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WORKING PAPER

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INFORMATION

From:	General Secretariat of the Council
To:	Delegations
Subject:	EU-UK Trade and Cooperation Agreement: - Compilations of written questions and answers

Delegations will find attached, on behalf of the Commission, a compilation of written questions and answers by title/agreement on the EU-UK Trade and Cooperation Agreement:

- LECJ title
- SSC title in TCA
- participation of UK in Union programmes
- governance title of TCA
- Transport title in TCA
- trade in services in TCA
- Energy title of TCA
- fisheries title of TCA
- EU-UK SOIA
- LPF title in TCA
- TiG title in TCA
- Euratom UK NCA
- GRP in TCA
- visa free travel in TCA

LAW ENFORCEMENT AND JUDICIAL COOPERATION IN CRIMINAL MATTERS - Questions on the TCA –		
Article	Question	Answer
PART ONE: COMMON AND INSTITUTIONAL PROVISIONS		
TITLE II: PRINCIPLES OF INTERPRETATION AND DEFINITIONS		
COMPROV.16 [Private rights]	- In ECJ case law, the principle stands that - as long as it is not explicitly excluded - a provision in an agreement concluded by the EU with non-member countries must be regarded as being directly applicable when, regard being had to its wording and the purpose and nature of the agreement itself, the provision contains a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure. Does this principle apply entirely with regard to Art. MOBI.SSC.67 and Part Three of the EU-UK Trade and Cooperation Agreement as foreseen in Art. COMPROV.16? If yes, is the assumption correct that with regard to Part III of the EU-UK Trade and Cooperation Agreement the question of direct effect of a provision in Part Three has to be examined for every provision separately and cannot be presumed for all provisions of Part Three in general?	Article COMPROV.16(1) is a provision which as a general rule explicitly excludes the direct applicability of the Agreement within the legal orders of the Parties. However, the effect of the introductory phrase of Article COMPROV 16(1), insofar as it relates to Part Three [Law enforcement and judicial cooperation], is that within the Union that Part confers rights and imposes obligations on private parties (natural and legal persons). Therefore, administrative and judicial authorities of the Union and of the Member States can directly apply Part Three vis-à-vis private parties, without the need to enact domestic legal provisions transposing the content of that Part.
COMPROV.16 [Private rights]	How should Article COMPROV 16 be understood and especially the exception with regard to the Union of Part Three (Law enforcement and judicial cooperation)?	The effect of Art. COMPROV.16, insofar as it relates to Part Three (Law enforcement and judicial cooperation), is that within the Union that Part confers rights and imposes obligations on private parties (natural and legal persons). Therefore, administrative and judicial authorities of the Union and of

		the Member States can directly apply Part Three vis-à-vis private parties, without the need to enact domestic legal provisions transposing the content of that Part.
TITLE III: INSTITUTIONAL FRAMEWORK		
INST.1(4)(h) [Partnership Council] / FINPROV.10A [Interim provision for transmission of personal data to the United Kingdom]	Data protection: The power of the Partnership Council to make recommendations regarding the transfer of personal data (Art. INST.1(4)(h)) - is it intended to provide for bridging option for law enforcement and judicial cooperation until the adequacy decision can be adopted?	As regards the interim period in the absence of an adequacy decision, please see Article FINPROV.10A (page 406 of the Agreement) that in fact already establishes a "bridge" to ensure full continuity of data flows, including for law enforcement purposes, under a certain number of conditions and a specific governance mechanism, in which the Partnership Council plays a role (see paragraphs 8 to 13 of Article FINPROV.10A). In addition and more generally , the Partnership Council can make recommendations pursuant to Article INST.1(4)(h) on safeguards that may become necessary for the transfer of personal data, (see Article COMPROV.10(4), page 399 of the Agreement) in the context of the application of the Agreement.
INST.1(4)(h) [Partnership Council] - Data protection	According to Art. INST 1 4 h) the Partnership Council can "make recommendations to the Parties regarding the transfer of personal data in specific areas covered by this Agreement or any supplementing agreement". We would like to kindly ask for clarification on what specific areas are meant by this, the relationship with the GDPR and the European institutions, to which the interpretation of the data protection rules has so far been reserved, as well as the legally binding force of these recommendations.	Article INST.1(4)(h) covers *all* specific areas of the Agreement which relate to the transfer of personal data (e.g. customs, transport of goods by road, digital trade, Article FINPROV.10A [Interim provision for transmission of personal data to the United Kingdom]). Given that the Partnership Council will adopt recommendations jointly, the Union will be able to ensure that they do not contradict the EU data protection rules. Such recommendations will have no binding force (per Article INST.4(1)). They could concern, for example, specific safeguards required by further developments of the cooperation in the context of the application of the agreement.
PART THREE: LAW ENFORCEMENT AND JUDICIAL COOPERATION IN CRIMINAL MATTERS		
TITLE I: GENERAL PROVISIONS		
LAW.GEN.3(2) [Protection of human rights and fundamental freedoms]	As Human Rights standards are different for the UK and member states: Is it correct to presume that neither requests could be answered nor sent if there is a concrete risk that the	Article LAW.GEN.3 defines the respective applicable fundamental rights framework for the UK and for Member States. The UK is no longer bound by the Charter, but has to comply with the ECHR, as interpreted by the ECtHR. In interpreting the Charter, the

	UK will not apply the Charter of Fundamental Rights standards higher than ECHR standards as member states are bound to the Charter. That might occur e.g. with respect to ne bis in idem.	ECJ takes into account the jurisprudence of the ECtHR. Legal discrepancies are therefore more the exception than the rule. The Member States have to comply with their own obligations under the Charter when they issue or execute cooperation requests. This is different from assessing whether the UK will apply the Charter. As set out in Article LAW.SURR.84(3) and 93(2), the executing authority can request additional guarantees if there are substantial grounds for believing that there is a real risk to the protection of the fundamental rights of the requested person after surrender. Regarding the ne bis in idem ground for refusal, it was explicitly addressed in relevant chapters (cf. Art. MUTAS 119, SURR 80 (b)) with specific wording to be respected by both EU MS and UK.
LAW.GEN.4 [Protection of personal data] / LAW.OTHER.137 / FINPROV.10A [Interim provision for transmission of personal data to the United Kingdom]	It would be appreciated, if you could provide us with clarification about the relationship between the different provisions concerning the protection of personal data. LAW.GEN.4 requires certain safeguards for the protection of personal data. FINPROV.10A determines interim provisions for the transmission of personal data to the United Kingdom until the date on which adequacy decisions in relation to the UK are adopted by the European Commission under Article 36(3) of Directive (EU) 2016/680 and under Article 45(3) of Regulation (EU) 2016/679. Article LAW.OTHER.137 deals, inter alia, with the case that an adequacy decision ceases to apply. Could you please clarify how these provisions are related to each other and to the general	There is no change of the approach/standard. This agreement itself does <u>not</u> provide for any transfer mechanism (as adequacy is a unilateral and autonomous process). Article LAW.GEN.4 states that this cooperation is based on the Parties' commitment to a high level of data projection, and then gives some examples of the safeguards ensuring such high level of protection. This a non-exhaustive list ("including") of safeguards. The proper transfer mechanism will be provided by the future adequacy decisions to be adopted under the "Law Enforcement Directive" and General Data Protection Directive. In the meantime, an interim "bridging" solution has been put in place to ensure stability and continuity of data flows, including in this area (see Article FINPROV.10A). This provision is based on the assumption that an adequacy decision will be adopted. Article LAW.OTHER.137 provides for the possibility to suspend Part Three of the Agreement in case of serious and

	provisions concerning the transfer of personal data to third countries as laid down in Directive (EU) 2016/680 and in Regulation (EU) 2016/679? In particular, it would be useful to assess the possible situation that the envisaged adequacy decision could not be reached at all.	systematic deficiency as regards data protection, including the withdrawal or annulment of an adequacy decision. All the above is fully in line with EU law requirements and the negotiating directives.
LAW.GEN.4 [Protection of personal data]	Are the data protection safeguards in Art. LAW.GEN.4 to be considered as sufficient appropriate safeguards, in the sense of art. 37, § 1, under (a), of the Law Enforcement Directive 2016/680?	No, they are not. Art. LAW.GEN.4 does not provide for any transfer mechanism. It has essentially an illustrative nature, i.e. it gives some examples of safeguards reflecting the Parties' commitment to a high level of protection of personal data, which is one of the prerequisites of the law enforcement and judicial cooperation. Moreover, it is a non-exhaustive list ("including"). The proper transfer mechanism will be provided by the future adequacy decision to be adopted under the "Law Enforcement Directive". In the meantime, an interim "bridging" solution has been put in place to ensure stability and continuity of data flows, including in this area (see Article FINPROV.10A).
LAW.GEN.4 [Protection of personal data]	Could the Commission elaborate on the changes made in the article on personal data protection and privacy? What is the reason behind the changes and do they mean any shift from the standard?	There is no change of the approach or standard. This agreement itself does not provide for any transfer mechanism (as adequacy is a unilateral and autonomous process). Article LAW.GEN.4 states that this cooperation is based on the Parties' commitment to a high level of data projection, and then gives some examples of the safeguards ensuring such high level of protection. This a non-exhaustive list ("including") of safeguards. The proper transfer mechanism will be provided by the future adequacy decisions to be adopted under the "Law Enforcement Directive" and General Data Protection Regulation. In the meantime, an interim "bridging" solution has been put in place to ensure stability and continuity of data flows, including in this area (see

		Article FINPROV.10A). Article LAW.OTHER.137 provides for the possibility to suspend this Part of the Agreement in case of serious and systematic deficiency as regards data protection, including the withdrawal/ annulment of the adequacy decision. All the above is fully in line with EU law requirements and the negotiating directives.
TITLE II: EXCHANGES OF DNA, FINGERPRINTS AND VEHICLE REGISTRATION DATA and ANNEX LAW-1: EXCHANGES OF DNA, FINGERPRINTS AND VEHICLE REGISTRATION DATA		
LAW.PRUM– provisional application	-	
LAW.PRUM.15 [Automated searching of vehicle registration data]	- The MS assumes that the data exchange set out in the document is limited to what the PRUM resolutions (COUNCIL DECISION 2008/615 / JHA) already provide. - However, since the specifications in the document could also be understood in such a way that the scope of the regulatory could be broader. We would like to ask the COM for a more specific understanding of this. - Does the COM agree that the scope of the regulatory comply with the COUNCIL DECISION 2008/615 / JHA?	Article LAW.PRUM.15 is modelled on the text of Article 12 of Council Decision 2008/615/JHA and does not bring about additional obligations on the Member States in comparison to that Decision.
LAW.PRUM.17 [Implementing measures]	Police cooperation: - The Member States set quotas for automated comparison of fingerprints. Will these quotas continue to apply to UK as well?	As regards the automated comparison of fingerprints, the declarations of Member States under Art. 13(1) and 18(2) of Council Decision 2008/616/JHA continue to apply, see Article LAW.PRUM.17(3) (page 289 of the Agreement) read together with Article 12(1) of Annex LAW-1 (page 901 of the Agreement).
Annex LAW-1 EXCHANGES OF DNA, FINGERPRINTS AND VEHICLE	- Do the regulations in the agreements lead to deviations or changes with regard to the previous	It should be noted that the UK can only start searching vehicle registration data via the TESTA network after a successful completion of the evaluation pursuant to

REGISTRATION DATA	procedure of the COUNCIL DECISION 2008/615 / JHA? - The MS assumes that procedures established between the member states and the UK on the basis of the EUCARIS treaty will continue to run via the TESTA network. Is this assumption correct?	article LAW.PRUM.18. The UK was not yet participating in vehicle registration data exchanges under Prüm when it was a Member State or during the transition period. In the future, Eucaris will be used for the comparison and exchange of vehicle registration data under Title Prüm of Part Three of the TCA once the UK has fulfilled the relevant conditions. On the basis of an overall evaluation report on the evaluation visit and, where applicable, a pilot run, the EU shall determine the date from which such data may be supplied by Member States to the United Kingdom (see Article PRUM.18).
PRUM/ EUCARIS:	- During previous contact with DG DIGIT about the services based on EUCARIS (VHInfo, DLInfo and AVI) we were told that they had not yet received the approval from the UKTF to authorize traffic flows related to EUCARIS. Could you give an indication as to when this approval might be given, and can the services stay active/connected?	EUCARIS is involved in many data exchange solutions under EU law, as a sole provider (e.g. Prüm Decisions, cross-border enforcement of traffic rules – Directive 2015/413) or in combination with EU technical solutions (e.g. RESPER - driving licences, RSI – roadside inspections, ERRU – road transport undertakings, VAT-taxation). In accordance with Article 8 the Withdrawal agreement, the UK had to be disconnected from these data exchange applications at the end of the transition period. Concerning TACHOnet (Council Regulation (EEC) No 3821/85), the situation is indeed unchanged and UK is connected on the basis of article 13(2) of Section 2 of Part C of Annex ROAD.1 to the EU-UK Trade and Cooperation Agreement. The UK was not yet participating in vehicle registration data exchanges under Prüm when it was a Member State or during the transition period. In the future, Eucaris will be used for the comparison and exchange of vehicle registration data under Title Prüm of Part 3 of the TCA once the UK has fulfilled the relevant conditions. On the basis of an overall evaluation report on the evaluation visit and, where applicable, a pilot run, the EU shall determine the date from which such data may be supplied by Member States to the United Kingdom (see Article PRUM.18).

TITLE III: TRANSFER AND PROCESSING OF PASSENGER NAME RECORD DATA		
TITLE III and data protection	The Commission stated at an earlier stage of the negotiations, that TITLE III concerning the transfer and processing of passenger name records originally was modelled closely in line with the provisions of the draft agreement between the EU and Canada, also implementing the requirements stated by the ECJ. As we don't know the current status of negotiations between the EU and Canada: Are the modifications and add-ons in TITLE III (compared to the draft at an earlier stage) still in line with the draft agreement between the EU and Canada and the respective opinion of the Court?	The additional safeguards in Title III: PNR ensure that the transfer of PNR data to the UK and the processing of that PNR data by the UK is in line with the requirements for the transfer of PNR data from the EU to a third country as set out by the Court in its opinion 1/15. Title III on PNR largely follows the renegotiated text for an Agreement with Canada. There are some adjustments to reflect UK specificities, most notably a conditional and limited interim period due to special circumstances reflecting the need for the UK to make technical adjustments to transform the PNR processing systems, which the United Kingdom operated whilst Union law applied to it, into systems which would enable it to delete the data of departing passengers.
General question on competent authorities	Could the Commission please clarify the concepts of "competent authority", "independent administrative body" and the role of the courts and administrative tribunals? In general as well as more in specific in certain articles mentioned below.	The concept of "competent authority" is defined in article LAW.PNR.19, point (c) and means the United Kingdom authority responsible for receiving and processing PNR data under this Agreement. This competent authority is what the Passenger Information Units (PIUs) are for the MS (see point (d) of article 19). This concept is to be distinguished from "independent administrative body", as referred to in article 28(7), since this body has to be independent from the UK competent authority (UK PIU). This independence is required in order to "assess on a yearly basis the approach applied by the United Kingdom competent authority as regards the need to retain PNR data pursuant to paragraph 4." Finally, the terms "court or independent administrative body" in article LAW.PNR.29(2) refer to the requirements set out by the Court of

		Justice of the EU in its Opinion 1/15 regarding the use and disclosure of PNR: this should be "subject to prior review either by a court or by an independent administrative body" (para. 208).
LAW.PNR.19 [Definitions]	Can the competent authority as mentioned in art. LAW.PNR.19 be considered as an "independent administrative body" as mentioned in art. LAW.PNR.29 §2?	No, see answer above. The independent administrative body referred to in article LAW.PNR.29 has to be independent from the UK competent authority (PIU) referred to in article LAW.PNR.19.
LAW.PNR.20 [Purposes of the use of PNR data]	Regarding Article LAW.PNR.20: Purposes of the use of PNR data (Part Three, Title III), Point 2 b) mentions "a significant public health risk, in particular as identified under internationally recognized standards" as one of the Purposes of the use of PNR data. In national legislature, which is currently fully harmonised with the PNR Directive, such purpose of the use of PNR data is not mentioned. A the moment [the Member State] is using PNR data only in the exceptional concrete cases for the prevention of terrorism or very serious crime, it's investigation, determination or their criminal persecution purposes. Possibility to use PNR data on the purpose of significant public health risk is not foreseen in national legislation at the moment. So there is a possibility that the UK might start using PNR data, we would be supplying, on the different purpose on the exceptional cases (not for the purpose of terrorism or etc. but for health or etc.). That is why we are considering if there might be necessity for the additional safeguard there,	• The Agreement between the EU and the UK is binding on the institutions of the Union and on the Member States under the terms of Articles 216 and 218 TFEU. Part Three [Law enforcement and judicial cooperation] is also directly applicable, meaning that neither the EU nor the MS need to adopt or adapt secondary/ national law to apply the agreement. • That said, first, we do not see a contradiction between the agreement and article 13 of the PNR directive. Carriers will transmit PNR data – comprising the elements in Annex LAW-2 – to the UK under Article LAW.PNR.21 and Member States will also transmit PNR data under Article LAW.PNR.22(3) and (4). The UK competent authority will normally process this data for the purposes of Article LAW.PNR.20(1) and only in exceptional cases where necessary to protect the vital interests of any natural person the UK PIU may use them to combat a significant public health risk, in particular as identified under internationally recognised standards (as permitted under Art. LAW.PNR.20(2)). The safeguards provided for in the agreement will apply also in this case. • Moreover, in Article LAW.PNR.24, the agreement has an equivalent provision to Article 13(4) of the PNR directive, as it prohibits the processing of "special categories of data" which includes data concerning health (see definition in Article LAW.GEN.2). • Finally, it needs to be recalled that also other PNR agreements with third countries (e.g. Australia and the negotiated

	assuring that UK could not start using PNR data for the purposes different from the ones the Member States would have supplied them for? Or maybe this problem is already covered by data protection provisions of the Agreement? Do you think these provisions for the new purpose of PNR data should be applied directly?	text with Canada) recognise that there may be exceptional circumstances where PNR data can be processed to protect the vital interests of any individual, such as a risk of death or serious injury or a significant public health risk. The Court of Justice, in its Opinion 1/15 on the draft EU-Canada PNR agreement, has also accepted the exceptional use of PNR for such purposes. The Commission has also recognised that the use PNR data could constitute a valuable tool to protect public health and prevent the spread of infectious diseases, for example by facilitating contact tracing as regards persons who have been sitting near an infected passenger. A number of MS have indicated a need to allow for the use of PNR data to tackle such health-related emergencies (see p.11 of COM(2020) 305 final on the Review of the PNR Directive and the page 41 of the relevant Staff Working Document SWD(2020) 128 final).
LAW.PNR.20 [Purposes of the use of PNR data]	In relation to PNR, it is noted that provision is made that, in exceptional cases, the UK may process PNR data where this is necessary to protect vital interest of individuals or where there is a significant public health risk. The PNR Directive specifically prohibits the processing of data for health reasons. It is not clear whether this provision is limited to allowing the UK to process data transferred to it by carriers under this ground or whether it might also apply, by implication, to data supplied by Member States' Passenger Information Units (PIUs) on a case by case basis where data is sought for the investigation of terrorism and serious crime. Follow-up question: In our understanding, Article 13	Concerning your question on the processing of PNR data to protect the vital interests of any natural person in case of a significant public health risk, provided for by Article LAW.PNR.20(2)(b), we confirm that this provision applies to data shared both under Article LAW.PNR.21 and under paragraphs 3 and 4 of Article LAW.PNR.22. Additional reply: • The Agreement between the EU and the UK is binding on the institutions of the Union and on the Member States under the terms of Articles 216 and 218 TFEU. Part Three [Law enforcement and judicial cooperation] is also directly applicable, meaning that neither the EU nor the MS need to adopt or adapt secondary/ national law to apply the agreement. • That said, first, we do not see a contradiction between the agreement and Article 13 of the PNR directive. The former (LAW.PNR.20) concerns the (exceptional) use of PNR data (which can be any element in Annex LAW-2) for the purpose of protecting public health while the latter prohibits using PNR data revealing a person's health; These are different things.

	of the PNR Directive specifically prohibits carriers from sharing data for health reasons; a provision has been included in domestic legislation transposing the PNR Directive to reflect this. The provisions of Article 20(2), and the clarification provided by the Commission, appears to be against this intent of Article 13 of the PNR Directive. If it is confirmed to be the case that PNR data can be shared between MS PIUs and the UK Competent Authority for cases of significant public health risk, then this would appear to raise the question as to whether an amendment to the PNR Directive, and to national implementing legislation, is required. We would be grateful for any further views that could be provided on this potential conflict of obligations.	Carriers will transmit PNR data – comprising the elements in Annex LAW-2 – to the UK under Article LAW.PNR.21 and Member States will also transmit PNR data under Article LAW.PNR.22(3) and (4). The UK competent authority will normally process this data for the purposes of Article LAW.PNR.20(1) and only in exceptional cases where necessary to protect the vital interests of any natural person the UK PIU may use them to combat a significant public health risk, in particular as identified under internationally recognised standards (as permitted under Art. LAW.PNR.20(2)). The safeguards provided for in the agreement will apply also in this case. • Moreover, in Article LAW.PNR.24, the agreement has an equivalent provision to Article 13(4) of the PNR directive, as it prohibits the processing of "special categories of data" which includes data concerning health (see definition in Article LAW.GEN.2). • Finally, it needs to be recalled that also other PNR agreements with third countries (e.g. Australia and the negotiated text with Canada) recognise that there may be exceptional circumstances where PNR data can be processed to protect the vital interests of any individual, such as a risk of death or serious injury or a significant public health risk. The Court of Justice, in its Opinion 1/15 on the draft EU-Canada PNR agreement, has also accepted the exceptional use of PNR for such purposes. The Commission has also recognised that the use PNR data could constitute a valuable tool to protect public health and prevent the spread of infectious diseases, for example by facilitating contact tracing as regards persons who have been sitting near an infected passenger. A number of MS have indicated a need to allow for the use of PNR data to tackle such health-related emergencies (see p.11 of COM(2020) 305 final on the Review of the PNR Directive and the page 41 of the relevant Staff Working Document SWD(2020) 128 final).

LAW.PNR.20(2) [Purposes of the use of PNR data]	This article foresees that the UK competent authority may process PNR data where necessary to protect the vital interests of any natural person, such as (b) a significant public health risk, in particular as identified under internationally recognized standards. Taking this into account, does this imply that EU PIUs can do the same? To which extent does this agreement have an impact on the existing PNR Directive?	The PNR Title of the Agreement is not reciprocal. Article LAW.PNR.20(2) applies only to the UK and as regards PNR data received by the UK under this agreement. EU PIUs cannot avail themselves of this provision and, therefore, it does not change the purpose limitation of the PNR Directive. Other PNR agreements with third countries (e.g. Australia and the negotiated text with Canada) also recognise that there may be exceptional circumstances where PNR data can be processed to protect the vital interests of any individual, such as a risk of death or serious injury or a significant public health risk. The Court of Justice, in its Opinion 1/15 on the draft EU-Canada PNR agreement, has also accepted the exceptional use of PNR for such purposes.
LAW.PNR.20(3) [Purposes of the use of PNR data]	Could the Commission please clarify the concept of "a United Kingdom court or administrative tribunal" and their roles?	According to article LAW.PNR.20(3) "The United Kingdom competent authority may also process PNR data on a case-by-case basis where the disclosure of relevant PNR data is compelled by a United Kingdom court or administrative tribunal in a proceeding directly related to any of the purposes referred to in paragraph 1." These actors and their roles are defined by the domestic law of the United Kingdom. A similar provision can be found in the negotiated text for a PNR agreement with Canada.
LAW.PNR.22 [Police and judicial cooperation]	Can the competent authority request data based on art. LAW.PNR.22, even after the first period of 6 months? Is a prior review by the court / administrative tribunal or independent administrative body required for these disclosures?	Under the EU PNR Directive (art. 12) MS are required to depersonalise data after six months meaning that – if they would receive such a request from the UK - they will need to follow the disclosure procedure of Article 12(3) of the PNR Directive (involving a judicial authority or another competent national authority)
LAW.PNR.22(4) [Police and judicial cooperation]	Could the Commission please clarify the concept of "the United Kingdom competent authority"?	The concept of "UK competent authority" is defined in article LAW.PNR.19, point (c) and means the United Kingdom authority responsible for receiving and processing PNR data under this Agreement. This competent authority is what the PIUs are for the MS (see point (d))

LAW.PNR.28 [Retention of PNR data]	Is the "competent authority" in Art. LAW.PNR.28 the same authority as defined in art. LAW.PNR.19?	Yes, the "United Kingdom competent authority" as referred to in article 28 is defined under point (c) of article LAW.PNR.19.
LAW.PNR.28(3) [Retention of PNR data]	Could the Commission please clarify the concept of "the United Kingdom competent authority"?	The concept of "UK competent authority" is defined in article LAW.PNR.19, point (c) and means the United Kingdom authority responsible for receiving and processing PNR data under this Agreement. This competent authority is what the PIUs are for the MS (see point (d))
LAW.PNR.28(4) [Retention of PNR data]	Could the Commission clarify how the process of deleting the PNR data of passengers will be put into practice (cf. case EU-CAN Agreement)?	The United Kingdom has committed to deleting the PNR data by making the necessary technical adjustments to its PNR processing systems in order to delete PNR data in line with article LAW.PNR.28(4). As set out in article 28(10), there are special circumstances that prevent the United Kingdom from instantaneously making these technical adjustments to its PNR processing systems which it operated whilst Union law applied to it, into systems that comply with the deletion requirement of article LAW.PNR.28(4). For that reason, the agreement foresees that the United Kingdom may derogate from the deletion requirement of article LAW.PNR.28(4) for an interim period of one year under the strict conditionality that it complies with a number of additional safeguards, reporting obligations and subject to monitoring. Under Article LAW.PNR.28(12), the UK must periodically provide to the Specialised Committee on Law Enforcement and Judicial Cooperation its assessment of whether the special circumstances persist, together with a description of the efforts made to enable PNR data to be deleted. If the special circumstances preventing the UK to adapt its system persist, the interim period can be extended further maximum twice with one year by the Partnership Council under the same conditions. Substantial progress in the adaption of its systems is required for the second extension.

LAW.PNR.29(1) and (2) [Conditions for the use of PNR data]	Could the Commission please clarify the concept and roles of "the United Kingdom competent authority" and "a court or by an independent administrative body"?	The concept of "UK competent authority" is defined in article LAW.PNR.19, point (c) and means the United Kingdom authority responsible for receiving and processing PNR data under this Agreement. This competent authority is what the PIUs are for the MS (see point (d)) The terms "court or by an independent administrative body" in article LAW.PNR.29(2) refer to the requirements set by the Court of Justice in its Opinion 1/15 regarding the use and disclosure of PNR: this should be subject to prior review either by a court or by an independent administrative body (par. 208). The concepts and roles of these actors are determined by the domestic law of the UK.
TITLE IV: COOPERATION ON OPERATIONAL INFORMATION		
LAW.OPCO.1 [Cooperation on Operational Information]	Title IV deals with the exchange of information and intelligence between law enforcement authorities in the field of the Swedish initiative as laid down in Council Framework Decision 2006/960/JHA. Therefore, the scope of Title IV originally was modelled closely in line with the respective provisions of Council Framework Decision 2006/960/JHA. Why did the Commission move away from this approach? Is the scope now considered to be broader than the scope of Council Framework Decision 2006/960/JHA and, if so, does this lead to a closer cooperation between the EU und UK than between Member States?	As outlined in the Political Declaration and the mandate, the aim was to provide for simplified exchanges of existing information and intelligence between the UK and MS law enforcement authorities, with the view of delivering capabilities that, in so far as is technically and legally possible, and considered necessary and in the Union's interest, approximate those enabled by Council Framework Decision 2006/960/JHA. This would include information on wanted and missing persons and objects. It was considered in the EU interest to list a number of specific purposes for which operational information can be exchanged between Member States and UK police. In fact, the purposes listed are the usual purposes for which information can be exchanged between police authorities. (a) the prevention, investigation, detection or prosecution of criminal offences; (b) the execution of criminal penalties; (c) safeguarding against, and the prevention of, threats to public safety; and (d) the prevention and combating of money laundering and the financing of terrorism. This wording is indeed more specific than the wording used in the SFD, which refers

		in very broad terms to the purpose of conducting criminal investigations or criminal intelligence operations. However, this should not lead to the conclusion that the OPCO Title allows for a closer cooperation with the UK compared to the cooperation between EU MS under EU law, as also the SFD allows the exchange of operational information for the purposes outlined in the OPCO Title. In line with current practices, the purposes are nowadays defined in agreements in a more specific manner. It should also be borne in mind that Article LAW.OPCO.1 states, this Title is applicable to the extent that the information is not provided for in other Titles of Part Three. It is thus a residual Title.
LAW.OPCO.1(1) and (3) [Cooperation on Operational Information]	Does the difference in purposes in art. LAW.GEN.1 (limited to criminal matters), art. LAW.OPCO.1, 1 (criminal matters + execution of criminal penalties + threats to public safety) and art. LAW.OPCO.1, 3 (inclusion of missing persons) have any significance or legal consequence? It is odd that the definition in the general article is narrower than it is in the following more specific articles. Is it for instance possible to confirm that it will be possible to exchange information on public order (such as sporting events and mass manifestations) on the base of article LAW.OPCO.1 (c), as it is today the case under article 14 and 15 of the Prüm regulation?	Part three of the TCA is entitled "law enforcement and judicial cooperation *in criminal matters*". The term "in criminal matters*"* should not be interpreted restrictively as Part three of the TCA also covers the prevention of and fight against money laundering and financing of terrorism (title X), as well as the possibility to exchange operational information under (title IV). Article LAW.GEN.1(2) states that "This Part *only applies* to law enforcement and judicial cooperation in criminal matters taking place exclusively between the United Kingdom, on the one side, and the Union and the Member States, on the other side." It continues by clarifying that it aims to exclude from the scope of the Part Three, "situations arising between the Member States, or between Member States and Union institutions, bodies, offices and agencies, nor does it apply to the activities of authorities with responsibilities for safeguarding national security when acting in that field." By contrast, this paragraph should not be interpreted as calling for a restrictive interpretation of "in criminal matters". We confirm that it is possible under OPCO to exchange information between an EU MS and the UK on sporting events and

		mass manifestations insofar as it aims to safeguard against or prevent threats to public safety (see purpose limitation in Article LAW.OPCO.1(1), points (a) to (d).
LAW.OPCO.1(2) [Cooperation on Operational Information]	The definition of a 'competent authority' in this article is very broad. Could the Commission clarify which authorities are covered by this definition? Does this definition include e.g. public prosecutors, prisons, mayors, etc.? Will this concept and its exact extent be explained in a formal instrument?	As defined in Article OPCO.1(2), the concept of "competent authority" means a domestic police, customs or other authority that is competent under domestic law to undertake activities for the purposes set out in paragraph 1. Which specific actors are competent in a State therefore depends on the organisation of that State. For instance, Financial Intelligence Units (FIUs) are seen as part of the police in some Member States, whereas in others they are seen as an administrative authority. In the latter Member State, the "administrative" FIU is to be considered a "competent authority" under Article OPCO.1(2) because it is competent under domestic law to prevent and combat money laundering and terrorist financing as referred to in Article OPCO.1(1)(d). The Commission does not consider it necessary to provide further interpretative guidance on this matter.
LAW.OPCO.1(4) [Cooperation on Operational Information]	Why does this provision exclude the provision/channelling of information via judicial authorities from the scope of the Article? (If, pursuant to para 2, a judicial authority is "competent" according to the relevant domestic law and, pursuant to para 3, such law foresees the channelling through judicial authorities, this seems to be a typical application of the Article.) To put the question from a different angle: What rules apply if the relevant domestic law does stipulate the channelling via judicial authorities?	Paragraph 4 does not exclude the provision/channelling of information via judicial authorities from the scope of the Article. It enforces safeguards applicable through domestic law of the MS that may apply as regards the channelling of such data, i.e. where domestic law reserves certain information exchange to judicial authorities. This means that if the police of MS A requests information from MS B and in MS B this can only be provided by judicial authorities, MS B is allowed to channel such information through its judicial authorities. This provision also aims to respect requirements in domestic law that impose an authorisation by the judiciary prior to the information being made available (see notably the language "the request has to be made via judicial authorities. ")

LAW.OPCO.1(8) [Cooperation on Operational Information]	[The Member State] would like some clarification as to the specific scope of the words "which it holds" and "information from other sources" in this article. Does this article make it possible to exchange the same kind of information as defined under art. 2 (d) of the Swedish Framework Decision (SFD) ("any type of information or data which is held by law enforcement authorities" and "any type of information or data which is held by public authorities or by private entities and which is available to law enforcement authorities without the taking of coercive measures, in accordance with Article 1(5)")?. Or does the difference in wording also implies a difference in scope between the possibilities of exchange of information as defined in this treaty and the SFD?	Article LAW.OPCO.1(8) states that " A competent authority may provide under this Title any type of information *which it holds*, subject to the conditions of the domestic law which applies to it and within the scope of its powers. This may include information *from other sources*, only if onward transfer of that information is permitted in the framework under which it was obtained by the providing competent authority." The terms "(any type of information) which it holds" aims to cover all existing information and intelligence which is already in the possession of the competent authority. This excludes for instance information that can only be obtained by the competent authority through the use of further investigative measures, such as interception of telecommunications data. This also covers information from "other sources" such as other States or private entities. Therefore, Article OPCO.1(8) makes it possible to exchange the same kind of information as defined under article 2 point (d) of Framework Decision 2006/960/JHA (SFD)
LAW.OPCO.1(8) [Cooperation on Operational Information]	The article mentions that this may include information from 'other sources, only if onward transfer of that information is permitted in the framework under which it was obtained by the providing competent authority'. What is meant with other sources? And are they also required to give consent for the subsequent transfer to e.g. UK? Can UK use that information as evidence?	Information can come from "other sources" such as other States or private entities. The competent authority providing the information will have to respect the conditions set by the source of the information on onward transfer. For example, the information could be obtained from another State that has requested to be consulted before that information is transferred onwards to (or used as evidence in) another State. The obtained information can be used as evidence under the conditions set out in paragraph 6 of the Article.
LAW.OPCO.1(10) [Cooperation on Operational Information]	The article leaves the possibility open for concluding bilateral agreements between the UK and MS, although in compliance with EU law. Which kind of	The issue of bilateral agreements cannot be seen in the abstract, but consideration needs to be taken of the nature and the extent of EU competence on the matter(s) that the agreement intends to cover.

	bilateral agreements would remain be possible? Which areas, what kind of agreements can still be made? For example, would it be possible to conclude agreements on time limits?	In general, matters covered by EU legislation cannot be the subject of a bilateral agreement (Article 3(2) TFEU). The UK has refused the EU proposal to include time limits in OPCO.
OPCO/joint declaration on classified information	JOINT DECLARATION ON THE EXCHANGE AND PROTECTION OF CLASSIFIED INFORMATION: Does this have direct consequences for operational information exchange?	The Agreement between the EU and the UK concerning security procedures for exchanging and protecting classified information (OJ 2020 L 444/1463) is about protecting classified information from unauthorised disclosure or loss, see Article FIN.PROV.6. Accordingly, it does not impact the scope and conditions of operational information exchange set out in Article LAW.OPCO.1.
TITLE V: COOPERATION WITH EUROPOL		
LAW. EUROPOL.47 [Definitions]	Does the reference to the Europol Regulation 2016 in Article 47 LAW.EUROPOL paragraph a mean that after the amendment of the Europol Regulation, this EU-UK agreement must be amended, or must this be incorporated in the new Europol Regulation?	As per standard legislative technique, future amendments to the Europol regulation and references thereto will be construed as references to the Europol regulation. Therefore, the agreement will not need to be amended simply to update the references to the new amended Europol Regulation.
LAW.EUROPOL.47(b) [Definitions]	LAW.EUROPOL 47 paragraph b contains more limited definition of competent authorities of Member States than the Europol Regulation. The agreement excludes competent authorities other than national law enforcement authorities from the definition, preventing cooperation of those authorities with the UK on the basis of this agreement. What is the reason for this and does the Commission foresee to accommodate this significant limitation? Reply: Follow up question: Does that mean that the Member States should communicate through Europol everything that is discussed between the liaison officers? In concrete terms: can a Member	The agreement foresees cooperation between Europol on the one side and the competent UK authority on the other (to be designated by the UK in accordance with Art. LAW.OTHER.134(6)). The Agreement therefore does not employ the same definition of "competent" authority as the Europol Regulation, because the purpose of the Europol chapter is not to establish cooperation directly between the MS authorities and the UK authorities. REPLY to follow-up question: As mentioned in the first reply, the Agreement aims primarily at regulating the relationship between Europol and the UK competent authorities. This being said, mention is made in the Agreement of Member States' competent authorities (see LAW.EUROPOL 50(7)) in order to ensure that already existing forms of operational cooperation can be used also post-BREXIT. Member States' competent authorities should be understood in this

	State's customs (not being a competent authority) rely on these provisions to cooperate, within the context of Europol, with the British competent authority and other countries on an international drugs investigation? If not, which provisions can be relied upon?	context in the same manner as under the Europol Regulation. The example may be covered by LAW.EUROPOL 50(7). Liaison officers from the United Kingdom and representatives of the competent authorities of the United Kingdom may be invited to operational meetings. Member State liaison officers and third-country liaison officers, representatives of competent authorities from the Member States and third countries, Europol staff and other stakeholders may attend meetings organised by the liaison officers or the competent authorities of the United Kingdom. This provision allows the liaison officers of the competent authorities of the Member States to invite the UK liaison officers to relevant operational meetings, as well as the other way around. Therefore, the Member States' liaison officer(s) at Europol can invite UK liaison officers, other Member States liaison officers and third country liaison officers to discuss an international drugs investigation. Depending on the nature of the operational cooperation the Member State's Customs authorities envisage, also Article LAW.EUROPOL.59 may come into play. This provision foresees that either the working arrangement or administrative arrangement, as the case may be, between Europol and the UK include provisions, amongst others, in particular allowing for (….) (c) the association of one or more representatives of the United Kingdom to operational analysis projects, in accordance with the rules set out by the appropriate Europol governance bodies. This provision allows engaging the UK in operational analysis projects in the sense of Article 18 of the Europol Regulation in the same way as this is currently done for other third counties with which a cooperation agreement has been concluded.

LAW.EUROPOL.50(2) [National contact point and liaison officers]	Article 50 LAW.EUROPOL states in paragraph 2 that information can be shared by Europol directly with national British competent authorities and therefore not via the central contact point of Member States. Under which circumstances is this the case and when is this not possible? In addition, it is stated that the central contact point as included in paragraph 3 is charged with the assessment, correction or deletion of personal data on the basis of the agreement. Does this role of the single point of contact also apply to Europol's direct exchange with UK national competent authorities? REPLY=> Article LAW.EUROPOL.50(3) indeed states that the UK national contact point is to be the central point of contact in respect of review, correction and deletion of personal data. Given the specific reference, without explicit room for exceptions as in par. 2, it is understood that for issues of review, correction and deletion of personal data, it is obligatory that Europol liaise with the UK national contact point (i.e. no possibility for "direct exchanges").	The UK national contact point is to be designated in accordance with Art. LAW.OTHER.134(6). Article LAW.EUROPOL.50(2) establishes the rule that exchanges of information shall take place between Europol and the UK national contact point. Direct exchanges between Europol and the competent authorities are to be exception "if considered appropriate". This is not further defined in the agreement, but may be specified further in the working and/ or administrative arrangements pursuant to Article LAW.EUROPOL.58. An example of such a situation could be one of urgency requiring a quick exchange of information, which can justify bypassing the national contact point.
LAW.EUROPOL.53(1) [National contact point and liaison officers]	Who assesses the additional safeguards regarding the processing of data of victims, witnesses, etc., as outlined in paragraph 1? Reply: Could you please clarify who reviews the guarantees and whether this is regularly reviewed?	These safeguards have to be provided by each Party under its "domestic" legislation. For Europol this is achieved through the Europol Regulation (EU) 2016/794 and the Regulation (EU) 2018/1725 on processing of data by EU institutions and bodies. As regards Europol, this will be the EDPS overseeing data processing by the Agency. On the UK side, it will be the relevant data protection supervisory authority. It is up to these independent authorities to decide how often they want to proceed with an assessment of the additional safeguards mentioned under Article 53 LAW.EUROPOL.

Swedish Framework Decision/ OPCO/ EUROPOL	Europol, secure data exchange system SIENA. What about SIENA information exchange previously regulated by the Swedish Framework Decision? Is it still in force or the agreement does not foresee this possibility to exchange data with the UK? If not, what are the possible alternatives?	As the UK is now a third country and the transition period of the withdrawal agreement has ended, the Swedish Framework Decision does not apply anymore in relations between the EU MS and the UK. Instead, title IV (OPCO) provides a legal basis for EU MS and UK to assist each other through the provision of relevant information. Under Article LAW.OPCO.1(9), "Information may be provided under this Title via any appropriate communication channel, including the secure communication line for the purpose of provision of information through Europol", i.e. making the use of Siena possible.
EUROPOL – SIENA		
TITLE VII: SURRENDER		
General: Exchange of information/ international search for persons	Are there envisaged further negotiations with the UK in respect to the area of cooperation in the general exchange of information and international search for persons which is covered only generally in the Trade and cooperation agreement (e.g. setting deadlines for replies to requests and obligation to provide information)?	There are no such negotiations envisaged at this moment in time.
Search of a wanted person / SURR	Will the UK accept a request for search of a wanted person that is based on the European arrest warrant, or will there be a need to issue a special arrest warrant in accordance with the Trade and cooperation agreement? In practice, a search for a wanted person is carried out while there is no information of the whereabouts of such person. It is unnecessary to place a burden on courts in order to issue two identical documents in a situation where there is no information on the whereabouts of a wanted person.	To arrest a person in the UK, it is necessary to issue an arrest warrant in accordance with the agreement. For persons arrested before 31 December 2020, the Framework Decision on European Arrest Warrant continues to apply, cf. Article 62(1)(b) of the Withdrawal Agreement. For other pending European Arrest Warrants, where the person was not yet arrested, the new Agreement applies, c.f. Article LAW.SURR.112; a new arrest warrant is not required. For alerts entered into the Schengen Information System on which there was a hit before the end of the transition period, the United Kingdom shall be entitled to

		use, up until 31 March 2021, the Communication Infrastructure as referred to in Article 8(1) of Decision 2007/533/JHA to the extent strictly necessary for the purpose of exchanging supplementary information regarding such hits.
LAW.SURR.77 [Principle of proportionality]	Is it correct to presume that a breach of the principle of proportionality leads to a ground for mandatory non-execution of the arrest warrant as in LAW.SURR.80?	No, Article LAW.SURR.80 is not applicable in that case. It provides only three mandatory grounds for non-execution. However, Article LAW.SURR.93(1) provides that execution can be refused in case of a breach of the proportionality principle. The procedure set out in Article LAW.SURR.93(2) allows obtaining more information in such cases.
LAW.SURR.112 [Application to existing European arrest warrants] and Art. 62(1)(b) WA	According to the new Agreement, in existing cases of extradition of fugitives submitted on the basis of a European Arrest Warrant, which are currently before the competent Courts, will they be executed as submitted, or a new Application should be sent?	For persons arrested before 31 December 2020, the Framework Decision on European Arrest Warrant continues to apply, cf. Article 62(1)(b) of the Withdrawal Agreement. For other pending European Arrest Warrants, where the person was not yet arrested, the new Agreement applies, c.f. Article LAW.SURR.112; a new arrest warrant is not required.
SURR		
TITLE VIII: MUTUAL ASSISTANCE		
MUTAS/ Art.62(1)(l) WA	According to the new Agreement, requests for Mutual Legal Assistance submitted on the basis of a European Investigation Order by 31/12/2020, will they be executed as submitted, or a new Application should be sent?	This issue was addressed in the Withdrawal Agreement, cf. Article 62(1)(l). Directive 2014/41/EU continues to apply to such European Investigation Orders.
Communication channels in general		
Communication channels	Communication channels What secure electronic communications channels will be used for bilateral judicial cooperation (in civil and criminal matters) between UK and a Member State? In cases when the multilateral channels (like Interpol or Hague Isupport) are not being used are Member States expected to coordinate	Under Article LAW.OPCO.1(9), "Information may be provided under this Title via any appropriate communication channel, including the secure communication line for the purpose of provision of information through Europol", i.e. making the use of SIENA possible. For the exchange of criminal record information, TESTA shall be used. In the field of civil judicial cooperation,

	standards for such bilateral (MS-UK) electronic communication?	since 1 January 2021 the Hague Conventions form the framework for international cooperation between the EU Member States and the UK. For the purpose of this cooperation, we consider that the MS can use the same channels as they use with other third countries in the context of the Hague Conventions. To this effect, the Hague Conference on Private International Law, in close cooperation with the Commission and the Member States themselves has undertaken steps to ensure Convention-specific communication tools, specifically in the area of maintenance through the online platform software iSupport. The Commission supports Member States joining this initiative.
TITLE IX: EXCHANGE OF CRIMINAL RECORD INFORMATION and ANNEX LAW-6: EXCHANGE OF CRIMINAL RECORD INFORMATION – TECHNICAL AND PROCEDURAL SPECIFICATIONS		
LAW. EXINF.125 [Requests for information]	Was it intentional to exclude from the scope of cooperation set out in Article LAW.EXINF.125: Requests for information situations covered under art. 6.2. of Council Framework Decision 2009/315/JHA of 26 February 2009? Does it mean that the exchange of the requests for information and related data to be extracted from the criminal record provided the person concerned is or was a resident or a national of the requesting or requested State between UK and other MS cannot be dealt with under the TCA?	Art. LAW.EXINF. 125(2) concerns the situations when a UK national asks for the information on his own criminal record in a MS, or when an EU national asks for information on his record in the UK. In such cases, the central authority where the request was made is obliged to contact the State of nationality of that person for the complete information to be extracted from the criminal record. In other cases, when a person is a national of the State where he/she asked for information on his criminal record, paragraph 1 of this Article will apply. A central authority may then request another State for information to be extracted from criminal record, if it finds it necessary or when a person requests it, etc. (e.g. a citizen requests information in its Member State, but as he resided before in the UK, his employer asks also for a criminal record from the UK). Art. LAW.EXINF.125 covers therefore all situations referred to in Art. 6 of FD 2009/315/JHA.

EXINF.125(2) [Requests for information]	Several District authorities of the Ministry of Justice have asked about how to treat British citizens that request a certificate of criminal records at this local authority. To date, when a citizen requests it, the national certificate is issued and the United Kingdom is requested to provide a certificate with the information of its criminal records, all through ECRIS. As of 1 January 2021, will citizens of the United Kingdom still be served in the District authorities or would they have to be directed to their consulate to request it? We think that they should continue to serve them in the Districts, having regard to section 2 of art. LAW.EXINF.125, but could you please confirm.	In reply to your question, we can confirm that, as to the Agreement to be provisionally applied, citizens of the United Kingdom can indeed request information on their own criminal record from the competent national authority and do not need to be referred to their consulate. The procedure how to achieve that the extract from the criminal record is as complete as possible is described in Article LAW.EXINF.125(2).
EXINF.126 [Replies to requests]	Article LAW.EXINF.126: Replies to requests Point 2. contains the same reference to domestic law as the Ecris framework decision. However, in point 3, an addition is made to point 2 regarding information the States shall include in their replies to requests made for the purposes of recruitment for professional or organised voluntary activities involving direct and regular contacts with children. This addition covers the requirements of Directive 2011/92/EU on combating the sexual abuse of children etc. Taken outside the EU context however, and without any reference to the Directive, point 3. seems to limit Member States room for implementation and application of these requirements in relation to the UK “in accordance with its domestic law”. Is there an intention to give the UK a	Art. LAW.EXINF.126(3) on background checks has been introduced to the Agreement text on request of the Member States and the UK, with the objective of protecting the safety of children by prevention. It is based on Art.10(3) of Directive 2011/93/EU that was binding on the UK as a Member State, so the obligation to respond with the information on the existence of criminal convictions for sexual offences remains for both Parties the same as before the BREXIT.

	stronger position post Brexit than it had as a Member State?	
Annex LAW-6	Could the Commission verify whether the technical and procedural specifications in Annex LAW-6: Exchange of criminal record information, correspond fully to the provisions of EU legislation on ECRIS.	Care was taken that the two systems are compatible with one another. Differences exist (see, e.g., the 20-days-deadline for replying to all requests, irrespective of the purpose – Article LAW.EXINF.126(1)), which will, however, not cause a need to adapt the reference implementation software in order to exchange information with the UK.
ANNEX LAW-6 Article 4 [Information to be transmitted in notifications, requests and replies]	Article 4: Information to be transmitted in notifications, requests and replies Point 1. defines the obligatory information, including the convicted person's place of birth (town and State). This corresponds to the obligatory information listed in the Ecris Framework Decision, article 11.1.(a)(i). However, the agreement doesn't contain the exception made in the Framework decision in the chapeau of article 11.1.(a) "unless, in individual cases, such information is not known to the central authority". This exception is of great importance between Member States and a lack of such an exception in the EU-UK agreement would give the UK extended rights to receive information post Brexit than it had as a Member State.	It was the common understanding of the Parties negotiating Title IX of the TCA that the obligations under Article 4 of Annex LAW-6 should not go beyond the obligations under the current ECRIS framework.
TITLE XI: FREEZING AND CONFISCATION		
CONFISC – scope	1. Regarding freezing and confiscation (*Title XI*), could the Commission verify whether the provisions also oblige to cooperate in situations where, a) a freezing order has not been issued by a judicial authority; b) a freezing order has been issued outside criminal proceedings; c) a decision on confiscation	a) a freezing order not issued by a judicial authority can be recognized, but there is a facultative ground for refusal in Article LAW.CONFISC.15(4) "if the request is not authorised by a judicial authority acting in relation to criminal offences"; b) Article LAW.CONFISC.1(1) provides that the provisions of this Chapter apply to freezing and confiscations orders issued "within the framework of proceedings in criminal matters".

	has not been issued by a judicial authority; d) a decision on confiscation has been issued outside criminal proceedings?	Cooperation on confiscation orders issued outside of criminal proceedings are regulated by Article 10 (5) and (6) and shall be afforded by the requested State "to the widest extent possible under its domestic law", meaning that there is no obligation to execute such measures if this is not possible under the domestic law of the requested State. Article LAW.CONFISC.10(5) only refers to confiscation orders. Title XI therefore does not cover cooperation on freezing orders issued outside the framework of proceedings in criminal matters. c) Article 2 defines confiscation as "a penalty or a measure ordered by a court" See reply to (b)
CONFISC – scope	Furthermore, do the provisions oblige Member States to execute confiscation orders from the UK which are not based on a criminal conviction?	Article 2 defines confiscation as "a penalty or a measure ordered by a court following proceedings in relation to a criminal offence or criminal offences, resulting in the final deprivation of property". Like in Regulation 2018/1805, a criminal conviction is not necessarily required. This means that third-party confiscation or confiscation when the person has died or fled before the criminal conviction are also covered.
CONFISC – scope	Moreover, do those provisions broaden the material scope of freezing orders or confiscation decisions issued in the UK and to be recognized and enforced by Member States, in comparison to the EU regulation (EU 2018/1805)?	The provisions of Title XI, as far as proceedings in criminal matters are concerned, do not go beyond Regulation 2018/1805. Regarding confiscation orders or similar measures adopted outside of criminal proceedings, they allow for cooperation (e.g. among States who have civil confiscation regimes), but impose no obligation on States who do not have this possibility under their domestic law (see above). This is in line with the provisions of the Warsaw Convention.
LAW.CONFISC.4(4) [Requests for information on bank accounts and safe deposit boxes]	Question on reciprocal nature of the notifications: For instance in case of notification no 15 Article LAW.CONFIS.4.4 determines that such notifications may be made subject to the principle of reciprocity. Similar wording is used for the remaining	The relevant provisions are inspired by the Warsaw Convention (e.g. Art. 17(6). We found no declaration on this provision extending the scope to non-bank financial institutions. At first reading of the provisions of the Warsaw Convention and LAW.CONFISC,

	notifications. How to interpret this provision, notably is the notion of reciprocity also optional? If so, provided a Member State would be interested in extending the exchange of information to non-banking instructions, how to ensure the reciprocity from the UK from the moment of notification? Should this wish be additionally indicated in the wording of the notification?	reciprocity would have to be requested by States making this declaration to be applicable. However, the Explanatory Memorandum seems to suggest otherwise. To be on the safe side, it would therefore be preferable if MS would include the reciprocity in their declaration if they want to make use of these provisions.
TITLE XII: OTHER PROVISIONS		
LAW.OTHER.134 [Notifications]	If we will not indicate by 15 January 2021 that we will make a notifications under Art. LAW.SURR.82 part 2; Art. LAW.SURR.83 part 2 and Art. LAW.SURR.91 part4, is it still possible to make those notifications later according to Art. 134 part 1 para 2? If in the indications (table) the option "Will be decided at a later stage" is chosen, does this means that Article LAW.OTHER.134: Notifications is applicable in this regard? In particular, if this option is chosen, is it treated as application of notification during interim period i.e. does the para 3 of part 1 of the mentioned Article applies?" What in simple terms means Article LAW.OTHER.134: Notifications part 1 para 3 i.e. „During that interim period, any State in relation to which no notification provided for in Article LAW.SURR.82(2) [Political offence exception], Article LAW.SURR.83(2) [Nationality exception], or Article LAW.SURR.91(4) [Consent to surrender] has been made, and which has not been the subject of an indication that	In fact, the Union has time to make such notifications on behalf of the Member States until 28 February 2021. It would therefore be good if the Member State sent such notifications a few days before that deadline so that the Union's notification to the United Kingdom on behalf of all Member States can be prepared. If the Member State choses in the form "will be made at a later stage", the Member State can still make such notifications (by 28 February 2021 at the latest). This option in the form was intended to clarify the situation, in particular to flag that the State might 'provisionally' apply certain notifications (see below). If the Member State choses "no", the Member State would no longer be able to make or amend such notification (even within the period until 28 February once the Union had made such notification to the UK on behalf of the Member State), and the Member State would not be able to avail itself of the possibility to "provisionally" limit the political offence exception, apply the exception for own nationals or allow revocation of consent. Subparagraph 3 of Article LAW.OTHER.134(1) was intended to avoid that a State needs, for example, to extradite own nationals during the interim period until it makes a notification under

	no such notification is to be made, may avail itself of the possibilities provided for in that Article as if such a notification had been made in respect of that State?	Article 82(2). Equally, a State can limit the political offence exception or allow revocation of consent during that period.
LAW.OTHER.134(7) (d) and (g) [Notifications]	We have noticed that the draft decision foresees that the Union will issue a notification "on its own behalf" regarding the role of the EPPO in relation to the UK. How does this relate to the fact that the EPPO is based on enhanced cooperation and that 5 MS do not participate in it? Furthermore, the 22 MS who do take part will notify the Council of Europe that the EPPO is a competent judicial authority under the 1959 MLA Convention. Does this not imply that the Union should notify the UK "on behalf of the participating Member States" rather than on its own behalf?	Under Article 3 of Regulation (EU)2017/1939, the EPPO is established as a body of the Union. As a consequence, it should be the Union to notify it under this Agreement, on its own behalf. This has now been reflected in Article LAW.OTHER.134(7)(d) and (g). Of course, the notification only applies as far as the competence of the EPPO reaches, and thus only as far the enhanced cooperation applies. The notification itself will refer to the competences of the EPPO. The situation is different under the 1959 MLA Convention to which the Union is not Party. Here the only solution that could be found was that each Member States participating in the enhanced cooperation notifies the EPPO as competent authority.
TITLE XIII: DISPUTE SETTLEMENT and related questions on PART SIX: DISPUTE SETTLEMENT AND HORIZONTAL PROVISIONS TITLE I: DISPUTE SETTLEMENT and TITLE II: BASIS FOR COOPERATION		
LAW.DS	a. The part on law enforcement and cooperation in criminal matters includes specific dispute resolution mechanism including suspension and termination clauses. Why was this considered necessary and how do those provisions relate to the general dispute resolution mechanism and governance of the Partnership Agreement?	A distinct and different dispute settlement mechanism has been created (Title XIII) specifically for Part Three on law enforcement and cooperation in criminal matters. Article INST.10(2)(f) excludes the application of the general dispute resolution mechanism and governance to Part Three on law enforcement and cooperation in criminal matters. This is confirmed by Article LAW.DS.3 which provides for the exclusive applicability of the specific dispute settlement mechanism. The UK opposed binding dispute resolution by arbitration. Therefore, a system of consultations is foreseen. Finally, it should be borne in mind, that no international agreement concluded by the Union in the area of law enforcement and cooperation in criminal matters provides

		for binding dispute resolution by arbitration.
COMPROV.13 [Public international law] / uniform application of EU law in the field of LEJC	b. Given that the Court of Justice has no role in the governance and enforcement part of the Agreement how will the uniform application of EU law will be safeguarded?	The interpretation and application of the Agreement, including by the arbitration tribunal under the general dispute settlement mechanism, has no bearing on the interpretation and application of Union law other than the Agreement itself as being binding on the Union institutions and Member States (cf. Art. COMPROV.13 and Art. INST.29 (4)
LAW.DS.4 [Consultations] / SURR	Is it correct to presume that different understandings of provisions of LAW.SURR in the UK and a member state or between member states can only be discussed after a final decision on a surrender, as only states and not courts can ask for consultations and binding rules?	A consultation, with the aim of reaching a mutually agreed solution, can be launched at any time. Though it is only one of the Parties that can make such a request, it is not excluded that a pending court case triggers the consultation procedure.
INST.10 [Scope]	INST.10 para. 2 excludes certain provisions from the EU-UK Trade and Cooperation Agreement's general mechanism on dispute settlement. Which rules for dispute settlement apply instead in the respective fields?	The exclusion of certain provisions from the scope of the general dispute settlement mechanism, as set out in INST.10(2), follows normal practice in similar international agreements (e.g. provisions on SMEs, Good Regulatory Practices, competition policy, security of information exchanges, etc.). Specific dispute settlement or enforcement mechanisms apply to certain of those areas – for example: - Part Three on Law Enforcement of the Agreement contains a dedicated dispute settlement mechanism (see Title XIII); - On LPF, the following provisions apply: Articles 9.2 and 9.3 [Panel of experts for non-regression areas] for Chapters 6 and 7, Article 9.2 [Panel of experts] for Chapter 8 and expedited arbitration proceedings under Article 3.12 [Remedial measures] and Article LPF 9.4 [Rebalancing measures] (see Title XI on LPF); - Article INST.35 [Fulfilment of essential elements] may be applied

		if the essential elements under Title II [Basis for cooperation] are not fulfilled. Also, Article INST.10(3) provides that the Partnership Council may be seized by a Party with a view to resolving a dispute with respect to obligations arising from the excluded provisions.
COMPROV.10 [Personal data protection]	In several areas, the EU-UK Trade and Cooperation Agreement contains rather specific provisions on what kind of data should be exchanged (e.g. customs, transport of goods by road): How does this relate to the GDPR?	Article COMPROV.10 states that "*Where this Agreement or any supplementing agreement provide for the transfer of personal data, such transfer shall take place in accordance with the transferring Party's rules on international transfers of personal data*." Hence, any exchange of data between the EU and the UK covered by this agreement will have to comply with the applicable rules of the GDPR. In certain areas, the agreement provides for specific transfer rules to ensure full compliance with EU data protection law (e.g. transfers of PNR data that are subject under the CJEU case law to additional requirements that go beyond those of the GDPR and LED).
PART SEVEN: FINAL PROVISIONS		
FINPROV.10A [Interim provision for transmission of personal data to the United Kingdom] / adequacy decision	Should we expect the adoption of both (GDPR and law enforcement) adequacy decisions to take place at the same moment? Is there any tentative schedule in this respect? What is the status of the UK's procedure on adequacy decision?	The Commission is working towards the adoption of the two adequacy decisions during the interim period established under Art. FIN.PROV.10A (i.e. at the latest 30 June 2021). The adoption process involves both the European Data Protection Board and MS in the framework of comitology. The adoption of the two adequacy decisions should take place at the same moment.
Data protection FINPROV.10A [Interim provision for transmission of personal data to the United Kingdom] and FINRPOV. 11	- General Question: Are there any new developments regarding the adequacy decisions? When can the first drafts be expected? - What should apply with regard to a transmission of personal data if the European Commission's adequacy decision is not taken in time? - Could you confirm that under FINPROV.11 the	- The draft GDPR and LED adequacy decision are under preparation. We plan to seek the opinion of the EDPB at by end of January/beginning of February 2021. This should ensure final adoption in the course of the spring, i.e. within the 6-month "bridging" period created under Article FINPROV.10A. - The bridging period starts indeed on 1 January 2021. Pursuant to Article FINPROV.11(3), references to "the date of entry into force of this Agreement"

	duration of the transitional regime under FINPROV 10a relates to the date of the provisional application and therefore the four/six months transitional period begins on 01.01.2021? - Para 9-11: We would like to kindly ask for clarification on the notification process and the request for a meeting of the Partnership Council. This also raises the question of how and when will the Member States be notified?	(as in Article FINPRV.10A(4)) are to be understood as references to the date from which the Agreement is provisionally applied. The notification under Article FINPROV.10A(9) will normally be made to the Secretariat of the Partnership Council or to the Commission. Pursuant to Article 2(2) of the Council Decision on signature, the Commission will send to the Council all the information and documents related to any meeting of the Partnership Council sufficiently in advance of that meeting.
FINPROV.10A(1) [Interim provision for transmission of personal data to the United Kingdom]	This Article becomes relevant through the reference in Art. LAW.GEN.4 para 12 to specific provisions of data protection which, in turn, refer to the provisions of domestic law (LAW.OPCO.1). Under domestic law, a distinction is being made between data transfer within the EU and to third countries. According to FINPROV.10A para 1, pending the issuing of an adequacy decision, the UK will not be viewed as third country. The practical application of the Article, however, seems rather unclear to us (“*, provided that the data protection legislation of the United Kingdom on 31 December 2020, as it is saved and incorporated into United Kingdom law by the European Union (Withdrawal) Act 2018 and as modified by the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 201987 (“the applicable data protection regime”), applies and provided that the United Kingdom does not exercise the designated powers without the agreement of the Union within the Partnership Council.” Our question is: How do we know in practice whether the data*	During this period, the situation of the UK will be similar to the one of the three EAA EFTA countries (data flows to these countries are not considered international transfers under the GDPR or the LED because they essentially apply identical rules than the ones of the EU). In order to benefit from this “bridging” solution, the UK has entered into international obligation not to change its system and not to exercise certain powers. If it would not comply with these obligates, the “bridge” would no longer apply.

	protection of the UK as specified in the Article "applies" and whether the UK exercises the "designated powers"?	
FINPROV.10A [Interim provision for transmission of personal data to the United Kingdom]	Data adequacy – there has been some media speculation about the status of the bridging mechanism (e.g. whether it is legally effective) – could Cion/CLS address this?	The 'bridging' mechanism is set out in Article FINPROV.10A of the TCY. In a nutshell, it ensures stability and continuity of data flows between the EU and the UK during the interim period between 1 January 2021 and the adoption of a possible adequacy decision under the conditions that the UK continues essentially to apply the rules of the General Data Protection Regulation (GDPR) and the Law Enforcement Directive (LED) and does not exercise certain autonomous powers.
Annex LAW-7: DEFINITION OF TERRORISM		
Annex LAW-7	Furthermore, could the Commission verify whether the definition for terrorism in Annex LAW-7: Definition on terrorism, corresponds fully to the definition in the Directive (EU) 2017/541 on combatting terrorism	Yes, the mere purpose of the Annex was to incorporate the definition of Directive (EU) 2017/514 into the Agreement.
Other issues		
Top-up agreements and Part Three	"Articles 5 to 8 provide for the possibility for Member States to "top up" bilaterally, defining the content and procedural framework. However, this possibility hitherto extends to a limited number of areas only. Would it be possible to open up further areas for such "topping up" (e.g. cooperation in criminal matters), given that the Deal's application in practice may potentially reveal a need for additional bilateral agreements?"	The issue of bilateral agreements cannot be seen in the abstract, but consideration needs to be taken of the nature and the extent of EU competence on the matter(s) that the agreement intends to cover. In general, matters covered by EU legislation cannot be the subject of a bilateral agreement (Article 3(2) TFEU). For example, on top of the Title on surrender, no agreement is possible, because no provision was included as in the Iceland-Norway-Agreement. However, note should be taken of certain room left in the TCA for bilateral agreements in a limited number of specific cases: (a) LAW.OPCO.1(10) provides the possibility for bilateral agreements

		between the UK and MS in the area of cooperation in criminal matters, as long as this is in compliance with EU law. (b) A joint declaration on PNR provides for the possibility for bilateral agreements for a system for collecting and processing PNR data from transportation providers other than those specified in the Agreement, provided that the Member States act in compliance with Union law (c) A joint political declaration on asylum and returns takes note of the United Kingdom's intention to engage in bilateral discussions with the most concerned Member States to discuss suitable practical arrangements on asylum, family reunion for unaccompanied minors or illegal migration, in accordance with the Parties' respective laws and regulations NB: declarations are on p. 1480 of OJ L 444 of 31.12.2020
Post-transition measures		
Post-transition measures		

Questions & Answers regarding the Protocol on Social Security Coordination (EU-UK Cooperation and Trade Agreement)

Question	Reply
Detachment (Posting) /Applicable legislation Will the health fee apply to detached workers? If detached workers are covered in the competent state, will this lead to double coverage if they need to pay the fee?	The health fee can be applied under national immigration legislation to anyone covered by the Protocol on social security coordination (SSC Protocol). However, for certain categories of persons we agreed on reimbursement of this fee. Therefore, if a posted worker moves their habitual residence to the UK while a MS is competent for them, they might still be charged the health fee by the UK but do have the right to be reimbursed for this fee at the same time. The usual known arrangements with PD S1 would continue to apply. See Article SSCI.21 for the detailed arrangements regarding reimbursement of persons holding PD S1.
Does the regime in Art. 11 of the Protocol work both ways – are also postings from UK to MS, which made declaration, covered?	If the question is whether the posting is mutual, the reply is yes, postings from the UK to the EU are included. The UK is already mentioned in Art. SSC.11.The application of the posting rule between the UK and each MS will depend on MS' choice to opt or not for the application of the posting rules.
In which sectors is it allowed to post workers? Which documents do posted workers need to work (work permit, social security A1)? Could persons covered by mode4 fall in the category of posted workers? We understand that posting started before 1/01/2021 can continue based on the same document and without working permits.	There is no longer free movement of persons for the purposes of providing services and/or working between the EU and the United Kingdom. Putting an end to such free movement was one of the main objectives of the United Kingdom. As a result, the possibility to provide services in the United Kingdom or to move to the United Kingdom as a worker will depend indeed on United Kingdom law. The TCA contains however some rules on the entry and temporary stay of natural persons for business purposes, limited to certain categories of persons and certain activities. Among those categories, the closest to the notion of "posted workers" (within the sense of Directive 96/71 concerning the posting of workers in the framework of the provision of services) would be the category

Question	Reply
	"Contractual Service Supplier". This category covers, however, highly skilled professionals only with university degrees linked to the activities carried out (e.g. engineer) and are essentially "white collar" employees. The category of "independent professionals" is similar, but for self-employed person. For the conditions in respect of both categories, see the definition of contractual service supplier in Article SERVIN 4.1, the conditions in SERVIN 4.4 and the sector or activities covered and the reservations in annex SERVIN-4. If the posting of workers refers to the "intra-group" transfers, the TCA also contains rules on intra-corporate transferees. See the definition in Article SERVIN 4.1, the conditions in SERVIN 4.2 and the reservations in annex SERVIN-3. Beyond the above categories, the TCA does not provide for any rule on the movement of employees for the purposes of supplying services. Please see the readiness notice on posted workers that we published earlier this year: https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/getting-ready-end-transition-period_en#readiness-notices As regards social security coordination, please note that the rules on social security coordination are ancillary to the underlying movement of persons and that, as such, the Protocol on social security coordination does not grant any right to move between the European Union and the United Kingdom (or vice versa). Once a worker is in a situation referred to in Article SSC.11, the Protocol on social security coordination applies in all relevant respects, including the rules on applicable legislation. As regards social security documents, the current relevant documents should continue to apply, such as PD A1.

Question	Reply
	Work permits are not within the ambit of the Protocol on social security coordination. In the case of persons falling under the scope of Chapter 4 (Entry and temporary stay of natural persons for business purposes) of Title II (Services and Investment) of Heading One (Trade), Member States can request a work permit in respect of contractual services suppliers and independent professionals; however, host authorities do not have discretion to deny such work permits in the sectors where the EU has taken commitments for those categories (see Article SERIVN 4.1, paragraphs 2 and 3). Moreover, Member States are prevented from requesting a work permit (unless they have scheduled a reservation on this issue in Annex SERVIN-3) in respect of Business visitors for establishment purposes and Short-term business visitors (Article SERVIN 4.2(1)(a)(ii) and Article SERVIN 4.3(2). For intra-corporate transferees, permits are addressed under Directive 2014/66/EU (on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer).
Will all Mode 4 categories of natural persons eligible under TCA be covered by social security coordination?	All MODE4 categories will fall within the scope of the SSC Protocol if the conditions for the application of the Protocol are fulfilled.
What is the purpose of Article SSC.11 PSSC and why was it introduced? What posting situations does Art. SSC.11 refer to? *"By way of derogation from Article SSC.10(3) [General rules] and as a transitional measure in relation to the situation that existed before the entry into force of this Agreement, the following rules as regards the applicable legislation shall apply between the Member States listed in Category A of Annex SSC-8*	To avoid social dumping by the UK, by default, a special provision for posted workers was not going to be maintained. However, transitionally, MS could choose, as per Article SSC.11, to opt into the application of the same rules for posted workers. This derogation works in both directions (UK <-> MS). The SSC Protocol applies for 15 years which is the time length of this derogation. This was meant to refer to the current posting provisions that are applying now under Regulation 883/2004. If MS opt in to apply this provision, the SSC Protocol will cover situations of posting as of the entry into force of the agreement. So the postings covered will be those taking place as of 1/01/2021. This means either new postings (starting as of this day) or postings not covered by WA, such as postings for the provision of services taking place within the provisions and limits of the TCA.

Question	Reply
[Transitional provisions regarding the application of Article SSC.11] and the United Kingdom"	
How will posting notifications be made between social security institutions now that the Posting Directive no longer applies?	The SSC Protocol (as does Regulation 883/2004) contains provisions indicating under which conditions the States can deviate from the general rules on the determination of applicable legislation. The implementing part (Annex SSC-7) contains provisions on the notification and cooperation between institutions in this regard (cf. notably Arts. SSCI 14 and 16). As there is no longer free movement of services between the Member States and the UK and as a consequence the provisions of the Posting Directive no longer apply, it is up to the Member States to determine all those details of the procedures for postings from the UK, which concern aspects other than social security, in the same way as they do for postings coming from other third countries.
Article 16 of Regulation 883/2004 is not taken on board in the PSSC. What is the reason for not including a provision on exceptions? We would like to highlight an issue: during the sanitary crisis, the Administrative Commission took some special measure to not apply the lex loci laboris to workers working in home office. For the application of European Regulation 883/2004, certain adaptations to the Covid-19 crisis have been provided for within the Administrative Commission. For example, the increased use of teleworking due to the coronavirus is not taken into account when determining the applicable social security legislation. This has also been applied by the UK during the transitional period. Nevertheless, if no derogation is allowed on the basis of article 16 of the Regulation 883/2004 (or an equivalent) for future relationships, then those persons will be subject to the legislation of the State of work.	Given that the Protocol provides for a complete system of conflict rules, which are mandatory for Member States and the UK and taking into account the changed context (the end of free movement) and the jurisprudence of the Court of Justice which does not allow the possibility to derogate from this complete system of conflict rules, the EC could not take over this provision in an international agreement.

Question	Reply
Under Article 11 of the Social Security Coordination Regulation (883/2004) a person residing in a Member State but for whom another Member State is competent for healthcare cannot be subject to a further assessment of their eligibility for healthcare. This is because they are not subject to the legislation of the State of residence but to the legislation of the competent Member State and cannot be subject to the legislation of more than one State. Article SSC.9 – General Rules on Applicable Legislation, appears to be a direct copy of Article 11 of Regulation 883/2004, and we would like to know if this same principle as underlined above continues to apply under the terms of the TCA in respect of UK national resident in Ireland.	We are not sure to have understood the question but we can confirm that the same principles on applicable legislation as in Regulation 883/2004 will apply in the SSC Protocol (see Article SSC.10)
How is the relation between the EU-Regulations and the Agreement/Protocol in situations where both are applicable, for example in cases of pluri-activity involving two Member States and the UK?	The TCA will apply in a cross-border situation between a MS and the UK. In a situation involving 2 MS and the UK, for situations arising between MS, the MS will coordinate according to EU law (SSC Regulations) in their bilateral relation while in their relation with the UK they will have to apply the TCA/Protocol. However, as regards situations involving at least two Member States and the UK, the applicable legislation will be determined pursuant to the TCA, where it has specific coordination rules.
Personal scope a. What is legal residence? The Protocol in the Trade and Cooperation Agreement (TCA) only applies to persons 'legally residing' in a Member State or the UK (CH.SCC.2, para. 1). The term legally residing has not been defined for the application of the main parts of the TCA.	Indeed, this does not refer to the social security concept of residence, which would mean habitual residence, but to legal residence in line with the applicable (national) legislation. That is why it was placed in the chapeau preceding the SSC Protocol.

Question	Reply
However, in the Protocol residence is defined as the place where a person habitually resides. Should the term legally residing therefore be understood as meaning that only persons with a habitual residence in one of the Member States or the UK are covered by the agreement so that the case law of the Court of Justice of the European Union on persons residing in a third country (e.g., the judgment in case C-477/17, Balandin and Lukachenko) does not apply?	
<u>Q on the effects of the absence of residence in a State</u> What importance should be attached to CH.SCC.2, paragraph 2, which states that the condition of legal residence shall not affect entitlements to cash benefits which relate to previous periods of legal residence of persons covered by Article SSC.2 [Persons covered] of the Protocol on Social Security Coordination? Does this mean that the case law of the Court of Justice of the European Union concerning the acquisition and calculation of the right to benefits outside the territories of the Member States, applies (e.g., the judgment in case C-331/06, Chuck)? If yes, this means that certain advantages derived from the Protocol – such as the aggregation of periods in Article SSC.7 – are retained as soon as a person settles in a third country other than the UK.	Indeed, this means that a person who has been covered by the Protocol but no longer resides in one of the Parties, does not lose his/her entitlement to a cash benefit (e.g. old-age pension). When a person who previously worked in NL and UK, claims a pension in the NL and the UK, s/he retains rights derived from the SSC Protocol such as aggregation of periods.
b. Persons with periods before 1.01.2021? SSC Protocol applies to persons who are or have been subject to the legislation either of a MS or the UK. Although there is no transitional provision comparable to Article 87 of Regulation	b. The intention is not to lose any periods, which should be safeguarded. Note that Article Ch.SSC.2(2) ensures that periods of previous residence shall not be affected as regards cash benefits under the SSC Protocol.

Question	Reply
883/2004), we assume that also periods and situations before 1.1.2021 are covered?	Therefore, as regards persons covered by the TCA, periods completed before 1.01.2021 should be taken into account in the framework of the TCA, unless the person is a beneficiary of WA and those periods are taken into consideration on that basis.
c. This applies in the same way to EU nationals, UK nationals, any third country national, and the family members of these persons; the mentioning of stateless persons and refugees in Article SSC.2 PSSC is a clarification but not necessary.	c. The mentioning of refugees is a clarification. The mentioning of stateless persons is necessary as they are neither EU citizens nor third country nationals.
d. The cross-border element (Article Ch.SSC.3 TCA) is not necessary the moment the person has been subject to the legislation of a state but can occur later or earlier.	d. Yes, but the cross-border element must exist by the time the person claims a benefit under the Protocol.
e. It has to be decided on a case-by-case base, if a situation falls under the WA or the PSSC.	e. Yes, that is correct.
E.g. aggregation of periods of insurance completed by an EU national in the UK before 31.12.2020 have to be aggregated by an EU MS, in which periods have been completed after that date, under Article 32 (1) (a) WA while such periods of an UK national have to be aggregated under Article SSC.7 PSSC.	Yes, provided the UK national is not a beneficiary of the WA.
E.g. In relation to third country nationals for aggregation under Article 32 (1) (a) WA it is necessary that they have completed periods in the UK and an EU MS before 31.12.2020 while this is not necessary under Article SSC.7 PSSC (under this provision aggregation would also have to be made of periods of a third country national before 31.12.2020 only in the UK and after that date in an EU MS).	Yes.

Question	Reply
Does the protocol apply to British citizens when moving between two Member States? (only relevant for Denmark as regulation 1231/10 does not apply to Denmark).	No, Ch.SSC.3 provides that the Protocol applies only to situations arising between one or more Member States and the UK, i.e. not between various Member States. EU law will continue to apply to situations arising between two MS.
Branches/Annex entries Long-term care (LTC): the annex refers to cash benefits: are only cash LTC excluded from the material scope of the SSC Protocol or also in kind LTCs?	Please note that the Specialised Committee intends to update Annex SSC-1 as soon as feasible. MS should send their inputs as regards LTC in cash and in kind.
Article SSC.1 (k) and (r): Do we interpret the concepts of "long term care" and "family benefits" in accordance with the acquis communautaire?	The "acquis communautaire" is not part of the agreement. In the application of the SSC Protocol, the definitions provided by the SSC Protocol are a useful tool in this regard. In case additional clarifications are necessary, further guidance may be discussed with the UK and adopted by the Specialised Committee.
Any deadline to submit corrections to annex entries?	As soon as possible, before the 1st meeting of the Specialised Committee. The date is tbc but it should be in February. Entries were taken from the information available since MS could not be consulted at that moment. All MS should send us **all** their corrections (including the name of the LTC benefits and the relevant national legislation) to any of the annexes/appendices to the SSC Protocol before such meeting.
In the TCA, as in Regulation (EC) No 883/2004, there are provisions concerning equality of treatment of benefits, income, facts or events (SSC.6 or art. 5) and aggregation of periods (SSC.7 respectively art 6, or, in the case of unemployment benefits, SSC.56 respectively article 61). In the Regulation there are explanatory information that is not available in the TCA, it is for instance clarified in the Regulation, in recital 10, that "the	The provisions of the SSC Protocol will be applied in the light of the current common understanding of these provisions, as agreed at the level of the governance of the agreement (e.g. Specialised Committee). As mentioned, where useful, the Specialised Committee may adopt further guidance for the interpretation of the SSC Protocol.

Question	Reply
principle of treating certain facts or events occurring in the territory of another Member State as if they had taken place in the territory of the Member State whose legislation is applicable should not interfere with the principle of aggregating".	
Article 59.1 PSSC mentions that new social security branches shall be notified to the Specialised Committee. We would be interested in learning whether this only covers new social security branches or even new benefits introduced in a national scheme? If affirmative, to whom shall the benefits/new security branches be notified?	Any changes in national legislation that may affect the implementation of the Protocol or that are relevant for its implementation. This is an assessment to be made by the MS. The changes should be notified to the Specialised Committee (for MS, the SC secretariat).
• PSSC does not contain a similar listing as is provided by the Article 9-declaration in Regulation 883/2004. Is the intention that UK and Member States' Article 9 declarations under Regulation 883/2004 should apply by analogy also when applying the PSSC and, if affirmative, should such an interpretation cover any future amendment which is made by a Member State under the procedures related to Article 9 of Regulation 883/2004?	The notification made via Article SSC.59 as explained above should reach the same result. Article 9 declarations made in the framework of EU law would therefore not need to apply by analogy, as a separate notification would take place.
We would highly appreciate a confirmation of our understanding in respect of the branches of social security covered by article SSC.7: Aggregation of periods, namely if they are the ones enumerated in article SSC.3: Matters covered, point 1.	Yes, to the extent that nothing else is provided for in the branch-specific provisions of the Protocol, Article SSC.7 applies to all branches that are listed under SSC.3(1).
Further guidance from the EC concerning workers covered by the Protocol which will not be entitled to family benefits when the family members are not resident in the competent country and persons covered by the Withdrawal Agreement which are entitled to family benefits. The Government is concerned as it	The SSC Protocol will apply without prejudice to the Withdrawal Agreement. WA beneficiaries will receive family benefits as per the provisions of the WA, whereas SSC Protocol beneficiaries will not have their family benefits coordinated. Difficulties that national authorities may have to distinguish between WA beneficiaries and SSC Protocol beneficiaries in what concerns any matter of the respective material scopes will need to be discussed more broadly at the level of national

Question	Reply
will be difficult to distinguish between beneficiaries of the Withdrawal Agreement vis-a-vis beneficiaries of the Protocol.	experts with the involvement of the EC, as it is currently done for WA matters.
Invalidity From our point of view this is one of the more challenging new aspects of the PSSC. For a better understanding of our questions we would like to refer first to the MS legislation on invalidity pensions, which will be affected by the coordination under the PSSC. The MS invalidity pension is a pension to which the general principles for other pensions (e.g. old-age) applies. For entitlement a waiting period (minimum 5 years) is requested. The pension is calculated taking into account the average insured income during the MS periods of insurance and this base of calculation is applied to the "real" MS periods before the contingency arises and to future periods between this date and the time when the person would reach the age of 60 put in relation to the MS real periods (internal pro-rata calculation of the future periods). Under Article SSC.39 PSSC read together with Article SSC.8 (b) PSSC a new way of coordination for invalidity benefits is provided. Nevertheless, this rule applies only to situations which are not already covered by the WA (see our remarks under 1). Therefore, we will continue calculating invalidity pensions in accordance with Regulation 883/2004 and exporting them when a person falls under Article 30 WA (e.g. an EU national residing in the UK on 31.12.2020 etc.) or Article 32 (1) (a) WA (e.g. an EU national who has completed periods in the UK before 31.12.2020). We think this would also cover a case in which an EU national completed periods in the UK from 2010 to 2015, then moved back to an EU MS and claims a	Yes, where a person is a beneficiary of the WA, invalidity benefits should be calculated under the Regulations (including pro-rata calculation) and exported. Precisely: MS would need to consider periods in the UK when checking whether eligibility criteria are fulfilled and then calculate the benefit pursuant only to its national law. There would be no partial payment from the UK. If the beneficiary (UK national) moved to another Member State later on, they would be covered by Regulation 1231/2010 and MS would need to export the benefit on this basis. If the beneficiary returned to the UK, no export would required by the Protocol, this would be a question subject to MS law.

Question	Reply
pension there and in 2025 moves to the UK again as the export linked to the application of Article 32 (1) (a) WA would continue to be relevant. We would expect the UK to continue applying Regulation 883/2004 in these cases and not Article SSC.39 PSSC. Therefore, Article SSC.39 PSSC would only apply to new cases, which are not covered by any of the provisions of the WA. E.g. an UK national has completed periods only in the UK before 31.12.2020 and then moves to an EU MS and starts working there. In such a case e.g. MS would have to grant an invalidity pension taking into account the UK periods to fulfil the condition of 5 years of insurance (one month in MS would be sufficient to start aggregation as Article SSC.52 PSSC on the minimum of 12 months does not apply for the new coordination of invalidity benefits). The UK would not export any benefit. What would happen if this person moves to another MS or back to the UK later on? Under national law we have to export our invalidity pensions worldwide (also those which are based on aggregation e.g. under a bilateral agreement concluded by MS). A comparable situation would occur if such a person resides in the UK when claiming an invalidity benefit (and, therefore, due to Article SSC.39 PSSC only the UK has to grant an invalidity benefit). If this person has already fulfilled 5 years of insurance in MS (national entitlement is given) we would not have any legal base to deny the granting of this benefit under national MS law. Therefore, we would have to export it to the UK although under Article SSC.39 PSSC only the UK would be competent to grant the benefits. Therefore, there will be cases of overlapping of benefits, which cannot be avoided by the PSSC. If a person moves from the UK to MS1 and has never been working in MS (there are no periods of insurance in MS), we will not be obliged to grant an invalidity pension.	

Question	Reply
What happens if a person has completed periods of insurance in 2 or more MS and the UK? In the past, the AC has decided that in cases in which a person has relations to 2 or more EU MS and an EEA-State or Switzerland, the specific rules under the EEA-Agreement or the EU-Swiss Agreement have priority. Does this mean that this has also relevance in relation to the UK? Therefore, if a UK national has worked until 31.1.2021 in the UK, then works from 1.2.2021 until 31.12.2022 in MS1 and afterwards form 1.1.2023 until 31.12.2029 in MS2, becomes invalid on 1.1.2030 and resides in MS1, MS2 would not have to grant an invalidity pension because of Article SSC.39 PSSC (MS1 is competent under Title II of PSSC). If there were no periods in the UK, MS2, of course, would have to grant a pension in accordance with Regulation 883/2004 based on the MS1 and MS2 periods of insurance. Finally, specific situations could occur if a person is subject to the legislation of a State but resides during this period in another State (e.g. frontier workers). If a worker residing e.g. in FR but working in the UK, becomes invalid and continues working part-time in the UK, the UK would not have to grant any invalidity benefit (even if the conditions are met) because this would mean export (excluded by Article SSC.8 (b) PSSC) and FR does not have to grant an invalidity benefit because it is not competent under Title II PSSC. Is our interpretation of the TCA shared?	That is most likely correct, assuming that national law does not require the payment of an invalidity benefit in such a case (the calculation is subject to national law). The Protocol should not and does not affect the applicability of the Regulations between Member States. Article Ch.SSC.3 provides that the Protocol applies only to situations arising between one or more Member States and the UK. Where one or more MS and the UK are involved, the SSC Protocol should apply. In the case described, the UK national can rely on Regulation 1231/2010. On this basis, a pro-rata calculation would need to be made, which would, however, only take into account periods completed in a MS (while periods in the UK would be taken into account based on the Protocol to assess whether there is an entitlement to benefit to begin with, if necessary). It is correct that the Protocol does not oblige the UK to export invalidity benefits, even in the cases of frontier workers.
Why is export of invalidity excluded?	This is the outcome of the negotiations following UK's request, since export of this cash benefit, without having control over the evolution of

Question	Reply
	the invalidity, was a red line for the UK. A compromise was found to ensure aggregation of periods when determining entitlement to an invalidity pension. Therefore, export was expressly excluded in Art SSC.8.
As there seem to be no explicit references to disability benefits in the text of the Agreement, could you please clarify whether any provision of the text regulates those benefits	Assuming that the question refers to invalidity benefits, the relevant provisions are Articles SSC.39-43.
Regarding the invalidity pensions: we notice that articles 44, 46 and part of article 47 from Regulation (EG) 883/2004 were not copied in the Social Security Protocol. What would this mean for the calculation of invalidity pensions? Does this mean that there are no pro rata calculations for invalidity pensions?	Indeed in the framework of the Protocol, the coordination of Invalidity Pensions is limited to aggregation of periods for the opening of the right to an invalidity pension. However, benefits are then calculated on the basis of national law only, thus there is no pro rata calculation, as you say. This is because of the UK position in the negotiations.
Article 39 states that 'without prejudice to Article SSC.7, where, under the legislation of the State competent under Title II of this Protocol, the amount of invalidity benefits is dependent on the duration of the periods of insurance, employment, self-employment or residence, the competent State is not required to take into account any such periods completed under the legislation of another State for the purposes of calculating the amount of invalidity benefit payable.' In which cases would the aggregation of periods still be of importance for the invalidity pension?	Aggregation will be relevant to assess the right to an invalidity pension (determination of the entitlement) but not the calculation of the benefit, which will have to be done under national law.
Article SSCI.37: On A (Submission of claims for old-age and survivors' pensions is there a Part B missing?	Only one part (in the SSC Protocol Part A) was kept that refers to old-age and survivors' pensions. The part on invalidity was not necessary to take over since calculation is not coordinated in the SSC Protocol.

Question	Reply
Healthcare Could you give us more information on the healthcare fee (including the surcharge applied by the UK) and why Article Ch.SSC.4 was included?	Article Ch.SSC.4 was inserted to reflect the new immigration policy of the UK towards EU citizens who become TCNs. However, the SSC Protocol provides for reimbursement of the healthcare fee for certain categories of persons such as S1 holders and students (SSCI.22(11)). More information on the UK Immigration Healthcare Surcharge for any person applying for a visa, including workers (see https://www.gov.uk/healthcare-immigration-application). Healthcare Surcharge shall however be reimbursed for persons holding a PD S1 (such as a pensioner) in accordance with article SSCI.21(4)-(6).
Cross-border healthcare Directive The Social Security Coordination Protocol does not address the issue of reimbursement of cross-border healthcare (when an insured person of one state chooses to receive certain out-patient planned medical services in another state without prior authorisation). Will persons covered by UK law be entitled to reimbursement of such costs if they receive cross-border healthcare services in one of EU Member states?	If the question refers to the cross-border healthcare Directive, please note that the TCA does not include it in its material scope. Therefore, the same cross-border arrangements can no longer take place. It will be only the cross-border healthcare arrangements within the framework of the SSC Protocol (planned healthcare, necessary healthcare and healthcare in the country of residence) that will continue to apply.
Although the Cross Border Directive (CBD) is not directly within scope of the Withdrawal Agreement and TCA we have a question regarding the application of the CBD to persons for whom the UK is competent under the Withdrawal Agreement/TCA/EU Regulation 883/2004, and who are residing in Ireland where entitlement to health care is based on residency. Does Ireland become the Member State of Affiliation for such persons for the purposes of the Cross Border Directive, as per Article 3(c)(ii) of the Cross Border Directive?	The CBD is outside the scope of WA and TCA and no longer applies to and in the UK and neither between IE and the UK. The UK's competence for healthcare should not have any implications as regards the application of this Directive. Such competence will be exclusively relevant for the application of the CTA and/or the WA, as the case may be, within the framework of social security coordination.

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Or is it the case that because, under the Article SSC.9 of the TCA, the UK remains competent for that person, this competency extends to the CBD (a similar position arises for persons for whom the UK remains competent for social security coordination under the Withdrawal Agreement)? Or is it the case that the CBD no longer applies to any UK nationals in any and all circumstances and Ireland, or another EU MS where such nationals might reside, becomes their Member State of Affiliation under Article 3(c)(ii) of the CBD? The CBD is outside the scope of WA and TCA and no longer applies to and in the UK and neither between IE and the UK. The UK's competence for healthcare should no longer bare any meaning as regards the application of this Directive. It will be exclusively relevant for the application of the CTA and/or the WA, as the case may be, within the framework of social security coordination.	
EHIC The UK issued a note in November stating that the old UK European Health Insurance Cards (EHIC) would no longer be valid from 01/01/2021 and informing that the UK would issue two new types of EHICs. There is an urgent need for information from the UK about the changes in this area. Will the UK issue a separate model EHICs for students? Can necessary medical care be provided to persons having an old EHIC model?	The UK information, before there was a deal, referred to a no-deal situation and as regards partial beneficiaries of the Withdrawal Agreement. The current agreement with the UK is that UK-issued EHICs in circulation remain valid. The Specialised Committee will set the date until which forms in circulation (including EHICs) can be used (SSCI.75). The UK plans to start issuing new cards replacing the EHIC. As stated in APPENDIX SSCI-2(3), the UK shall inform the Specialised Committee about the new format so that all MS are informed. The PRC may also be issued. Finally, all 3 types (EHIC, new card and PRC) should be accepted. As regards students, we were not informed by the UK that they will issue a separate model for students covered by TCA, besides the new card envisaged for TCA beneficiaries.

Question	Reply
The UK has previously informed that they will issue a special EHIC for persons covered under the Withdrawal Agreement, the so-called Citizens' Rights Agreement EHIC – marked with the letters CRA. According to Appendix SSCI-2 in the Trade and Cooperation Agreement the UK will issue another new EHIC with the code "UK" for the purposes of Article SSC.17 in the agreement – (Stay outside the Competent State). a. Does this mean that two different UK-issued EHICs will be in circulation?	3.a. Indeed, there will be different entitlement documents in circulation for persons who are WA beneficiaries (CRA EHIC) and for those who can rely only on the TCA (the so-called Global Health Insurance Card (GHIC)).
4. The Withdrawal Agreement (WA) between the UK and the EU only covers persons, who have exercised their right to free movement before the end of the Transition Period. Therefore, persons covered by the WA in need of necessary healthcare during a temporary stay in the UK must present a PRC as documentation for their right according to the WA. However, according to the new Trade and Cooperation Agreement citizens will continue to benefit from necessary healthcare based on the EHIC. a. Does this mean that the EHIC is sufficient documentation for the entitlement to necessary healthcare during a temporary stay in the UK, regardless whether the legal basis is the WA or the new Trade and Cooperation Agreement? b. If this is the case, how will the British healthcare provider be able to distinguish between persons covered under the WA and the new Trade and Cooperation Agreement, as the two agreements do not include the same benefits?	4. Pursuant to the TCA persons insured in the EU who are on a temporary stay in the UK are also entitled to necessary healthcare if they are not WA beneficiaries. The solution agreed at the Administrative Commission in December (according to which PRCs should be used in the UK), was intended to distinguish WA beneficiaries from non-beneficiaries and is therefore no longer needed. a. Yes, for persons insured in the EU, the EHIC is sufficient documentation of an entitlement to necessary healthcare during a stay in the UK, regardless of whether that entitlement is based on the WA or the TCA. b. While the scope of the WA and the TCA is indeed not the same in general, it is the same with regard to necessary healthcare. See however our explanations relating to the healthcare surcharge that will be imposed by the UK as part of the immigration applications, for stays longer than 6 months. In this context, students should be reimbursed the surcharge.

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Could the Commission give an example of the situation described in this article with regard to reimbursement of a health fee paid as part of an application for a permit to enter, stay, work or reside? Article SSCI.21 (4): How should the three months-period in this article be interpreted? Does it mean that the UK must reimburse an insured within three months? Article SSCI.22 (11): With regard to the reimbursement of students, is it to be understood that a student is reimbursed only in the Member State in which he is studying?	Example: a pensioner receiving a pension from a MS moves residence to the UK. They are issued a PD S1 by the MS, as the country competent for their healthcare. The UK will charge them the healthcare fee as part of their immigration application for a visa. The pensioner will have to pay it but may apply for reimbursement after registering their PD S1 with the relevant UK authorities. The UK should reimburse them for the healthcare fee paid and they will receive healthcare based on S1. The aim of para 4 is for the reimbursement claim to be finalised within this period. Yes, in the country (UK/MS) of study which imposed the healthcare fee, in connection with an application for a permit to enter, to stay, to work, or to reside in that State.
What categories of EU students will be required to pay the health fee? Will EU students whose studies started in the UK before 31/12/2020 actually be exempt from paying this fee?	The SSC Protocol will cover EU student movements as of 1.01.2021 who will be studying in the UK for periods longer than 6 months. The situation of students who started before 31.12.2020 is being discussed with the UK in the context of the WA.
Why are reimbursements for students specially mentioned in the article SSCI.22 of the Implementing Part, but not distinguished in the Protocol in the article SSC.17?	It was not considered necessary to distinguish students from other insured persons since the right to necessary healthcare was the same for all insured persons covered by the TCA.

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Article SSCI.22: paragraph 16 says that "This Article shall enter into force 12 months after the date of entry into force of this Agreement". Does it concern all Article SSCI.22 or only the specific procedure for the students?	The 12 month are meant to give the UK the necessary amount of time to handle the administrative aspects of such reimbursement. It concerns students. Paragraph 16 only applies to reimbursement of students. Its aim is to allow the UK more time to prepare the reimbursement procedure administratively. Students will not be reimbursed immediately but at the same time will not lose their rights during this period (see paragraph 17). They will be able to apply for reimbursement later on.
As it can be understood the Withdrawal Agreement (WA) and the TCA accounts for three different situations as regards social security, i.e. Article 30 and Article 32 of the WA and the TCA. The question is however how the situations (the agreements) relate to one another and what the different situations cover in material scope. This concerns particularly to sickness benefits in kind (Articles 17-20 in Regulation 883/2004). Apart from assisted conception services which is clearly not covered by the TCA (SSA 3.3.e), are there any other differences in material scope? If that is not the case, would it not be possible to use the same certificates as are being used at present, in relation to Regulation 883/2004, e.g. EHIC?	See the reply on applying the TCA without prejudice to the application of WA/EU law. While the TCA has a similar material scope, this scope is reduced in comparison to Regulation 883/2004 and the WA (see Article SSC.3). As regards portable documents and social security forms, see above our reply on the EHIC and the intention of the UK to start issuing to TCA beneficiaries a different healthcare card. MS will be able to continue issuing the EHIC for their insured persons. The exclusion of assisted conception services is the only main difference regarding the scope of sickness benefits in kind which are covered by the WA and the TCA respectively. EHICs issued by a Member State can indeed continue to be used in the UK. The Specialised Committee will formalize the use of social security forms and portable documents as part of further guidance. As mentioned, the UK has chosen to issue a new document, the Global Health Insurance Card (GHIC), which will replace the UK EHIC for the purposes of the TCA over time. The Specialised Committee will make any further decisions about the documents to be used as foreseen by Article SSCI.4(1). For the time being documents used before the end of the transition period remain valid (cf. Article SSCI.75).

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Unemployment Article 56, paragraph 1, obliges States to take into account periods of insurance, employment or self-employment completed under the legislation of any other State as though they were completed under the legislation it applies. What is the relevance of this obligation with respect to unemployment benefits?	The State of last employment will have to aggregate periods of insurance completed in another State when assessing the right to unemployment benefits under its legislation.
We would like more clarifications on the actual implementation of this provision given that it is a new concept which was never applied neither in the Regulation (EC) 883/2004 nor in the Bilateral Agreement previously in force with the UK. According to our understanding, there are two possible scenarios – which may lead to a different rate of benefit for the person concerned under a type B scheme: Scenario 1: If MS requires a minimum period of ten (10) years to assert the right, and the person only has two (2) years, MS will aggregate other periods in the UK to assert the right, but will it then disregard those periods (taken for aggregation purposes) and just pay the 2 years? Scenario 2: Or will, alternatively, MS calculate the benefit as if the person worked ten (10) years in MS and then pay two (2) years? How can this be applied without resorting to the pro-rata calculation?	Scenario 1. Yes, aggregation will be used to determine entitlement but not for calculation of the benefit. The calculation will be based on national law alone.
Which legislation applies in the case of a worker who is a resident in MS and temporarily works in the UK (or vice versa) and loses his job? Where does he claim unemployment benefits?	A person is entitled to unemployment benefit on behalf of the country of last employment. A person residing in MS but working (temporarily) in the UK, will be subject to UK legislation. In accordance with Article SSC 56, they will be entitled to unemployment benefits in accordance with UK legislation. In order to assess the entitlement to unemployment benefits,

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The chapter on unemployment benefits does not contain provisions on the definitions of institutions with regard to the place of residence or stay. Which country pays the unemployment benefit, since the unemployment chapter only determines the aggregation of periods and not the payment of a cash benefit?	the competent State has to take into account periods of insurance/work completed in another State (Article SSC.56). The Protocol does not contain provisions on the export of unemployment benefits nor special rules for cross-border workers. The State of last employment will pay the unemployment benefits in accordance with its national legislation.
Article SSC.10: Persons to whom this Protocol applies shall be subject to the law of a single State. This legislation shall be determined in accordance with this Title: (a) a person pursuing an activity as an employed or self-employed person in a State is subject to the legislation of that Member State; (b) any other person to whom points (a) and (b) do not apply shall be subject to the legislation of the Member State of residence, without prejudice to other provisions of this Protocol guaranteed by benefits under the legislation of one or more other States. For example if MS resident is employed in the UK, UK legislation applies. If he becomes unemployed, what legislations is applicable, UK or MS?	If a MS resident was covered by the UK legislation in accordance with Article SSC.10(3)(a), their right to unemployment benefits will be determined on the basis of that legislation.
Is the competent State no longer linked to the status of frontier worker to claim unemployment benefit? What about the rights that are still in progress? It is assumed that until the transfer of the unemployment benefits granted in 2020 this applies and the person remains registered at the Unemployment Institute in UK. What if a person wishes to	

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extend the transfer period by an additional 3 months after Brexit? - Will the UK confirm U1 for the period before Brexit? Is the application for U1 still available to persons who have been employed in the UK? - What will happen with the insurance periods after 1.1.2021 – are there any agreement on mutual recognition of insurance periods between MS and UK after 1.1.2021?	The SSC Protocol only applies to persons who are in a cross-border situation between one or more Member States and the UK as of 1.01.2021. The WA should protect the social security rights of persons in cross-border situations that started before 31.12.2020. Those persons, depending on whether they are within full or partial scope, will continue to benefit from the SSC Regulations 883/2004 and 987/2009.
Forms/EESSI/AC Forms, documents and EESSI Due to Article SSCI.4 (2) PSSC, EESSI may be used for exchange of information between institutions subject to the approval of the Specialised Committee on Social Security Coordination (SCSSC). In such a case, the rules of EESSI must be respected. Also in another provision it is stated that the UK may use EESSI (Article SSCI.71 (4)). Therefore, it seems that there is no obligation to use EESSI for the application of the PSSC. For an interim period to be fixed by the SCSSC the existing forms and documents (thus, also the existing SEDs and BUCs) shall be used (Article SSCI.75 PSSC). The SCSSI has the right to develop new forms and documents (Article SSCI.4 (1) PSSC). How can it be safeguarded that whenever information has to be exchanges between an EU MS and the UK EESSI has to be used (building a new standalone electronic data exchange model for the UK should not be an option)? The same applies to forms und documents, which should be as far as possible the same as the ones used in between EU MS. When could the relevant decisions of the SCSSC be expected? When will the work on new SEDs and BUCs (e.g. for invalidity benefits) or, whenever necessary, on adaptations of existing	There is indeed no obligation to use EESSI for exchanges under the Protocol i.e. the Protocol is not intended to ensure that EESSI necessarily needs to be used for all exchanges between Member States and the UK. There will be further opportunities to discuss the implementation of these provisions and we will of course be in contact accordingly for any relevant discussions and further provision of information.

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SEDs and BUCs start to allow the full application of EESSI also in relation to the UK? - What role (if any) do the previous (& future) Administrative Commission decisions play in the application of the Protocol on Social Security? - Article SSCI.4 (2) states: "The transmission of data between the institutions or the liaison bodies may, subject to the approval of the Specialised Committee on Social Security Coordination, be carried out via the Electronic Exchange of Social Security Information". Is it known when such formal decisions on the use of EESSI will be made?	Administrative Commission decisions only apply in the framework of the EU Social Security Coordination Regulations and the EU-UK Withdrawal Agreement, which extends the application of the former Regulations to well-defined situations covered by the Withdrawal Agreement. However, in so far as these AC decisions are useful for the interpretation/application of the SSC Protocol, the agreed objective with the UK is to incorporate the content of the relevant AC decisions as soon as possible as guidance, to be adopted by the Specialised Committee. For the time being, there is not yet a concrete planning for the adoption of these decisions on the use of EESSI. There will be further opportunities to discuss the implementation of these provisions and we will of course be in contact accordingly for any relevant discussions and further provision of information.
Q on the workings of EESSI, forms and documents SED's can require that the legal basis for a declaration or request is provided (e.g., the PD A1 requires that the issuing institution states which article and paragraph in Regulation No 883/2004 is at issue). Will the relevant provisions in the TCA be included in the EESSI standard values for filling in the SEDs? ➢ If so, when can this adjustment be expected in EESSI? • If so, when can these guidelines be expected? ➢ If not, will central guidelines be issued (by the AC / Specialized Committee on Social Security	The Commission is currently reflecting on this issue. There will be further opportunities to discuss the implementation of these provisions and we will of course be in contact accordingly for any relevant discussions and further provision of information.

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Coordination?) on how the situations covered by the Protocol should be otherwise included in the SED's? • If not, are Member States free to make their own choices? If the TCA and Regulation No 883/2004 can be applied simultaneously (see Q3 On the relation between the TCA and Regulation No 883/2004) can the simultaneous application be communicated in one SED, despite the difference in bases for determining the applicable legislation, or should this be communicated in two different SED's? If this can be communicated in one SED, will detailed guidelines be issued and, if so, when can these be expected?	
Horizontal Direct applicability/direct effect of the SSC Protocol	Article COMPROV.16: [Private rights] provides, as a general rule, that the TCA does not confer rights or impose obligations on individuals and cannot be directly invoked within the legal orders of the Parties. However, this article applies without prejudice to Article SSC.67 [Protection of individual rights]. Article SSC.67 aims at achieving the necessary protection and conferring the necessary guarantees to persons as regards their rights provided to them in the SSC Protocol. Depending on the legal orders of the States involved (i.e. the UK has a dualist system where international treaties need implementation under national law), the obligation provided in Article SSC.67 is to ensure that persons can invoke their rights before domestic courts, tribunals, administrative authorities. In the EU legal order, the obligation provided in Article SSC.67 is fulfilled by the direct effect enjoyed by those provisions of the Protocol on SSC, in accordance with the case law of the Court of Justice, which contain clear, precise and unconditional obligations. In particular, this would appear to be the case of the provisions determining the applicable legislation, setting

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	out the SSC principles, such as equal treatment, export, aggregation of periods and assimilation of facts/events or relating to the coordination of benefits, such as healthcare and maternity/paternity benefits, accidents at work, pensions (old-age, survivors', invalidity), family benefits, unemployment and death grants. As regards the fulfilment by the UK of its obligations pursuant to Article SSC.67, irrespective of the choice between giving effect to the provisions of the Protocol on Social Security Coordination either directly or through domestic legislation, in any case it should be possible to invoke these provisions before domestic courts or tribunals.
Articles SSC.59 (7): difficulties in the interpretation or application of the Protocol on SSC related to the rights of the persons concerned should be solved through consultations in the framework of the Specialised Committee on Social Security Coordination. This is consistent with Article INST.10 (5) which excludes disputes concerning the interpretation and application of the provisions of the Protocol on SSC in individual cases from the dispute settlement mechanism of Part Six of the TCA. Beyond individual cases, this mechanism is also relevant for the Protocol on SSC?	Beyond individual cases, the dispute settlement mechanism applies as regards the SSC Protocol as well.
Non-discrimination How can Art. 7c (non-discrimination) be reconciled with the possibility of individual MS to negotiate better individual regulations that are not contained in the agreement itself? This is important in view of the fact that, in accordance with Art. 7 Para. 3, the Council decides on the compatibility of the top ups with the requirements of Art. 6 so that these top ups can be concluded. Hypothetical example: only one MS	We understand the question as relating to the reconciliation of Article SSC.4 of the SSC Protocol with Article 7 of the Council Decision. On one hand, Article SSC.4 aims at ensuring that a country like the UK will not, in the implementation or application of the SSC Protocol, be treating differently DE citizens from other MS' citizens in what concerns the rights and obligations provided by the SSC Protocol.

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negotiates regulations for the export of disability benefits (not yet agreed in the protocol on the coordination of social security with the UK). The question arises here, especially with a view to the order of competencies, as to when discrimination can be assumed and the COM could therefore fail the conclusion."	Article 7 of the Council Decision, on the other hand, provides for the possibility to top-up the SSC Protocol bilaterally with the UK: if DE concludes such a top-up, DE may not discriminate between DE and EU nationals subject to DE social security legislation. In this context, to be noted that Article 7 of the Council decision does not open a right to conclude bilaterals in areas covered by the TCA, but only on areas *left out* of the TCA. The example provided in the question (export of invalidity benefits) may thus, in our view, not give rise to a bilateral to top up the TCA.
Dispute settlement/Governance The TCA installs various dispute settlement bodies and procedures, which might also be relevant for social security. As social protection can also be seen as element of the provisions concerning the level paying field, which could involve the panel of experts (Article 9.2 of Part II Title XI TCA, which would exclude the dispute settlement under Part VI TCA); but at the same time it goes beyond these aspects and, therefore, Part VI TCA would be relevant. Dispute settlement could additionally also be connected with the work of the SCSSC and the UK will remain an observer in the AC (under the WA) which also has dispute settlement functions. What are the roles of the different bodies under the WA and the TC and how can their roles be clearer defined and the borderlines of their competences made more transparent?	While the application of the two agreements (WA and TCA) may inter-link in certain situations in the field of SSC, they are concluded in different frameworks and the two governance models, which include dispute settlement, are completely separate and will continue to be dealt with as such. To point but a few of the notable differences, the WA is referring back to the application of EU law in the field of social security coordination, whereas the TCA does not; while the WA preserves the jurisdiction of the Court of Justice when it comes to disputes raising questions of EU law, the TCA does not. The roles of the different bodies are clearly provided in each of the respective instruments and they should be considered separately, in the framework of each agreement.
According to articles INST.2.1. (p), INST.2.4. a Specialised Committee on social Security Coordination is to be established. This committee has wide-ranging decision-making powers	

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(article INST.2.4.). According to article INST.2.5. "the committees shall comprise representatives of each Party". • How many members does the committee have? • How many members represent the UK, how many the Union? • How are MS represented? How are the members elected?	The Agreement does not specify the number of members of a Committee which will be determined based on specific needs. Under Rule 4(1) of Annex INST, in advance of a meeting, the Union and the United Kingdom shall inform each other of the intended composition of their respective delegations. See above. The number of representatives from each side would normally be equal. As per Article 2(1) of the Council Decision on signature, each Member State is allowed to send one representative to accompany the Commission representative, as part of the Union delegation, in meetings of the joint bodies. The Commission shall also keep the Council informed (Article 2(2)). The EU co-chairs of the Committees will be appointed by the Commission.
According to Art. INST. 3.1 (d) a working group on Social Security Coordination is established under the supervision of the Special Committee on Social Security Coordination. Art. INST.3.2 states that the working group shall assist the Committee under its supervision. Art. INST.3.2. states that the Working Group shall comprise respresentatives of the EU and the United Kingdom and a co-chair with both parties. Art. INST.3.4. states that the Working	

Question	Reply
Groups shall, for example, establish their own rules of procedure. • What is to be understood by supervision and how is this to be guaranteed, also in view of the independent rights of the Working Group from Art. INST 3.4? • According to which criteria are the representatives and the chair selected? Are they chosen by the Specialised Committee? These questions also take place against the background of the internal EU order of competences, as outlined e.g. in recitals 8, 12, 13, 14 and 16 as well as Art. 2.1, 2.2, 6 and 9 of the Council Decision on the signing of the Agreement and deposited by the Commission in its supplementary declaration.	The Specialised Committees will have wide powers in relation to the Working Groups. In particular, pursuant to Article INST.2(4)(f), the Specialised Committees will have the power to "establish, supervise, coordinate and dissolve Working Groups". The Working Groups will, under the supervision of Committees, assist Committees in the performance of their tasks and, in particular, prepare the work of Committees and carry out any task (e.g. of a more technical nature) assigned to them by the latter (see Article INST.3(2)). The exact mechanisms for supervision of the Working Groups by the Specialised Committees (e.g. reporting) may be established later (e.g. in the rules of procedure). To be discussed with the UK who should be the representatives best placed with the technical expertise necessary from the EU and the UK sides. The Specialised Committee will establish the WG.
According to article INST.4.2, decisions shall be taken " by mutual consent". • Does this mean by majority or unanimously?	Mutual consent means that both parties, the Union and the UK, have to agree. Each party has one vote.

Question	Reply
• What are dispute resolution mechanisms if there is no "mutual consent"?	If there is no mutual consent, the relevant decision will not be adopted. The parties may pursue further discussions.
Is Guidance to be adopted as it has been done for WA?	Guidance such as drafted for the WA is not envisaged. This does not exclude further discussions at technical level and/or at the level of the TCA Specialised Committee on SSC.
Has the Commission a document comparing which articles of Regulation (EG) 883/2004 were copied into the Social Security Protocol and which articles were not (or not completely) copied?	No
If changes are made in the Regulation, on the occasion of the ongoing revision of the Regulation (EC) 883/2004, the WA can be less (or more) favourable for the individual than the TCA. If a person is subject to both the TCA and WA, which agreement takes precedence?	The Specialised Committee on SSC under the TCA will operate separately from the AC/ELA or other bodies established under EU law. You can find detailed information on the powers and tasks of all Specialised Committees, including the SSC Specialised Committee in Article INST.2(4) and on their rules of procedure in Annex INST. In so far as the work of the AC (e.g. AC decisions) is useful and relevant for the interpretation/application of the SSC Protocol, the agreed objective with the UK is to incorporate it as guidance to be adopted by the Specialised Committee.
• The Trade and Cooperation Agreement (TCA) provides that a Specialised Committee will be introduced, and it necessitates a clarification how the Specialised Committee will operate in relation to already existing bodies dealing with issues related to social security regulations, e.g. the Administrative Commission or European Labour Authority. Although we understand that these organs do have competence on union law matters, they are relevant also in this	See above our replies as regards the tasks of the Specialised Committee and the Working Group on SSC. The SC on SSC under the TCA will operate separately from the AC/ELA or other bodies established under EU law. In so far as the work of the AC (e.g. AC decisions) is useful and relevant for the interpretation/application of the SSC Protocol, the agreed objective with the UK is to incorporate it as guidance to be adopted by the Specialised Committee.

Question	Reply
case of Protocol on Social Security Coordination (PSSC) as the provisions to a large extent are identical. Furthermore, how does the Commission envision the Member States' role in interpreting and amending the PSSC?	
Interaction EU law/WA/TCA What is the relationship between the WA and TCA? - Relationship between the TCA and the Withdrawal Agreement (WA) Due to Article FINPROV.2 of the TCA its provisions are without prejudice to the WA; therefore, the WA prevails and has to be applied even in cases which are covered by the TCA. Of course, this is of lesser relevance, when the legal consequences under both texts are the same. Nevertheless, we have to take into account that, even if the same rules apply under the WA and the TCA, there might be differences in application and interpretation. Under the WA everything has to be interpreted in the light of free movement, also all Decisions and Recommendations of the Administrative Commission (AC) and relevant court rulings have to be applied (Article 4 (4) and Article 31 WA), which is not the case under the TCA. Therefore, from our point of view, in each individual case it has to be examined, first, if the WA applies to the concrete situation. Consequently, all the pending questions concerning the application of the WA have to be solved. Only if the situation is not covered by the WA, in a second step, the TCA will become applicable. There will be cases in which both agreements apply to a concrete person: E.g. A UK national, resident in the UK and following studies in MS 1, which began before 31.12.2020, can benefit from treatment in medically necessary situations under	The TCA applies without prejudice to the WA, i.e. WA will continue to apply to its beneficiaries, and not the TCA. This means that persons within the full scope of the WA, i.e. those who have been in a cross-border situation involving the UK and one or more Member States since before the end of the transition period, will continue to benefit from the full application of Regulation (EC) No 883/2004 as long as they remain without interruption in such cross-border situation. Their rights are more extensive than those of persons who are not beneficiaries of the WA and who can rely only on the TCA the material scope of which is more limited (e.g. as regards family benefits, invalidity). In our view, the WA will be granting a more extensive protection to WA beneficiaries since the entire EU SSC framework applies. As regards partial scope WA beneficiaries, the TCA will be able to complement protection as in your example with the UK student. A priori, we broadly share your view on the examples mentioned. As regards the AC decisions, it is worth mentioning that the objective is for the Specialised Committee on Social Security Coordination to make these applicable as part of guidance also in the framework of the TCA, to the extent that they are relevant in this context.

Question	Reply
Article 32 (1) (c) WA. For this treatment, the UK EHIC "MS1" can be used. If this student wants to spend holidays in MS2 then this entitlement will be covered by Article SSC.17 PSSC and the relevant document will be the one mentioned in Appendix SSCI-2 PSSC. In theory (not in this specific case of only a temporary stay in MS2) there is also a difference in the scope of benefits as the entitlement under the WA covers assisted conception services while the PSSC exempts them (Article SSC.3 (4) (e) PSSC). There will be also cases in which similar situations have to be treated differently: E.g. an MS1 national receiving only an MS1 pension who resides in the UK and becomes in need of long-term care (LTC) on 1.1.2022 will be treated differently depending on the day, they moved to the UK. If this transfer of residence took place before 31.12.2020 this person is covered by Article by Article 30 (1) (a) WA and Regulation 883/2004 will apply in its entirety, which includes the export of MS1 LTC benefits in cash. If the transfer of residence took place after 31.12.2020 Article SSC.3 (4) (d) PSSC applies and MS1 LTC benefits would not be exportable to the UK. Is our interpretation of the TCA shared? - Relation to the EEA-States and Switzerland Are there any plans to regulate also the relations with the EEA-States and Switzerland (triangulation, although this is not necessary for the personal scope as this covers already EEA- and Swiss nationals)?	Such ''regulation'' is not being considered.
Q On the relation between the TCA and Regulation No 883/2004 The material scope of the Protocol does not extend to family benefits. Family benefits are included in the material scope of Regulation No 883/2004. Does this mean that the Protocol and	The Protocol will only apply to new movements between the EU and the UK as from 1 January 2021. The TCA applies without prejudice to the WA. Persons covered by the Withdrawal Agreement, continue to benefit from the full or partial application of Regulation 883/2004. However, in the case of a person who is in a situation covering two or more Member

Question	Reply
Regulation No 883/2004 can be applied simultaneously; the Protocol for most social security risks, the Regulation for family benefits? Example (A). A MS1 resident works for a MS2 employer as a lorry driver. This driver has a steady route through MS1 and MS3 to Liverpool and Manchester in the UK. Since the UK is involved the Protocol applies. However, family benefits are not included in the material scope of the Protocol. Does Regulation No 883/2004 apply for the entitlement to family benefits?	States and the UK, the person may draw rights from both Regulations 883/2004 /1231/2010 and the Protocol, namely his cross-border situation between the two or more Member States is covered by Regulation 883/2004 or Regulation 1231/2010 . For instance as regards family benefits, a family with 2 children is residing in Member State A, the mother is working in Member State B and the father is working and covered in the UK. Member States A and B will have to coordinate between them the entitlement to family benefits in accordance with Article 65 of Regulation 883/2004. As regards the UK, as the Protocol does not apply to family benefits, the entitlement and possible export of family benefits will be assessed on the basis of national UK law only. Example(A): See the example above: the family is entitled to family benefits on behalf of NL and BE in accordance with Article 65 of Regulation 883/2004. As the Protocol does not apply to family benefits, the entitlement to UK benefits and the possible export of it, depends on national UK law.
Example (B). A resident of the UK works in the UK and two or more Member States for an employer based in a Member State. This person is subject to UK legislation because a substantial part of the work is done in the UK. Regulation No 883/2004 applies inter alia to persons residing in a third country (e.g., the judgment in case C-477/17, Balandin and Lukachenko). Does this mean that, to the extent that the agreement with the UK does not apply, the UK resident can rely on Regulation No 883/2004 to claim family benefits?	Example(B): In the example provided and assuming that the child is residing in the UK, there is no linking factor with the EU, namely the father is covered by UK legislation and the children are residing in the UK, therefore the person concerned cannot rely on Regulation 883/2004 to claim benefits. If the children are residing in a Member State, it will depend on the national legislation of the Member State concerned whether there is an entitlement to family benefits based on the residence of the child.

Question	Reply
How should the following situation concerning two MS and the UK in the field of social security coordination be assessed?: A UK national moves within the EU but he or she keeps ties also with the UK (e.g. preserving an economical activity there as well). Normally, when a situation concerns a third country national moving within the EU, Regulation 1231/10 applies, which can be more beneficial than the SSC Protocol. Isn't there an indirect discrimination of UK nationals comparing to other third country national moving within the EU?	See our reply above. In a situation such as this, the TCA applies as long as the WA or EU law do not apply. For example, if third-country nationals are covered by the WA, Regulation 883/2004 will apply with priority since the protection provided therein is wider. In the situation were a UK national has links with 2 Member States and the UK, Member States should apply between them Regulation 1231/2010. Only in relation to the UK, they have to apply the TCA. For instance, a UK national's family resides in FR, one of the partners is working in BE while the other works as a frontier worker in the UK. FR and BE need to apply 1231/2010 and apply Article 68 to assess the entitlements to family benefits of the UK nationals concerned.

Question	Reply
Q On the legal value of judgments by the ECJ EU and decisions of the AC The Protocol and Annex 7 to the Protocol are based on Regulation No 883/2004 and Regulation No 987/2009. To what extent does this mean that the case law of the Court of Justice of the European Union interpreting both regulations is applicable? Is it correct to state that in any case all future judgments of the Court of Justice of the European Union interpreting a provision of Regulation No 883/2004 and Regulation No 987/2009 will not automatically apply to the Protocol, even if the provision that is interpreted is identical to a provision in the Protocol? If so, should implementing institutions always wait for a decision from the Specialized Committee on Social Security Coordination? If yes, is it not likely that the implementation of judgments will have to take place retroactively? Can we assume that the Specialized Committee on Social Security Coordination will consider the existing decisions of the AC as well as the Practical Guide to be applicable in the context of the TCA (to the extent that the irrelevance does not follow from limitations in the material scope of the TCA)?	As opposed to the WA, the current or future CJEU jurisprudence is not part of the TCA framework. The provisions of the SSC Protocol will be applied in the light of the current common understanding of these provisions, as agreed at the level of the governance of the agreement (e.g. Specialised Committee). Yes. In so far as agreed with the UK, guidance to interpret the SSC Protocol in light of certain developments at EU level as regards provisions which are similar to EU law may be envisaged.
There are concepts that are mutual to the TCA and the Regulation (EC) No. 883/2004, e.g. residence. This concept is defined as "the place where a person habitually resides" (SSC.1 aa respectively article 1 j). The concept of residence is thoroughly examined in the Court of Justice of the European Union. How are the member states to consider this, and other concepts well known in EU law, with regards to the TCA?	As opposed to the WA, the current or future CJEU jurisprudence is not part of the TCA framework. As stated above, the provisions of the SSC Protocol will be applied in the light of the current common understanding of these provisions, as agreed at the level of the governance of the agreement (e.g. Specialised Committee).

Q&A on participation of UK in Union programmes

Questions	Answers
After leaving the EU, the UK is now a third country and will, like other non-EU countries, fall into category d) of Article 12 (1) of the regulation of Horizon Europe. - Is it correct that for joining Horizon Europe the EU and the UK need to agree on a separate EU UK Association Agreement? And if so: o What would be the relationship between the EU UK Trade and Cooperation Agreement and a future EU UK Association Agreement on Horizon Europe? o Will the EU UK Trade and Cooperation Agreement count as the "[…] agreement covering the participation of the third country to any Union programme […] (cf. Art. 12 (1) regulation of Horizon Europe)"? o Is there already a timetable for the negotiations of the EU UK Association Agreement on Horizon Europe? o What are the timetables for the negotiations for the association agreements with other non-EU countries? o What would be the content and structure of the future EU UK Association Agreement on Horizon Europe? Will the future EU UK Association Agreement on Horizon Europe have, from the perspective of the Commission, a strong influence on association agreements with other non-EU countries? - To ensure the involvement of the Council during the negotiations of association agreements in general, the Council may designate a "special committee": o How and to what extent could this special committee be involved in the negotiations of the future EU UK Association Agreement on Horizon Europe? o What could be the relationship between the "Specialised Committee on Participation in Union Programme" and a "specialised committee" dealing with associations negotiations for third countries in general?	**The combination of the TCA and the protocol that is part of the Joint Declaration will be the association agreement foreseen by the programme-specific basic acts** and there shall be no other negotiation on the participation of the UK in Union programmes, including Horizon. The only exception is the Peace Plus programme where discussions on a separate financing agreement have started. As it is the case in the EEA agreement, the main text of the TCA lays down the general rules for the participation to Union programmes and the protocol lays down the list of the programmes in which the UK participates and the specific conditions. In line with the horizontal approach on third country participation, the main text does not derogate from secondary EU law, in particular the basic acts of the programmes. **The protocol may not derogate from the main part of the agreement. For each programme it may not derogate either from the corresponding basic acts established by the Council (for the Euratom Treaty) or by the Parliament and the Council**, which define the conditions for the participation of third countries to this programme. The protocol shall be adopted and, if necessary, amended by the Specialised Committee on the Participation in Union programmes on the basis of a mandate in accordance with Article 218 TFEU. **Beside the list of programmes** (or part of the programmes) in which the UK is allowed to participate, **the duration of the participation**, **the protocol shall contain only very limited information** as all aspects related to financing, governance, suspension/termination of participation and sound financial management are located in the main part of the agreement while specific and politically important aspect of the participation of third countries are defined in the basic acts. The protocol would have been adopted as part of the agreement if the basic acts had been adopted before the entry into force of the agreement. As the basic acts are still being adopted, the draft protocol is annexed to a Joint Declaration. The text of the draft protocol has been negotiated with the UK as it is the case for the main part of the agreement (Part V). The protocol will be adopted following the entry into force of the basic acts. The negotiations with the UK might have an impact on the negotiations with other third countries, notably those under the same category "d" (third countries other than EEA/EFTA, acceding, candidate and potential candidate countries, and Neighbourhood countries) as this is the first agreement on Third country participation in 2021-2027 Union programmes. This would not imply through a systematic duplication of all conditions in the TCA to other third countries in category "d" as the dynamics of the future cooperation with those countries might be different. It should be noted that the basic acts require for "d" countries to have an agreement covering the participation of the third country to any Union programmes.
Article 6 of the Draft Protocol I excludes UK entities from the European Innovation Council (EIC) Fund established under Horizon Europe. o Does this mean that UK entities can participate in all other parts of the EIC? o Can UK entities participate in "grant-only" projects of the EIC Accelerator?	On the EIC Fund the understanding is correct: **the UK is excluded from the part of the EIC-Fund which is related to financial instruments** (as an example, investment in equity) but **will be able to participate in grants** related to the EIC accelerator calls.
According to article 4.6. of the Draft Protocol I the budget of the European Union Recovery Instrument will be included in the calculation of the operational contribution. o In the light of Art. 2.5. and 2.7. UNPRO, can UK institutions benefit from the Recovery Instrument? On what legal basis is a participation of UK entities possible and what would be the Commission's considerations behind it? o Will there be exemptions for UK participation?	In accordance with the basic act of Horizon, **the UK will indeed have access to the Horizon envelope as increased by the EU Recovery Instrument** (EURI). At the same time, to ensure the symmetry of contributions and benefits, the EURI top-up is taken into account for the calculation of the operational contribution of the UK.

Could you please explain why the contribution key to determine the operational contribution takes into account GDP ratios, instead of GNI?	**In all association agreements, the contributions from third countries use the GDP at market prices** (this is the case as an example in the EEA/EFTA agreement or with the agreement Ukraine or Israel). There was no reason to diverge from this general approach. While GNI is used for the purposes of calculation of own resources, third countries contributions do not qualify as own resources.
Quasi-exclusion of UK- Could you give an example?- Does it apply on the level of a single call? - If so, how should the possibility be countered here that a review reservation by UK could be entered for virtually every call?- The decision on exclusion is made by the Specialised Committee. Does the decision have to be taken unanimously? How can a possible conflict of interest be avoided?	The **quasi-exclusion applies indeed at the level of individual calls and for competitive grants only. There are a number of safeguards**: the UK has to notify any reservation before the closure of the call and provide justification. Furthermore, the Specialised Committee needs to examine the notification only if the participation of the UK is at least 25 % lower compared to similar calls over a period of 3 years. Finally, any decision of the Specialised Committee must be taken by consensus between the UK and the Union. **With these safeguards, it is expected that this provision would result in effectively confirming a quasi exclusion situation only in well justified, clear cut cases.**
As we understand the participation fee is a new (and additional) fee to cover the general expenditure of the institutions. It shall be 4% of the annual operational contribution (Article UNPRO.2.1.4). In the first 6 years of Horizon Europe it shall be lower (Article UNPRO.8); In 2021: 0.5% and increase to 3% by 2026. o What exactly is covered by the participation fee? In contrast, what kind of costs will be covered by the operational and support expenditure? o What is the reason for a reduced amount in the first years of participation in union programmes?	**The participation fee is indeed a new contribution** which aims at **covering the cost of providing an "environment" that enables the Union programmes to function as a whole**, including the role of the central Commission departments, the preparation of the programme (establishing, negotiating and adopting the legal test), the decision-making process, the pre-implementation phase, the governance structure and the control systems (audit, checks, discharge etc). **As a new contribution, it has been agreed to phase it in progressively.**
For the years 2021 and 2022 50% of the UK's operational contribution to Horizon Europe will not be paid until 2026/2027. We understand that this arrangement is linked to the UK's obligation to pay the Withdrawal Agreement in 2021/22 and at the same time the advance payments for Horizon Europe. o Could you illustrate this payment schedule as an example with specific numbers and figures?	**For the year 2021 and 2022, indeed a mechanism of staggered payment applies for Horizon only**: the UK will pay 50% of its contribution and the payment of the remaining 50% will be postponed to 2026 and 2027, respectively (as an example, if UK needs to contribute 100 each year of the period 2021-2027, it shall contribute 50 and 50 in 2021 and 2022, and 150 and 150 in 2026 and 2027). **The justification is the combination of the obligation for the UK to pay for the RAL in 2021 and 2022 in accordance to the Withdrawal Agreement**, and the rule that the UK contribution to the **MFF 2021-2027** is not based on a difference between commitment appropriations and payment appropriations as it is the case for Member States or EEA/EFTA countries (so **the UK has to frontload its payments**).
Based on the available data (GDP, EUROSTAT) can you illustrate the UK's contribution for the year 2021? (Article UNPRO 2.1 (6)) Could you simulate, by way of example, the adjustments for subsequent years as described in Article UNPRO 2.1 (8) as well as the working of the automatic correction mechanism described in Article UNPRO 2.2	According to Eurostat data, **the ratio between UK GDP and EU GDP for 2019 is about 18.1%** (https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=nama_10_gdp&lang=en). Based on the amount foreseen in the budget 2021 for each of the programme in which the UK participates, and taking into account the additional participation fee in 2021 (0.5%), and the spread payment for Horizon (50%), **it allows to estimate the contribution of the UK to the Union budget**. **The correction foreseen in 2.1(8) adjusts the contribution to the real use of the appropriations of the programmes.** So if there are some decommitments (so actions that will not be implemented), the contribution of the UK shall be reduced, applying the same methodology as the one used to calculate its initial contribution. In the opposite case, if the budget for the programme is increased during the year, the contribution of the UK shall be increased proportionally. The UK contribution is also adjusted in case of exclusion of UK entities from calls. **The automatic correction described in 2.2 must be read together with Article 5 of the protocol.** This Article 5 describes how to calculate the imbalance between the benefit for UK entities and the operational contribution of the UK, excluding support expenditure. If this imbalance is higher than 8% of the corresponding contribution for two consecutive years, the UK shall pay the amount of imbalance higher than the 8%. Please note that the automatic correction only applies to Horizon Europe.

How should the future financial participation of UK in ITER respectively the Euratom program be structured? Should the contribution be based on the previous payment as an EU member state? We kindly ask for specific information that shows not only the amount of the payment but also the intended use.	**As regards ITER and Euratom Research and Training programme, the contribution shall be based on the general principle (GDP ratio)** and will go proportionally to each programme (on different budget lines). This amount shall be used in line with the basic acts for ITER/Euratom Research and Training, the Union budget and the Financial Regulation.
We welcome that the United Kingdom shall participate in and contribute to Copernicus on the basis of the regulation establishing the space programme. We kindly ask the COM:o Please elaborate how far also specific agreements with other participating countries than UK are needed for their full access to the Copernicus Emergency Management Service respectively for access as authorized user to the Copernicus Security Service?o Is UK treated on par with other participating countries like Norway?o How is "authorised user" of the security service defined?	**For the Copernicus Emergency Management Service, other participating countries are part of the European Union Civil Protection Mechanism, meaning that agreements are in place.** **For the three security services** (border surveillance, maritime surveillance and support to external action), **the UK would need to establish cooperation** in the respective policy areas and conclude service-level agreements **with the relevant entrusted entities (Frontex, EMSA, SatCen)**. In terms of conditions for access to services, the UK is treated in the same way as other participating countries. **A list of authorised users for Copernicus security services is a dynamic list**, contemplated in the Contribution Agreements with the Entrusted Entities.
For SST, we assume that it will be only included in Protocol II (Access of the United Kingdom to services established under certain programmes and activities) and not Protocol I (Programmes and activities in which the United Kingdom participates). (Reference to SST Ch.3 Art. UNPRO.6 4.,p.381). This would be in line with Art.7 of the space regulation. o Is this assumption correct?	**For the SST, it is indeed true that participation concerns only access to services**, in accordance with Art 7 and 8 of the Space Regulation, and is therefore only included under Protocol II.
We consider the UK an important stakeholder in space. We kindly ask the COM: o Has the UK by now expressed their interest in (re-) joining Galileo and EGNOS?	**The UK participation to Galileo or its Public Regulated Service was not discussed in the frame of the EU-UK negotiations due to the lack of interest on the UK side** and despite the provisions agreed in the Political declaration framing the future EU-UK relationship. **The UK requested the access to the service provided by EGNOS with no financial contribution.** We proposed full participation in EGNOS as access to the service was not possible without participation in the programme, in accordance with the Space Regulation and the approach taken with other third countries. The UK rejected this proposal.
Will the UK contribution to the EU budget on the unpaid MFF 2014-2020 commitments for the year 2021 be as indicated in Draft Budget 2021 documentation i.e. approximately EUR 7 412 454 833 ?	**The provisional UK contribution in relation to the Withdrawal Agreement indicated in the Draft Budget 2021 is indicative** since it was based only on the information available at that time and several elements of the expected UK contribution were not included (e.g. pensions). With the annual accounts 2020 and the adopted budget 2021 the provisional UK contribution will be updated in the course of the revision of the revenue forecast for 2021.
Furthermore, could you please update information about the foreseen UK's contribution to the EU budget for the next MFF 2021-2027 and especially years 2021, 2022, 2023 and 2024, as it is vital for making forecasts of national contributions?	**For the TCA, the contribution of the UK on the next MFF 2021-2027 does not have a significant impact on the contributions of MS** as it is mostly assigned revenue increasing the envelope of the programme. **For the WA, the first forecast of the expected UK contribution for 2021-2025 was included in the Long-term forecast report** on the outflows and inflows of the EU budget (adopted by the Commission end of June 2020). The forecast will be revised in this year's report (to be adopted by the Commission at the end of June) taking into account the latest available information (e.g. annual accounts of 2020).

What are the next steps regarding the draft Protocol on UK participation in Union programs (esp. Copernicus and Horizon)?	**Once the basic acts of the programmes are adopted, a mandate shall be adopted by the Council on a proposal from the Commission for the Specialised Committee on Participation in Union Programmes to adopt the draft Protocols** attached to the "Joint Declaration on participation in Union programmes and access to programme services". **These protocols** list the programmes and services the UK will participate in or have access to, and establish the specific terms for that participation or service access. They **have been agreed in principle with the UK in the context of the negotiations of the whole agreement and could be adopted rapidly** once the basic acts have been adopted. Regarding Copernicus, once the draft Protocols are adopted, we will start to negotiate specific service level agreements where needed with the UK, as foreseen in Art 4 of Protocol I.
Regarding UK participation in EU programs, can the Commission present an estimate of the annual fee payed by the UK? Preferably split by program.	**The amount that the UK shall have to pay as operational contribution** will be the product of the annual budget of the programme, including the Next Generation EU assigned revenue by the ratio between the GDP of the UK and the GDP of the EU. According to Eurostat data, the ratio between UK GDP and EU GDP for 2019 is about 18.1% (https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=nama_10_gdp&lang=en). **On top of that, the UK shall also have to pay a participation fee**, which is a percentage of the operational contribution. This participation fee is phased in from 0.5% in 2021 to 3% in 2026 and reaches its standard level of 4% in 2027.
What will be the process for the annual payment of the UK contribution in EU programs going forward? Will the Commission provide an estimate for expected UK contribution in the draft annual budget, such that total (EU+third countries) expenditures on ie. Horizon Europe is transparent?	**The Commission shall provide an estimate of the expected assigned revenue**, as it is provided by Article 41(8) of the financial regulation.
Is it expected that negotiations will finish in time for the UK to participate in programs regarding the 2021 EU-budget?	**Negotiations on the participation of the UK in Union programme are completed** except if there would be a last minute change to the basic act as explained in the Joint Declaration on Participation in Union Programme and Access to Programme Services ("The Parties affirm that the draft protocols set out below have been agreed in principle and will be submitted to the Specialised Committee on Participation in Union Programmes for discussion and adoption")
We understand that the UK cannot participate in the new Erasmus+ programme as a 'programme country' (like EU member states and a.o. EFTA countries). Can the Commission elaborate on the question to what extent the UK can and/ or wants to participate in the action-lines that are open for 'third countries' (like e.g. the USA, Peru, Ghana, Indonesia etc.)? And what action-lines would that be? Will it only be mobility projects for students and teachers ((Key Action 107), or will it also cover other central actions (governed by the EC) such as Erasmus Mundus Joint Master Degrees and Jean Monnet?	- **The UK shall not be a programme country. This means that students from the EU cannot spend their Erasmus in the UK university anymore.** However there are some limited possibility for EU universities to send students to third countries universities not associated to the programme. It is very limited and the universities will have to respect the Erasmus+ charter for Higher education. - The few international opportunities such as Jean Monnet Actions and Erasmus Mundus Joint Master's degree will still be open to the UK. - Mobility actions covering higher education students and Vocational Education (VET) will offer possibility to undertake mobility in third countries, including the UK.

What will be the special contribution mechanism for Horizon Europe (standard adjustment mechanism, specific corrective measures)? What are the assumptions for the mechanism?	**The contribution for Horizon Europe shall follow the general rule** (defined in Part V of the TCA) and be based on the application of a ratio between the GDP of the UK and the GDP of the EU to the total amount that the EU finances, including through Next Generation EU (NGEU). On top of it there will be a participation fee. However, there are **two specificities** in relation with the financing of Horizon Europe: - **First the amount that the UK shall have to pay in 2021 and 2022 shall be 50% of the amount of the annual contribution** and **the amount that the UK shall have to pay in 2026 and 2027 shall be increased by the amount unpaid in 2021 and 2022**. This facility of staggered payments has been agreed with the UK because of the **financial impact of the Withdrawal Agreement** in 2021 and 2022 and the fact that the **UK has to frontload its payments** for the participation in Union programmes (unlike MS or EEA/EFTA countries). - **Second a correction mechanism shall apply in case of imbalance between the UK contribution and the benefit for its entities**. The system adjusts its contribution to avoid the UK becoming a significant net beneficiary and tries to boost the participation of UK entities in the case of the UK becoming a significant net contributor.
Are there any consequences for EU-27 students currently taking part in the Erasmus exchange in the UK stemming from the recent UK's decision not to participate in the programme from 2021?	**There are no consequences for the students taking part in the Erasmus programme financed under the MFF 2014-2020**, as the UK continues to fully participate in this programme until its closure. **However, the UK shall not participate in the Erasmus+ programme financed under the MFF 2021-2027. This means that students from the EU cannot spend their Erasmus in the UK university anymore.** However there are some limited possibility for EU universities to send students to third countries universities not associated to the programme. It is very limited and the universities will have to respect the Erasmus+ charter for Higher education. Mobility actions covering higher education students and Vocational Education (VET) will offer possibility to undertake mobility in third countries, including the UK.
What will be the annual contribution of UK to PEACE+? When the special solutions for PEACE+ will be finalized?	**The contribution of UK to the PEACE+ shall be based on maintaining of the current funding proportions** for the future programme as it stands for the PEACE programme financed under the MFF 2014-2020. The UK has confirmed that it accepts **applying this funding proportion to the envelope agreed in the MFF agreement for 2021-2027 (EUR 120 million)** and to an **additional envelope that Ireland makes available** from its own Interreg envelope **(EUR 86 million)**.
Article 9	**The text on reciprocity allows participation of Union entities to UK programmes** equivalent to **Horizon Europe and to the Euratom Research and Training** programmes in accordance with the UK laws and regulations. Union entities are defined very broadly as any type of entities, including both natural and legal persons.
Horizon Europe	The UK shall finance all the Horizon programme (except EIC-Fund financial instruments where UK does not participate) in accordance with the ratio between its GDP and the GDP of the EU (and the automatic correction mechanism). This includes the financing that Horizon provides to partnership under Article 185 or 187 of the TFEU. As specified in the draft protocol, **the UK shall participate in these legal structures in accordance with the Union legal acts related to the establishment of these legal structures**. The rules for UK and UK entities participations in these structures as a third country are hence defined in the Union legal acts related to these structures. This includes the rules for specific financing of these entities in the framework of the participation of UK and UK entities.

Support expenditure	**Support expenditure is expenditure of administrative nature which are under the heading financing the operational expenditure of the programme**. **It does not include the general administrative expenditure of Heading 7**. In order to have the UK to contribute to administrative expenditure related to the general environment needed for the programme to operate, **a new "participate fee" has been introduced**. Such a participation fee has never been requested from third countries in the same situation as UK in the past. As a new contribution, it will be phased in progressively.
UNPRO.2.1	**The participation fee is a new contribution and there has never been a similar requirement in the past** to any third country in a comparable situation as UK. Therefore it has been agreed to have a progressive phasing in of this contribution in order to reach 4%. It is true that the ratio of administrative expenditure of the Institutions (heading 7), including the payment of the pensions, is at the level of 7% of the whole MFF without Next Generation EU (with Next Generation EU, the ratio is at the level of 4%). **However, besides financing the pensions, administrative expenditure finances activities that are not related to the implementation of Union programmes at all.** Therefore, **this ratio may not have been taken as a proxy for the general administrative expenditure that is linked directly or indirectly to the programmes.**
UNPRO.2.1	**Article UNPRO 2.1a deals with a situation that could lead to an exclusion of UK entities** "in practise" (but without having a formal exclusion) precisely **because of the UK being a third country**. **This procedure is clearly foreseen for exceptional circumstances** and there are a number of **safeguards**: - the UK has to notify any reservation before the closure of the call and provide justification. - furthermore, the Specialised Committee needs to examine the notification only if the participation of the UK is at least 25 % lower compared to similar calls over a period of 3 years. - finally, **any decision of the Specialised Committee must be taken by consensus between the UK and the Union.** With these safeguards, it is expected that this provision would result in effectively confirming a quasi exclusion situation **only in well justified, clear cut cases.** Any negotiation with other third countries shall take into account their specificities.
mechanism of budget correction	**The mechanism of budget correction only applies when there are competitive calls for grants and when the main purpose of the programme is to organise competitive grants procedure for entities.** Such an approach would not been appropriate for most other programmes, such as for example ITER where the main goal is to provide components to the project through contracts and benefit from the result of the common investments; or for Euratom where the programme could have to finance access to an infrastructure (possibly located in the UK such as the Culham infrastructure). Furthermore the mechanism should only apply when it is a requirement of the basic act and this is the case for Horizon only. Such a mechanism is not easy to implement and, in particular, in Horizon, it is necessary to record the amounts apportioned to each legal entity participating in a consortium as the amounts paid by the Commission are paid to the head of the consortium. **As provided in the basic act** (a correction of "significant" imbalance) and also for practical reasons, **it was necessary to define a threshold to apply the correction mechanism**. **The threshold of 8% limits the possibility of the UK to become a net beneficiary** (as it is the case today for some other third countries). Beside the participation fee, the UK has to contribute also to the support expenditure (estimated at 5%) that is part of the operational contribution. **Simulations of the application of the automatic correction should be cautiously interpreted as the situation of the UK as a Member State will not be the same as the situation of the UK as a third country** (as an example there will be no free movement anymore and any person residing in UK for more than 6 months will need a visa and have to pay an entry fee). The historic data are also influenced by the uncertainties related to Brexit for the years post-2016. Finally the attribution of payments to a Member States in the financial reports does not include the complexities related to the existence of consortia

	As specified in the draft protocol, the UK shall participate in these legal structures established under article 185 or 187 of the TFEU in accordance with the Union legal acts related to the establishment of these legal structures. This includes the specific contributions that the UK or UK entities shall make toward these legal structures.Of course, the UK shall also participate to the financing of Horizon Europe to these structures through its financing of Horizon Europe. These are two different contributions.
UNPRO.2.1, UNPRO.2.2, UNPRO.2.3	Article UNPRO.2.1(10) states that "**All contributions of the United Kingdom or payments from the Union, and the calculation of amounts due or to be received, shall be made in euros.**" and this should apply also by analogy to Article UNPRO.2.2 and UNPRO.2.3. Note **that it is not foreseen that the UK participate to any financial instruments or guarantees supported by the Union budget in the MFF 2021-2027.** So article UNPRO.2.3 will not apply during this period.
Horizon Europe	**The provisions on participation of the UK to Horizon Europe** that have been negotiated with the UK and whose draft is in the Joint Declaration **foresees the participation of the UK to all parts of Horizon Europe except for the financial instruments of the EIC -Fund**. This agreement has been made taking into account the requirements of the draft basic act and in particular the requirement of Article 12 of the Horizon Europe Regulation (as the numbering stands). **This does not mean that the UK might not been excluded from calls or part of the working programmes in accordance with the basic acts** (as an example for security reasons or to preserve the strategic autonomy of the Union). This is also why the Agreement contains specific provisions regarding such exclusions.
Erasmus+ 2021-2027	No, **UK entities member of consortia shall not be able to receive funding in the European Universities action under Erasmus 2021-2027.** **Note however that Jean Monnet Actions and Erasmus Mundus Joint Master's degree will still be open to the UK.**
Copernicus	In accordance with the draft protocol, **the United Kingdom shall participate in the Copernicus component of the Space programme and benefit from Copernicus services and products in the same way as other participating countries**. A footnote however specifies that, "References to "participating countries" are to be finalised in line with terminology of basic acts when adopted". **Indeed, for the security services, the agreement with the relevant agencies (EMSA, SATCEN, Frontex) shall define the modalities of activation and use for the policy areas if and where cooperation is agreed. The Commission shall supervise the establishment of these agreements in close cooperation with Member States.** Finally, for the participation to the Security Accreditation Board (SAB), the draft protocol establishes unambiguously that **participation by the United Kingdom's representatives in the SAB meetings shall be governed by the rules and procedures for participating in this board taking into account the status of the United Kingdom as a third country.** In accordance with the basic act, UK representatives may be invited to attend SAB meetings as observers, on an exceptional basis, for matters directly relating to the UK, especially matters concerning the infrastructure belonging to them or established on their territory.

Could the COM explain the further process in terms of laying down the financial provisions for the UK's contribution to the individual programmes?	**The combination of the TCA and the Protocol I that is part of the Joint Declaration will be the association agreement foreseen by the programme-specific basic acts** and there shall be **no other negotiation on the participation of the UK in Union programmes**. **However the protocol shall only be integrated in the agreement by the Specialised Committee on Participation in Union programmes once the respective basic acts have been adopted and on the basis of a mandate according to Article 218 TFEU.** Part V of the agreement defines the level of the financing to any programme by the UK on the basis of the ratio between its GDP and the GDP of the EU applied to the amount of funding provided by the Union budget (including through the Next Generation EU assigned revenue). There are some specificities related to Horizon Europe such as the mechanism of staggered payments (established in the Annex) and the automatic correction. **The annex provides also the modalities of the payments by UK and the consequence of late payments.**
Is the UK's contribution for programmes (without prejudice to the automatic correction mechanism for Horizon) based on the UK contribution key for outstanding payments from earlier Financial Frameworks, as defined in the Withdrawal Agreement?	**No**, the contribution key is based on the ratio between the UK GDP and the GDP of EU as it is usually the case for the participation of third countries.
Could the COM produce the theoretical result of the automatic correction by applying it ex post to data already available (see Financial Reports up to the budget year 2019)? Did we understand well that the correction can either be negative or positive?	**No the financial correction can only be positive (increase of the UK contribution).** In cases of significant underperformance of UK entities (with the UK becoming a significant net contributor), the philosophy is to try to find balancing remedies to boost UK participation to re-establish a balance with its contribution. Ultimately, the Specialised Committee on Participation in Union programmes could adopt further measures to address underperformance, including by making adaptations to the participation of the United Kingdom in the Union programme concerned and adjusting future financial contributions of the United Kingdom in respect of that programme. The UK can also terminate its participation in the programme. Simulations of the application of the automatic correction on the basis of available financial reports should be cautiously interpreted as the situation of the UK as a Member State will not be the same as the situation of the UK as a third country (as an example there will be no free movement anymore and any person residing in UK for more than 6 months will need a visa and have to pay an entry fee). The historic data are also influenced by the uncertainties related to Brexit for the years post-2016. Finally the attribution of payments to a Member States in the financial reports does not include the complexities related to the existence of consortia.
What will be the legal status of Protocol I and II? Will those protocols be the basis for an agreement according to Art 218 TFEU to participate in the Union Space Programme as foreseen in Art 7 and 8 Space Regulation?	These draft protocols shall be incorporated in the trade and cooperation agreement (TCA) by the specialised committee on Participation in Union programme on the basis of a mandate granted by the Council under Article 218 TFEU. It should be noted that if the basic acts had been adopted before the provisional adoption of the TCA, these protocols would have been part of the TCA as from the start.
Are the current drafts of Protocols I and II still under discussion? Will those Protocols only cover participation in Copernicus and access to SST-services and no other space components?	**No, these protocols have been negotiated with UK as it has been the case for Part V of the TCA. No further discussion with UK is foreseen. The UK has only expressed its wish to participate in the programmes or the part of the programmes listed in the draft protocols in the Joint Declaration.**
When will the Specialised Committee on Participation in Union Programmes constitute and decide on the Protocols? How will member states be involved in the committee?	The rules related to the **Specialised Committees are specified in INST.2. They exist as from the date of entry into force of the TCA. The protocols should be the ones annexed to the Joint Declaration on Union programmes, technically adjusted to make reference to the adopted basic acts.** Of course the Specialised Committee on Participation in Union programmes shall only be able to include these protocols in the TCA on the basis of a mandate granted by the Council in accordance with Article 218 TFEU.
What is the current status of UK's membership in SST consortium?	**The UK has been excluded from the SST consortium already during the transition period, on the basis of Article 127(7)(b) of the Withdrawal Agreement**. However the UK continues to benefit from access to the services provided by SST. This access shall be preserved.

Which future solutions does EC envisage concerning cooperation with third countries (especially UK, but also NO and CH) with regard to thematic priorities after the end of MADAD and EUTF Africa after 31.12.2021?	**At this stage, the discussions with the UK did not address their possible future participations in such actions that are covered by the Withdrawal Agreement.** The UK wanted only to discuss participation to the programmes or access to the services mentioned in the protocols, plus participation in Erasmus+ and access to the EGNOS service. However at the end, the UK decided not to participate in these two programmes on the basis of the conditions for third countries participation defined in the draft basic acts.
If UK does not follow the Rule of Law conditionality agreed between EU MS is it then possible for EU to stop payments to UK on the same terms as for other EU MS?	**The conditions for participation of the UK in the Union programmes are mentioned in Article UNPRO.1.4.** In particular its first paragraph states that **the United Kingdom shall participate in the Union programmes, activities or parts thereof listed in Protocol I under the terms and conditions established in this Agreement, in the basic acts and other rules pertaining to the implementation of Union programmes and activities**.
The UK is to pay RAL-commitment payments into the "ordinary" budget as other revenue during the first years of the budgetary cycle, and new payments for new programs outside the "ordinary" budget are to be payed as externally assigned revenue. Could the COM explain how this will be accounted in a transparent way?	**The documentation related to the establishment of the budget in accordance with the financial regulation shall clearly identify the payments of the UK resulting from the Withdrawal Agreement**, and in particular its payments in relation to the RAL which shall have an impact on the payment appropriations requested from MS, **and the payments related to its participation to the programmes 2021-2027** which **shall increase the envelope of the programmes** (except for the participation fee).
UK will annually contribute through a "participation fee" and an "operational contribution". Will the "participation fee" also increase the programme volume/overall level of expenditure?	No, **the participation fee will cover general administrative expenditure.**
Operational contribution is calculated from the UK GDP as a share of the EU GDP. Does that mean that you will calculate the UK GDP as a share adjusted for UK, i.e. EU?	**The operational contribution shall be calculated by applying the ratio between the UK GDP and the EU GDP to the financing provided by the EU to the programme, including through Next Generation EU budget.**
Operational contribution is annually calculated from assumed commitments. The annual contribution from UK is calculated from commitments. What would happen if the payments turn out lower than the commitments?	**If the payments are lower than commitments in the context of the implementation of a programme, there will be decommitments and the contribution of the UK shall be reduced in proportion of this level of decommitment**. As opposed to MS or EEA/EFTA countries, **the UK has to frontload all payments related to the commitment appropriations** as requested by the financial regulation.
In article 4.6, in the declaration in regard to the financing of Horizon, it refers to the Next Generation EU. Will COM clarify how this goes together with the payments from UK	**The annual contribution of the UK shall be the product of the contribution key** (ratio between the GDP of the UK and the GDP of the EU) **and the sum of the voted budget and the additional assigned revenue from the Next Generation EU for this year and this programme**.
PEACE+ has a separate financing solution. Where is it regulated?	**The basic act of the European Territorial Cooperation (ETC)** defines the legal environment for the participation of third countries in an ETC programme. Peace+ is an ETC (Interreg) programme.

Reference article(s)	Question	Answer
Withdrawal agreement		
Article 4(4) WA	Is the UK committed by the Court of Justice of the European Union on decisions issued/ruled up until the time of its membership in the EU? Is the UK committed by decisions issued/ruled on previous decisions/prior to its withdrawal?	These two questions are about the Withdrawal Agreement, not the new Trade and Cooperation Agreement. The rules are set out in Article 4(4) on the interpretation of Union law concepts of the WA as per the CJEU jurisprudence handed down before the end of the transition period, and Article 86 according to which the Court of Justice of the European Union shall continue to have jurisdiction in any proceedings brought by or against the United Kingdom before the end of the transition period.
Part One – Common and institutional provisions		
Article INST.7 & 7.3 –Domestic Advisory Groups	As set out in Article INST.7 the Agreement foresees the participation of "Domestic Advisory Groups" (DAG), whose competence covers sustainable development issues. Article INST. 7.3 states the obligation of publishing that list of DAG members and focal points. Regarding this obligation, when and where these lists will be published?	The EU publishes the lists of DAG members on the EESCs website, see example here with the CETA DAG. The UK government can chose on which governmental website it wishes to publish the list of members. Once done, UK sends us the link which we will then distribute to the EU DAG members. The list should be published when the UK DAG is set up, early enough before the first joint meeting between DAG members from the UK and the EU to allow both DAGs to prepare the joint meeting.
Article INST.1 to 4 – institutional framework	Can the Commission indicate when they expect the Partnership Council and the various Committees to meet and agree a schedule of meetings for the year? How will the work programme for the various bodies that feed into the Partnership Council to be developed and is there a timeframe for this? [MS] is particularly interested in timelines for the work programmes of the SPS and Energy committees.	According to Article INST.1(2) of the Agreement, the Partnership Council shall meet at least once a year. The same timeline applies also to the meetings of Specialised Committees, unless specified or decided otherwise (see Article INST.2(7)). At this stage, it is not yet known when the Partnership Council or the Specialised Committees, including on SPS and Energy, will meet for the first time. If it becomes necessary to extend the period of provisional application beyond 28 February 2021 in accordance with Article FINPROV.11(2)(a), the Partnership

		Council will have to take a decision to that end. Also, from the usual practice in areas under existing Free Trade Agreements, joint bodies usually meet 1-2 times per year. The work programmes of the various joint bodies will normally be agreed upon at their first meeting. As for the SC's on Union Programmes and Social Security coordination, meetings may be scheduled sooner in order to make the necessary amendments to annexes and protocols as clearly stipulated in the Agreement.
Article COMPROV.2 – Supplementing agreements		
Article COMPROV.4 – fundamental rights	[MS] note that, compared to the EU proposal, explicit reference to the ECHR has been removed from Article COMPROV.4. Moreover, continued domestic effect of the ECHR in the UK is only included in Part Three [Law enforcement and judicial cooperation in criminal matters]. At the same time, Part Three is excluded from the horizontal dispute settlement provisions (Article INST.10(2)(f)). Is [MS] correct to conclude that if the UK limits the domestic effect of (parts of) the ECHR, no economic sanctions could be applied under the Trade and Cooperation Agreement? It would be worrisome if this were the case, as it would mean that the EU could not respond if the UK would restrict the property rights or access to justice for EU investors in the UK. This would also constitute a significant asymmetry in the relationship, as UK investors will continue to enjoy the protection of property rights and access to justice in the EU, based on the ECHR and the EU Charter of fundamental rights.	The Commission notes that, although an explicit reference to the European Convention on Human Rights (ECHR) does not appear in Article COMPROV.4, the latter still refers to international human rights treaties which are understood to include notably the ECHR. In accordance with Article INST.35, if either Party considers that there has been a serious and substantial failure by the other Party to fulfil any of the obligations that are described as essential elements in Article COMPROV.12 [Essential elements], which include the obligations described in Article COMPROV.4, this Party may decide to terminate or suspend the operation of the TCA or any supplementing agreement in whole or in part.

Article COMPROV.4 – fundamental rights	Does the Art. COMPROV 4 (HR Clause) include the ECHR or not?	The Commission notes that, although an explicit reference to the European Convention on Human Rights (ECHR) does not appear in Article COMPROV.4, the latter still refers to international human rights treaties which are understood to include notably the ECHR.
SSC.67 and COMPROV.16 – Social security and private rights	Article SSC.67(1) reads: "*The Parties shall ensure in accordance with their domestic legal orders that the provisions of the Protocol on Social Security Coordination have the force of law, either directly or through domestic legislation giving effect to these provisions, so that legal or natural persons can invoke <u>the said provisions</u> before domestic courts, tribunals and administrative authorities.*" Do we understand correctly that the explicit reference to the possibility to invoke 'the said provisions' suggests that, independently from the choice between giving effect to them either directly or through domestic legislation, in any case it should be possible to invoke the provisions of the agreement itself (as opposed to the rights/obligations conferred in them given effect in the domestic legislation)?	Article COMPROV.16: [Private rights] provides, as a general rule, that the TCA does not confer rights or impose obligations on individuals and cannot be directly invoked within the legal orders of the Parties. However, this article applies without prejudice to Article SSC.67 [Protection of individual rights]. This latter article aims at achieving the necessary protection and conferring the necessary guarantees on persons as regards the rights provided to them in the SSC Protocol. Depending on the legal orders of the States involved (i.e. the UK has a dualist system where international treaties need implementation under national law), the obligation provided in Article SSC.67 is to ensure that persons can invoke their rights before domestic courts, tribunals, administrative authorities. In the EU legal order, the obligation provided in Article SSC.67 is fulfilled by the direct effect enjoyed by those provisions of the Protocol on SSC, in accordance with the case law of the Court of Justice, which contain clear, precise and unconditional obligations. In particular, this would appear to be the case of the provisions determining the applicable legislation, setting out the SSC principles, such as equal treatment, export, aggregation of periods and assimilation of facts/events or relating to the coordination of benefits, such as healthcare and maternity/paternity benefits, accidents at work, pensions (old-age, survivors', invalidity), family benefits, unemployment and death grants. As regards the fulfilment by the UK of its obligations pursuant to Article SSC.67, irrespective of the choice between giving effect to the provisions of the Protocol on Social

		Security Coordination either directly or through domestic legislation, in any case it should be possible to invoke these provisions before domestic courts or tribunals.
INST.1 to 4 – institutional framework	[MS] welcomes the possibility for member states' representatives to join the partnership council and the specialized committees as part of the Union delegation (Article 2 in the Council decision on the signing of the TCA). However, there should also be the possibility for the Council to propose the inclusion of items on the agenda, in line with the procedures for the Joint Committee and the specialized committees under the Withdrawal Agreement (as set out in the joint declaration by the Commission and the Council of 10 January, XT 21118/1/18). Does the Commission foresee a similar joint declaration as XT21118/18 (for those provisions that have not already been addressed in the Council decision on the signing of the TCA) between the Commission and the Council with regard to institutional matters?	The Commission is currently considering the possibility to adopt such a declaration.
INST.1 to 4 – institutional framework		
Annex 1 – Rules of procedure of the Partnership Council and Committees		
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Part Six – Dispute settlement and other provisions		
Title I – Dispute settlement	What are the Commission's views on the procedure for the internal EU decision to initiate a consultation on a dispute or to initiate the arbitration procedure?	Regarding dispute settlement and the initiation of arbitration, this process is normally managed by the European Commission, in line with its external representation functions. It is for the COM to decide on the institution of consultations on a dispute and to initiate arbitration. These prerogatives are to be exercised in line with the principle of sincere cooperation between institutions as recognised by recital (11) of the Council Decision on signature. "It is also for the Commission to represent the Union before the arbitration tribunal where a dispute has been submitted to arbitration in accordance with the Trade and Cooperation Agreement. In compliance with the duty of sincere cooperation referred to in Article 4(3) TEU, the Commission is to consult

		the Council beforehand, for example by submitting to it the main points of the intended Union submissions to the arbitration tribunal and taking the utmost account of comments made by the Council."
INST.24 – Compliance review	Could the Commission explain the relationship between the sentence "*Obligations shall not be suspended until the arbitration tribunal has delivered its decision*" in article INST.24(11) and the sentence "*This paragraph shall under no circumstances delay the date as of which the complaining Party is entitled to suspend obligations under this Article*." in article INST.24(12)? Do we understand correctly that the second phrase relates to the 30 days deadline for delivery of the arbitration tribunal's decision; in other words that the function of this second sentence is to make clear that the examination described in paragraph 12 should take place within this deadline?	Indeed, the quoted sentence of Article INST.24(12) relates to the 30 day deadline for delivery of the arbitration tribunal decision set out in Article INST.24(11). Note that it also related to the impossibility for the responding party to seek a second arbitration procedure to challenge the consistency of the envisaged suspension with the principles and procedures set forth in point (b) of paragraph 7, paragraph 8 or paragraph 9 of that Article, so as not to delay the date as of which the complaining party is entitled to suspend obligations.
INST.25 – review of measures taken to comply	Article INST.25(1) reads: "*The respondent Party shall deliver a notification to the complaining Party of any measure it has taken to comply following the suspension of obligations or following the application of temporary compensation, as the case may be. With the exception of cases under paragraph 2, the complaining Party shall terminate the suspension of obligations <u>within</u> 30 days from the delivery of the notification. In cases where compensation has been applied, with the exception of cases under paragraph 2, the respondent Party may terminate the application of such compensation <u>within</u> 30 days from the delivery of its notification that it has*	The combined reading of paragraphs 1 and 2 of Article INST.25 indicates that the respondent Party may not terminate the application of compensation before the expiry of the 30-day period following its notification of a measure as long as the complaining Party does not agree that the notified measure brought the respondent Party into compliance. However, the termination of compensation may take place before the expiry of this 30-day period if parties agree that the notified measure complies with the covered provisions, which justifies the use of the expression "within 30 days". At the expiry of the said 30-day period, the respondent Party may terminate the compensation if the complaining Party has not requested the arbitration tribunal to rule on

	complied." Would it not make more sense if the second 'within' were replaced with 'after'?	whether the notified measure complies with the covered provisions.
INST.27 – Lists of arbitrators	Could the Commission indicate how the selection procedure on the Union side will take shape with regard to the list of arbitrators that needs to be established within 180 days from January 1 (Article INST.27)?	The Commission is currently in the process of defining the modalities for the selection procedure of arbitrators, taking due account of the current practice for international agreements, which involves both Member States, in a similar way as the Withdrawal Agreement, and the European Parliament. The Council will be kept duly informed.
Title I – Dispute settlement	What is the Committee's specific role in the disputes' resolution? In particular for the interpretation of serious and persistent breach?	Pursuant to Article INST.13 [Consultations], as a first step, the Parties shall endeavour to resolve any disputes through consultations. Subject to the exceptions listed in Article INST.13(7), such consultations may be held in the framework of a Specialised Committee or of the Partnership Council, at the initiative of the complaining Party. The Specialised Committee, or, as the case may be, the Partnership Council, may resolve the dispute by a decision. The period for consultations is one month, after which, if no agreement is found, an arbitration procedure may begin.
INST.24 and FISH.14 – retaliatory measures	Would the EU be in a position to suspend obligations under all sections of Part Two in case of a breach of one of the fisheries provisions, or can the obligations only be suspended in the Headings One, Two and Three of Part Two (providing that all conditions set forth in the article are fulfilled)? Could the Commission confirm that this provision differs from **article FISH.14, 1(c)** of the Treaty in the sense that under the latter unilateral measures can be imposed but with a more restricted scope?	In case of a breach of a fisheries provision, provided that all conditions set forth in Article INST.24(8) are met, the EU may seek to suspend obligations under all other covered provisions, as defined in Article INST.10 [Scope] (see in particular Article INST.10(2) for the list of exclusions from "covered provisions"; see also the limitations on cross-suspension in Article INST.24(3) – e.g. a breach of a fisheries provision cannot lead to the suspension of obligations in Heading Four [Social security coordination and visas for short-term visits], the Protocol on Social Security Coordination, Part Five [Union programmes] or in respect of financial services). Article FISH.14(1)(c) of the Agreement indeed differs from Article INST.24(8) in that (i) the former deals with remedial measures taken unilaterally prior to the ruling of the arbitration tribunal (while the latter concerns

		temporary remedies following such a ruling); and (ii) the scope of suspension under Article FISH.14(1)(c) is limited to Heading One [Trade], with the exception of Title XI [Level Playing Field for open and fair competition and sustainable development], and to Heading Three [Road Transport]. Note that by virtue of Article INST.34D [Conditions for rebalancing, remedial, compensatory and safeguard measures], in addition to the abovementioned limitations a remedial measure shall comply, mutatis mutandis, with the conditions set out in Article INST.24(3) [Temporary remedies], i.e. obligations under Heading Four [Social security coordination and visas for short-term visits], the Protocol on Social Security Coordination, Part Five [Union programmes] or in respect of financial services cannot be suspended.
Title I – Dispute settlement		
Autonomous measures		
Autonomous measures		
Part Seven - Final provisions		
FINPROV.10A - Data protection	Data adequacy – there has been some media speculation about the status of the bridging mechanism (e.g. whether it is legally effective) – could Cion/CLS address this?	The 'bridging' mechanism is set out in Article FINPROV.10A of the TCA. In a nutshell, it ensures stability and continuity of data flows between the EU and the UK during the interim period between 1 January 2021 and the adoption of a possible adequacy decision under the conditions that the UK continues essentially to apply the rules of the General Data Protection Regulation (GDPR) and the Law Enforcement Directive (LED) and does not exercise certain autonomous powers.
FINPROV.10A - Data protection	Regarding digital trade, what is the foreseen timeline for the adoption of an adequacy decision, and is there a provision for the extension of the 6 month period foreseen in article FINPROV.10A, 4, b), should the adoption of an adequacy decision prove elusive by then?	We believe the two adequacy decisions can be adopted in the course of the spring before the end of the 6-month period. The deadline of 6 months cannot be extended.

FINPROV.3 – Review		

Aviation	
Question	**Response**
We would welcome clarification on Art. AIRTRN.3 par. 9 regarding the flexibility on non-scheduled services. Can it be interpreted as allowing non-scheduled services beyond fourth freedom of air, i.e. within 5th to 9th freedom?	Yes
<u>Questions regarding Air Transport, primarily Article 3 (Traffic rights):</u> There seems to be a discrepancy between AIRTRN 3.7/3.8 and AIRTRN 23.5 (Article on Relationship to other agreements). The former prohibits cabotage and intra EU flights, the latter permits such flights for non-scheduled services under certain conditions. Please clarify. A similar discrepancy could be seen to exist between AIRTRN 3.7/3.8 and AIRTRN 3.9. However, the latter is mentioned in AIRTRN 23.2 as a permissible exception, so a discrepancy does not exist here. Please confirm. Please elaborate about the possibilities for blind sector operations and ferry flights (on any kind of sector, and for scheduled and non-scheduled flights).	Article AIRTRN 3.1 to 3.8 refer to rights mutually granted by the Parties, while Article AIRTRN 3.9 allows the MS to authorise non-scheduled flights (i.e. on application from an airline) beyond those rights. Article AIRTRN 23.5 clarifies, for legal certainty, that (as opposed to pre-existing bilaterals, if any) rights concerning non-scheduled flights available under the 1956 agreement are not superseded by the Trade and Cooperation Agreement. As is customary, the Agreement allows for the respective airlines to make stops in the territory of the other party for non-traffic purposes, cf. article AIRTRN 3.1. Any operations involving the taking up or putting down of passengers, cargo or mail are strictly subject to the traffic rights provided in article AIRTRN 3.2 to 3.8. Article AIRTRN 3.9 leaves the authorisation of non-scheduled flights to the Member States' discretion provided those flights do not constitute a disguised form of scheduled services (which would be the case of services which, albeit presented as non-scheduled, have the characteristics that define scheduled services in accordance with Article AIRTRN 1(s)). We will be happy to provide more specific answers on concrete examples of the operations you refer to.
<u>Questions regarding Air Transport, primarily Article 22 (Passenger rights / consumer protection):</u> First of all, as UK is now a third country, the NEB responsible for Regulation 261/2004 and Regulation 1107/2006 will handle any	The UK became 3rd country and for the purposes of Regulations 261/2004 and 1107/2006 should be treated as one. The existence of the agreement (similarly to Canada, the US or other countries

cases in accordance with this. In relation to the EU-UK Trade and Cooperation Agreement, we would like further information from the Commission in relation to AIRTRN art. 22. Will the Commission: a. provide guidance material related to the implementation of the agreement in relation to Regulation 261/2004 and Regulation 1107/2006? b. provide information on the practical use of the agreement, e.g. how will the consultation-process between the parties in relation to consumer protection work in practice cf. point 3?	the EU has an agreement with), does not influence such treatment. The Commission does not see a need to provide a special guidance related to the implementation of the agreement in relation to those Regulations. Parties will have a possibility to consult matters related to consumer protection in the Specialised Committee on Air Transport.
Furthermore, we ask the Commission the following: c. Which measures could be seen as effective, non-discriminatory and appropriate to achieve a high level of consumer protection from both parties view? Is it the measures and passenger rights as outlined in 261 and 1107 (and the following guidelines by the Commission and court orders) or others? Especially, we would like to know whether UK finds that the rights and measures of 261 and 1107 could be applicable? d. In case the parties cannot agree upon a given measure, e.g. if the member state finds that the passenger should be given a better consumer protection than the UK finds, how will this dispute be solved?	The UK has applied Regulations 261 and 1107 prior to Brexit and they also announced that "UK citizens' consumer travel rights remain as they were prior to 1 January 2021" on their respective website (https://www.gov.uk/guidance/passenger-consumer-rights-when-travelling-to-the-eu) therefore the Commission believes that this would be the "high level of consumer protection" as stipulated in the Agreement. Any matter can be discussed at the Specialised committee and when disputed then treated in line with the Dispute settlement provisions.
Will the Commission or EASA: a. Provide explanatory notes (and/or impact	a. The Commission did not produce an impact assessment in

assessments) to the specific provisions? b. Provide information on the practical immediate use of the agreement on aviation safety? c. Provide information on the implementation of the agreement - what further measures are foreseen and the timeframe for this? d. Will EASA provide a FAQ and point of contact for questions?	relation to the negotiation of the Trade and Cooperation Agreement with the United Kingdom. The negotiation was a necessary step, because of the decision of the United Kingdom to withdraw from the Union. The strict timetable was dictated by the terms of the Withdrawal Agreement and the decision of the United Kingdom not to extend the transition period. The content of the negotiation was guided by the Political Declaration and the negotiation directives provided by the Member States. The text of the agreement is also closely modeled on the equivalent text of existing Bilateral Aviation Safety Agreements with States such as Japan, so its impact is expected to be comparable. b. Yes, EASA will prepare training for the Member States related to the practical implementation of the agreement, once the TIP has been agreed. However, it should be noted that agreement – including the participation of the Member States - is very similar to existing agreements and the scope of the agreement is limited to design and manufacturing certification, so for most parts its implementation concerns EASA and not so much the Member States. c. EASA is already engaged in agreeing Technical Implementation Procedures with the UK. This process is similar to the one employed in the case of all other Bilateral Aviation Safety Agreements and covers the practical implementation measures and procedures to be utilized. d. The EASA Brexit-website already includes a FAQ (https://www.easa.europa.eu/brexit) and the text will be updated as more questions arrive.
Article AIRTRN.6, para 1, lit. d *[Operating Authorisations and Technical Permissions]* (page 226) Does the notion of "the conditions prescribed under the laws and regulations normally applied to the operation of international air transport by the Party considering the application or applications" also include the rules of Reg. 965/2012 (see Article 8 regarding	The expression in question includes all relevant instruments of national and EU law.

Flight Times Limits) and Reg. 2018/1139 (see e.g. Art. 32 para 1 lit. a) as well as Directive 2000/79/EC?	
Art. AIRTRN. 8, para 6 [Refusal, Revocation, Suspension or Limitation of Operating Authorization] (page 228) Is para 6 to be understood, that the rules and provisions of the Title XI on the Level Playing Field, such as rebalancing measures or non-regression prescriptions, can also be applied in the aviation sector?	Indeed, title XI (LPF) chapter applies to the aviation sector in accordance with its terms.
Art. AIRTRN. 10 [Compliance with Laws and Regulations] (page 229) Does AIRTRN.10 mean, that any operation of British aircraft while entering, flying over or within, or leaving the territory of the Union, must comply with social and labour protection provisions as regards pilots, crew and mobile staff (such as flight time limits and working time protection), and will be controlled/enforced?	Article AIRTRN 10 refers to all provisions of national and Union law which apply, in general, to the admittance, departure, overflight and/or operation of third country aircraft in the territory of the Member States, and only to that extent. If that is the case, it falls with the national authorities to control and enforce compliance.
Art. AIRTRN. 18 [Aviation Safety] (page 234/235) and Art. AVSAF.1 lit. b [Aviation Safety] (page 240) Does the concept of aviation safety, respectively, safety standards, with a view to Annex 6 of the Chicago Convention, also include the applicable flight time and working time rules?	It is correct that Flight Time Limitations are part of the EU aviation safety acquis and thus covered by the general concept of "aviation safety", but they are not covered by the Aviation Safety title of this agreement. The UK airlines are to be treated like any other third country airline in this respect, meaning that they need to comply with Point TCO.200 of Regulation (EU) No 452/2014. Under that point, the third country carriers are obliged to follow ICAO Annex 6, including the relevant provisions on flight time limitations therein.
Articles AIRTRN. 15 (1)(3), 23 With regard to the user charges for air navigation services, UK is signatory to the EUROCONTROL Multilateral Agreement on route charges. Within the framework of this agreement the EU-Member States and third countries as the UK have defined common principles for establishing the cost base and the calculation of the unit rate for en-route charges as well as conditions for the application of the route charges system and payment. These principles and conditions are in line with the current EU-system and also foresee/contain consultation requirements. Question: Is the assumption correct that the Multilateral Agreement on route charges and the developed principles and condition remains valid and	Formally, the two agreements (both subject to international law) – respectively the ECTL convention remaining unchanged/valid and being multi-lateral, and the EU-UK agreement being bi-lateral - are distinct. Importantly, the ECTL convention cannot in any way amend or overrule the EU-UK agreement. However, technically/operationally, the two agreements could be seen to complementing each other, which is not contradicted by the EU-UK being silent on the subject.

applicable/ complements the trade and cooperation agreement?	
Articles AIRTRN. 20, 23 Art. 20 foresees a wide range of cooperation between parties, their competent authorities and ANSPs in the area of ATM. The UK is a member state to the EUROCONTROL organisation, whose role is amongst others, to facilitate the cooperation in the area of ANS/ATM, so that EUROCONTROL is considered a platform for the described cooperation. Question: Is the assumption correct that the EUROCONTROL convention remains valid/ complements the trade and cooperation agreement?	
Article AVSAF.14: Other agreements and prior arrangements states; 1. Upon entry into force of this Agreement, this Title shall supersede any bilateral aviation safety agreements or arrangements between the United Kingdom and the Member States with respect to any matter covered by this Title that has been implemented in accordance with Article AVSAF.3 [Scope and implementation]. 2. The technical agents shall take necessary measures to revise or terminate, as appropriate, prior arrangements between them. 3. Subject to paragraphs 1 and 2, nothing in this Title shall affect the rights and obligations of the Parties under any other international agreements. 31. Are the cross border ATM/ANS service provision exchange of assurance agreements between the UK and Member States Competent Authorities now invalid? 32. When can Member States expect revisions to existing bilateral ATM/ANS safety agreements to be supplied to Member States?	31 and 32. Could Ireland provide examples of the ATM/ANS service provision exchange of assurance agreement and safety agreement referred to in its two questions 31 and 32? We would be grateful to also receive any further information regarding their implementation that Ireland considers necessary.
Article AVSAF.9: Exchange of safety information, which states; a. The Parties shall, without prejudice to Article AVSAF.11 [Confidentiality and protection of data and information] and subject	33. Subject to the analysis of the documents referred to above, Article AVSAF.9 does not per se prevent or question any previously existing sharing of operational information, subject to

to their applicable legislation: (a) provide each other, on request and in a timely manner, with information available to their technical agents related to accidents, serious incidents or occurrences in relation to civil aeronautical products, services or activities covered by the Annexes to this Title; and (b) exchange other safety information as the technical agents may agree. 33. Can we continue to share safety data with the UK in the context of cross border ATM/ANS service provision?	the provisions on confidentiality and protection of data and information in the applicable legislation. However, if the referred safety/operational data is relevant to the content of the TCA or the oversight of UK providers by EASA, those exchanges should be revisited at a technical level to ensure that they are coherent with the TCA and its implementation.
We would like to ask for clarification on the subject of traffic rights that can specifically be granted by MS to air carriers when performing flights between points situated in the territory of the UK and points situated in the territory of the EU. According to the Q&As prepared by the COM: EU-UK Trade and Cooperation Agreement "UK carriers will, however, no longer be able to transport passengers or cargo between two points in the EU, nor perform onwards carriage services between the UK and two other Member States". Taking into account the available 3rd and 4th freedom traffic rights under TCA is it possible to grant to a British air carrier the traffic rights to operate a flight (scheduled or non-scheduled) between one point situated in the territory of the UK and points situated in the territories of two different EU Member States however without any passengers being carried between those two EU points.	Yes. Article AIRTRN 5 (h) expressly provides for the right to serve more than one point on the same service (co-terminalisation).
Article AIRTRN.3: Traffic rights Para 6 specifies that Neither Party shall unilaterally limit the volume of traffic, capacity, frequency, regularity, routing, origin or destination of the air transport services operated in accordance with paragraphs 2, 3 and 4, or the aircraft type or types operated for that purpose by the air carriers of the other Party, except as may be required for customs, technical, operational,	Article AIRTRN 3.6 as rightly pointed out by Romania, allows the parties to impose restrictions for health protection reasons. However, those measures must be proportionate and strictly limited in content and duration to what is necessary to attain reasonable health protection objectives.

air traffic management, safety, environmental or health protection reasons, in a non-discriminatory manner, or unless otherwise provided for in this Title. We would appreciate clarifications from the COM regarding the restrictions that may be imposed to flights for COVID reasons.	
Article AIRTRN.8: Refusal, revocation, suspension or limitation of operating authorisation Para. 1 mentions that The Union may take action against an air carrier of the United Kingdom… We would appreciate further clarifications regarding the authority that is competent to take action in such a case – the national authority of the MS that issued the authorization, or the EU? In case the EU is the competent authority, could you further specify who will represent the EU?	The competence to grant, refuse, withdraw or impose limitations on operating authorisations lies with the Member States.

Question	Answer
We would like to ask some clarification regarding Article 23 (Relationship to other agreements) of Title I air transport/ heading two aviation from the point of view of international law: • Paragraph (1) How can an EU-only agreement supersede previous Member States' bilateral agreements to which the EU was not a party? • Paragraph (2) in understandable for us only with regards to flights between the territory of the EU and the UK, but we would like to ask the Commission to clarify why an EU–UK agreement regulates 5-7. rights with regard to extra EU territory in this way. The issue of trade rights is in the competences of Member States and Member States may have different interests for flights beyond the territory of the EU and the UK.	Answer under preparation.
Aviation • With regard to the Note of the Commission on bilateral arrangements between the Member States and the UK under the Trade and Cooperation Agreement (TCA) that was sent this week (Monday 11 January) to the Directors-General for civil aviation of the member states, we would like to raise the following: o Referring to the safeguards against discrimination as between Union carriers in Decision 2020/2252, the Note of the Commission states that any additional traffic rights exchanged under the TCA (cf. extra-EU fifth freedom traffic rights for all-cargo) must be available to all Union carriers regardless of establishment. o Whereas Regulation 847/2004 takes into account the notion of establishment of a Union carrier in the territory of a Member State, the above-mentioned Note leaves out this notion. We would request an explanation from the Commission as to this point, e.g. how does this note relate to Reg. 847/2004, what are the consequences for future bilateral arrangements with third countries (other than the UK)?	Regulation (EC) no. 847/2004 does not apply to the relations with the United Kingdom; the matter is governed exhaustively in Council decision (EU) 2020/2252 on the signing and provisional application of the EU/UK TCA. Article 6(1) of this Council Decision expressly excludes discrimination between Union air carriers when negotiating, signing and concluding an arrangement between a Member State and the UK of arrangements referred to in Article AIRTRN 3.4 TCA. Article AIRTRN 3.4 authorises bilateral arrangements between the Member States and the UK under which the rights to be mutually granted concern, "for the Member State concerned, the right for Union air carriers to make stops in the territory of the United Kingdom to provide scheduled and non-scheduled all-cargo air transport services between points situated in the territory of the United Kingdom and points situated in a third country, as part of a service with origin or destination in the territory of that Member State (fifth freedom traffic rights)

We would like to raise some concerns on Article AIRNTRN. 23 para 1 and 2 of the TCA. According to Article 23 para 1 the new agreement supersedes all previous agreements between the Member States and the UK which in practise may mean that "more favourable rights" exchanged between two sovereign States cease to exist due to entry into force the EU-only TCA. In our view such approach could be justified as far as the internal market is concerned but not for other rights outside the EU scope. This point is strictly connected with the division of competencies between the EU and the Member States. The rights outside the EU scope are within the exclusive competencies of the Member States. Article 23 para 2 forbids the Member States to exchange further rights with the UK, which is justified only in the case of intra-EU rights but not in the case of rights outside the EU scope (bilateral UK-PL agreement of 1960 covered in its scope also oversees territories of the UK and in this case EU internal market rules did not apply/did not replace the provisions of bilateral agreement in the mentioned narrow scope). We would be grateful for the Commission's observations in this regard.	Article AIRTRN 23.1 merely reflects the principle in the Council's mandate that the TCA will govern the relations in the area of aviation comprehensively, and the customary rules on succession of treaties. However, as regards territories under the sovereignty of the Member States and the UK which fall outside the scope of the TCA, Article AIRTRN 23.4 preserves the application of pre-existing bilaterals and the right of the Member States concerned and the United Kingdom to enter into new bilateral arrangements concerning those territories.
ECAC Multilateral Agreement on Commercial Rights of Non-scheduled Air Services in Europe of 1956 and the EU-UK Trade and Cooperation Agreement 1) Article 23.5 – We would welcome information on how the ECAC Multilateral Agreement on Commercial Rights of Non-scheduled Air Services in Europe of 1956 should be interpreted in relation to the EU-UK trade and cooperation agreement and also an assessment on which freedoms that are	Answer under preparation.

included in the ECAC Multilateral Agreement. 2) Article 3.4 – Does art. 3.4 not provide the opportunity to agree fifth freedom for freight from the UK to a MS and further on to another MS? If that is the case, how does art. 3.4 relate to article 2.2 (a) of the ECAC Multilateral Agreement on Commercial Rights of Non-scheduled Air Services in Europe? 3) Article 3.7 – How does art. 3.7 relate to art. 23.5 and to the ECAC Multilateral Agreement on Commercial Rights of Non-scheduled Air Services in Europe? Can British air carriers based on art. 23.5 perform charter transports covered by the ECAC Multilateral Agreement to EU MS included in the area of the ECAC Multilateral Agreement, despite art. 3.7? 4) Article 6 - How does art. 6 relate to the ECAC Multilateral Agreement on Commercial Rights of Non-scheduled Air Services in Europe of 1956? Can an EU MS that is a contracting party to the ECAC Multilateral Agreement demand that a British air carrier makes an application regarding flights that are covered by the ECAC Multilateral Agreement? If not, how does EU MS make sure the operator has insurance and TCO covered?	
5) Article 3.6 – In light of recent flight restrictions from the UK due to the spread of the new variant of the corona virus, a clarification would be welcomed regarding whether it is the COM or each EU MS that has the mandate to restrict traffic..	Answer under preparation.
6) Article 3.9 – Is it correct to understand art. 3.9 as a possibility to allow charter flights before bilateral arrangements are made? What should the bilateral arrangement specify? Does the opportunity to allow traffic rights according to art. 3.9 include 5th-9th freedom rights? In relation to other EU MS, e.g. is a charter flight from the UK to a MS and further on to another EU MS included? That would appear to be in contrast with art. 3.7.	Answer under preparation.
7) Article 13.7 – It is our understanding that traffic with an aircraft wet leased from an air carrier of Norway to a MS air carrier falls under art. 13.7 a) iv and thereby is not possible. Is this correct? The same goes for wet lease	Answer under preparation.

from an air carrier in the UK to a MS air carrier (except for what is provided for in art.13.7 a) iv). However, the other way around, wet lease from a MS air carrier to a UK air carrier would be possible, according to art. 13.7 a) iv	

• Covid: Our administration has issued a decision suspending flights from the UK on the basis of the new, quickly spreading variant of Covid-19. The decision is to be valid until 4 January. Our operating carrier has now asked us whether the new EU - UK Trade and Co-operation Agreement has effects on our decision.	• covid As you pointed out below, Article 3 of the EU UK Agreements lists health as one of the available exemption, however please note that the exemption needs to be taken in a non-discriminatory manner. Article AIRTRN.3: Traffic rights, paragraph 6: 6. Neither Party shall unilaterally limit the volume of traffic, capacity, frequency, regularity, routing, origin or destination of the air transport services operated in accordance with paragraphs 2, 3 and 4, or the aircraft type or types operated for that purpose by the air carriers of the other Party, except as may be required for customs, technical, operational, air traffic management, safety, environmental or health protection reasons, in a non-discriminatory manner, or unless otherwise provided for in this Title. Please also note the Commission's recommendation issued on 22 December https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2520 and the Council Recommendation (EU) 2020/912 of 30 June 2020 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020H0912 , as different treatment is recommended towards the Union citizens and essential/non-essential travel.

a) Regarding a "non-scheduled" air transport we ask for clarification, whether all sub-categories of special air transport are defined / permitted (i.e. charter, taxi, own-account flight), or whether non-scheduled means only a charter flight. b) Nevertheless, can you confirm that according to the text of the TCA, in connection with the Withdrawal agreement the Member States don't have the right to negotiate separate agreements on the fifth air passenger right, but negotiations are limited / allowed only to all-cargo transport in connection with the third countries – AIRTRN 3 (4)? In this regard, we would appreciate your clarification, in connection to the point 16 of the Draft decision on signing (WP 14362/20 of 26 December 2020), on the use of the phrase "the exercise of Union competence", since no transfer of the competences from the Member States to the EU with regard to the traffic rights has been in place.	a) all sub-categories are covered by this provision. b) Point 16 of the Draft decision provides generally that the exercise of Union competence is without prejudice to the respective competences of the Union and of the Member States and what Member States will do with other third countries.
We would welcome clarity on the form and nature of the agreement with the UK and specifically what is meant by references in the aviation section to “a party”. In many provisions in the aviation title, the rights of ‘a party’ are provided, which we understand as rights of the Member States. (e.g. AIRTRN 10 - The laws and regulations of a Party relating to the admission to, operation within, and departure from its territory of aircraft engaged in international air transport) But if the agreement is an agreement between the Union and the United Kingdom, and not the Union, its Member States and the United Kingdom, how are these rights to be understood and applied? For instance, under the ICAO Convention, every State has complete and exclusive sovereignty over the airspace above its territory as well as responsibility and authority for the oversight of aviation security, including its decision-making powers with respect to implementing corrective actions related to identified deficiencies.	• Air transport: The Council may decide to conclude TCA as an Union-only agreement (as confirmed by ECJ, the Union may conclude Union-only agreements in any area in which it has competence, irrespective of the nature of that competence). The notion of “Party” in TCA would mean therefore the Union (or the UK). This is however without prejudice to the EU internal arrangements and the responsibility of Member States to implement EU law, including the EU international agreements. Therefore, the question of who within the Union is responsible for implementing the agreement, adopting measures required in the Agreement or exercising the rights therein is a matter of internal law and e.g. Art. AIRTRN 10 refers to the laws and regulations of the Member States.

Road	
Question	**Response**
Road transport, questions regarding drivers certificate of professional competence a. Scenario 1: A driver working for a UK operator has a CPC issued in UK after 1 January 2021. The driver later on undertakes employment with an operator established in EU. Will this drivers CPC from UK be valid? Or will the driver have to get a CPC issued from a competent authority in EU? If this is the case, will the driver have to undergo training in order to get a CPC issued from a competent authority in EU or could the CPC get exchanged without training? b. Scenario 2: A driver working for a UK operator has a CPC issued in the UK before 1 January 2021. The driver is undertaking transport of goods between, through and within the territory of the EU. Will a CPC issued in the UK before 1 January 2021 be valid? Or must the CPC be issued after 1 January 2021 in order to get recognised? Does it make any difference if the driver later on undertakes employment with an operator established in EU?	a. Scenario 1: Since the UK is no longer a Member State, a CPC issued by a UK authority is no longer recognised as a CPC issued by a Member State. Drivers working for a road transport operator established in the EU need to hold a CPC issued by a competent authority of a Member State. Drivers holding a CPC issued by a UK authority and intending to work for an EU operator should approach the competent authorities of the Member State where they have their normal residence or the competent authorities of the Member State in which the road transport operator is established – see also Article 9 of Directive 2003/59/EC. The competent authorities thus approached then have to check whether the requirements for the issuance of a driver CPC in that Member State are met (i.e. whether the driver has the required minimum knowledge in the subject areas listed in Section 1 of Annex I to Directive 2003/59/EC and whatever additional knowledge that Member State may require – when transposing that Directive into national law such additional requirements may have been added…). For CPCs issued by the UK authorities before 1 January 2021 (which were issued to all drivers of the vehicles in question irrespective of whether they were active in national or international transport), a pragmatic approach may be applied in which the competent authorities of each Member State would assess what knowledge may still be missing according to its national rules (e.g. some Member State specific knowledge which someone with a CPC issued in the UK may not have) and make sure that that knowledge is acquired (if needed by requiring the driver to undergo training) before the CPC is issued. For CPCs issued by UK authorities on or after 1 January 2021, such a pragmatic approach may no longer be appropriate as the provisions of the

	agreement (which in Section 1 of Part B of Annex ROAD-1 largely replicates Directive 2003/59/EC) only apply to drivers of vehicles used for journeys covered by the agreement. For drivers only active in the UK, the UK may apply different / less stringent requirements (if it so wishes) – it is outside our control. Drivers with a CPC issued by the UK on or after 1 January 2021 should be treated in the same way as drivers with a CPC issued by any other third country (in particular if that third country also participates in the ECMT multilateral quota system, which requires similar minimum knowledge from drivers of vehicles used for ECMT operations). b. Scenario 2: A CPC issued by a competent authority in the UK to a driver working for a road transport operator established in the UK will be valid for the purposes of the agreement regardless whether it was issued before, on or after 1 January 2021. If the driver later on wants to work for an operator established in the EU, then the driver will need a CPC issued by an EU Member State (see scenario 1).
Art. ROAD.7, para 1, lit. b icw Sections 2 to 4 of Part B of Annex ROAD-1 [Requirements for Drivers] (page 249) Is it correct that Art. ROAD.7 in conjunction with ANNEX ROAD-1 (or, generally, the whole EU-UK-TCA) does not pre-empt the/any direct applicability of European Agreement Concerning the Work of Crews of Vehicles Engaged in International Road Transport (AETR) between the UK and the EU or any EU Member State? Respectively is it correct that the pertinent provisions of the EU-UK agreement cannot be construed as having a blocking effect with regard to the AETR, the former being lex specialis with regard to the AETR?	For operations covered by the agreement, the agreement itself applies and not AETR. The agreement supersedes AETR in this case. If the intention had been that AETR applies to operations covered by the agreement, there would have been no ned to add Sections 2 and 4 of Part B and Section 2 of Part C of Annex ROAD-1. For international road transport operations undertaken in part outside the territory of the Parties, Article ROAD.7(2) specifies that AETR rules apply to the whole journey. This provides legal clarity and consistency.
Art. ROAD.X+3, para 5 [Social Provisions in Passenger Road Transport] (page 254) Is it correct that Art. ROAD.X+3 (or, generally, the whole EU-UK-TCA) does not pre-empt the/any direct applicability of Interbus	The UK has become a Contracting Party in its own right of the Interbus Agreement on 1 January 2020. The Interbus Agreement is the basis of future relations between the EU and the UK for occasional services. The Protocol to the Interbus Agreement related to regular and special regular services will

Agreement (INTERBUS)?	be the basis for those services once it enters into force for the UK and the EU (we expect this to be the case later this year). Most provisions of the title related to the transport of passengers by road will no longer apply when that Protocol enters into force for the UK and the EU. Then only some specific "top-ups" will be left which are mentioned in Article X+12. For occasional services, the agreement only applies in two specific cases: transit through the other Party to reach a non-Interbus Contracting Party (important in particular for UK-CH operations) and cabotage operations on the island of Ireland (important because of the specific situation of Ireland). These cases are not covered by the Interbus Agreement.
Does the EU intend to act with regard to entry permits into the EU/Member States (e.g. visa regulations) and working permits for drivers, who do not have an EU/EWR citizenship? In our view there are three possibilities: a) The Member States are authorized to either apply their national laws or implement regulations concerning the drivers; in particular, the Member States are authorized to demand visa and working permits from drivers who are not EU/EWR citizens (in accordance with their national laws)? b) The EU is planning a supplementing agreement with the UK concerning entry/work permits for drivers, who are not EU/EWR citizens. c) The EU is planning legislation / uniform rules concerning the entry of the EU/Member States by drivers and their working permission.	Citizens of the United Kingdom are exempt from the requirement to have a visa when crossing a Member State border in accordance with Regulation 2019/592, subject to the conditions provided in that Regulation and in Regulation 2018/1806. In line with these rules, Member States retain the possibility to request a visa if the purpose of the visit is to carry out a "paid activity" during the stay (art. 6(3) of Regulation 2018/1806). They may also request a work permit in line with national rules. The Commission is not planning any new legislative initiative in this area. The United Kingdom can set its own visa policy, including with respect to road haulage drivers, subject to the obligations in Title II of Heading Four of Part Two (Visas for short term visits) of the TCA, including that "in the event that the United Kingdom decides to impose a visa requirement for short-term visits on nationals of a Member State, that requirement shall apply to the nationals of all Member States". The Union and the United Kingdom have agreed the following Joint Political Declaration on Road Hauliers: *The Parties note that while the Trade and Cooperation Agreement between the European Union and the United Kingdom does not deal with visa or border arrangements for road hauliers operating in the territory of the other party, the good and efficient management of visa and border arrangements for road hauliers is important for the movement of goods, in particular*

	across the United Kingdom-Union border. *To this end, and without prejudice of the rights of each Party to regulate the entry of natural persons into, or their temporary stay in, its territory, the Parties agree to facilitate appropriately within their respective laws the entry and temporary stay of drivers carrying out the activities permitted under Title I [Transport of goods by road] of Heading Three [Road transport] of Part Two [Trade, transport and fisheries] of this Agreement.* The Joint Political Declaration is not legally binding on the Union or the United Kingdom. In the Union, the effect of the Joint Political Declaration is to be understood as a simple recommendation to the Member States.
34. Article X+2(6) provides that road passenger transport operators established in the territory of one Party may, on a temporary basis, operate occasional services on the island of Ireland which pick up and set down passengers on the territory of the other Party. Clarity is sought as to the meaning of the term "on a temporary basis" particularly given that this Article will continue to apply after the Protocol to the Interbus Agreement enters into force. Is this term used to reflect the nature of occasional services (i.e. that they are generally one-off operations)?	Cabotage operations should as a rule only be carried out "on a temporary basis". We have the same provision in Article 1(4) of Regulation (EC) No 1073/2009 and the same interpretation of that concept should apply here as it does in that Regulation. So clearly it is not foreseen that an operator established in one Party does nothing but cabotage in the other Party.
35. Article X+12 provides that the Title will cease to apply following the entry into force of the Protocol to the Interbus Agreement for the UK or 6 months following its entry into force for the Union (whichever is earlier) – except for the purposes of the operations under Articles X+2(2) and X+2(5), (6) and (7). Does this mean that the Title in its entirety including Annexes continues to apply to services specific to the island of Ireland (only where pick-up and set-down is allowed) as set out in Articles X+2(5) and (6)?	Ireland's reading is correct. The Title will continue to apply except for the parts that will be superseded by the application of the Interbus Protocol.
36. Article ROAD.2.1 of the TCA provides that it "is without prejudice to the application of the rules established by the	Yes. A holder of an ECMT licence can continue to perform the operations permitted to holders of that licence.

European Conference of Ministers of Transport." Article ROAD.4.6 provides that "Road haulage operators of the United Kingdom shall be limited to a maximum of two journeys within the territory of the Union under paragraphs 3, 4 and 5 before returning to the territory of the United Kingdom." ECMT rules allow an operator with an ECMT permit to operate up to three cross trade journeys between ECMT member countries. Can a UK licenced operator with an ECMT permit conduct three cross trade journeys within the EU, in addition to the journeys provided for in the TCA, before returning to the territory of the United Kingdom?	
37. ANNEX ROAD-1: TRANSPORT OF GOODS BY ROAD, Part A , Section 1, Article 14 is titled Administrative cooperation between the competent authorities. Article 14.5 states that "The Specialised Committee on Road Transport shall establish detailed rules on the modalities of the exchange of information referred to in paragraphs 3 and 4." When does the Commission envisage such detailed rules being adopted? In the meantime, it is assumed that Member States can continue to share relevant information with the UK authorities as outlined in Article 14. Is this correct?	Ireland's reading is correct. The modalities will be established as soon as possible in 2021.
38. ANNEX ROAD-1: TRANSPORT OF GOODS BY ROAD, PART B –Section 2 is titled Driving times, breaks and rest periods. Article 8 relates to Exceptions. Article 8.3 reads: "Provided that road safety is not thereby jeopardised, each Party and, in the case of the Union, a Member State may grant exceptions from Articles 3 to 6 and make such exceptions subject to individual conditions on its own territory or, with the agreement of the other Party, on the territory of the other Party, applicable to transport by the following: …" In 2011 Ireland and the UK entered into an agreement on such exceptions as permitted under Article 13.1 of EU Regulation	Ireland is correct that agreements based on EU law no longer apply to the UK. The provisions of the TCA apply immediately, including the possibilities for exceptions in Annex ROAD-1.

561/2006. This agreement has been particularly relevant to cross border journeys on the island of Ireland. Ireland would like a similar agreement with the UK to be put in place under the new TCA. Our interpretation of the Article 8.3 is that Ireland can immediately enter into discussions with the UK in relation to putting such an agreement in place. Is this correct?	
39. Article ROAD.6: (page 253): on Exemptions from licencing requirement: states : "The following types of transport of goods and unladen journeys made in conjunction with such transport may be conducted without a valid licence as referred to in Article 5 [Requirements for operators]: (a) transport of mail as a universal service; (b) transport of vehicles which have suffered damage or breakdown; (c) until 20 February 2022, transport of goods in motor vehicles the permissible laden mass of which, including that of trailers, does not exceed 3.5 tonnes; (d) from 21 February 2022, transport of goods in motor vehicles the permissible laden mass of which, including that of trailers, does not exceed 2.5 tonnes." Our understanding of the Mobility Package is that for licensing LCVs (over 2.5t) is from May 2022. Could the Commission confirm the correct date?	Article 4 of Regulation (EU) 2020/1055 specifies that it applies from 21 February 2022.
What is the procedure/required documents for performing international passenger own-account transport operations between EU and UK in case of a company established in the EU? Is it the same as prescribed in par.5 of Article 5 of Regulation 1073/2009?	The international carriage of passengers by coach and bus by own-account carriers is not covered by the EU-UK TCA. Neither are such services covered by the Interbus Agreement (cf. Article 1(4) of that Agreement) or the related Protocol regarding the international regular and special regular carriage of passengers by coach and bus (cf. point (b) of Article 1(4) of that Protocol). As there appears not to have been any need to cover such operations in the Interbus Agreement or in that Protocol, the same assumption was made with respect to the EU-UK TCA. Regulation (EC) No 1073/2009 only applies to the international carriage of passengers by coach and bus within the territory of the EU (and, by way of Decision No 88/2014 of the EEA Joint Committee, also in the EEA countries).

	It does not apply to operations involving third countries such as the UK.
When as from 01.01.2021 determining whether an undertaking established in the EU satisfies the requirement of good repute shall the infringements fixed in the territory of UK by 31.12.2020 be considered? Regulation 1071/2009 provides that a Member country shall examine whether an undertaking, its transport managers and any other relevant person have not been convicted of a serious criminal offence or incurred a penalty for one of the most serious infringements of Community rules in one or more Member States.	In accordance with Article 6(1) of Regulation (EC) No 1071/2009, it is for Member States to determine the conditions to be met by undertakings and transport managers in order to satisfy the requirement of good repute. These conditions shall include *at least* the following: (a) that there be no compelling grounds for doubting the good repute of the transport manager or the transport undertaking, such as convictions or penalties for any serious infringement of *national rules* in force in certain fields; (b) that the transport manager or the transport undertaking have not in one or more Member States been convicted of a serious criminal offence or incurred a penalty for a serious infringement of certain *Community rules*. Convictions or penalties incurred in the UK *may be* considered in this context, but no longer *have to* be considered. Should Member States decide to consider such convictions and penalties, the administrative cooperation foreseen in Article 14(4) of Section 1 of Part A of Annex ROAD-1 should help.
We would like to raise concerns about the fundamental difference between the solutions adopted under the Annex to the TCA (ANNEX ROAD-1: TRANSPORT OF GOODS BY ROAD) Section "posted workers" (Section 2. Posting of drivers) and the provisions of the Directive (EU) 2020/1057 (Directive (EU) 2020/1057 as regards enforcement requirements and Regulation (EU) No 1024/2012). Under the provisions of the Directive, MSs are to adopt and apply all necessary measures to comply with the directive from February 2nd, 2022. Although the above-mentioned ANNEX ROAD-1 contains provisions similar to those adopted in the above-mentioned EU directives, no transition period has been stipulated. Therefore, Poland would like to ask if this means the rules on posting apply to drivers operating to the United Kingdom already as of January 1st 2021? This would mean transport operators will be deprived of the vacatio legis provided by the EU law.	The posting rules apply to all operations under the agreement except for bilateral transport operations between the EU and the UK and transit through the UK or through an EU Member State. They hence apply to all cabotage operations and, for UK operators, also to all cross-trade operations inside the EU. For EU operators, the rules only apply when they carry out cabotage operations in the UK. As the posting rules have been applying to cabotage operations in the EU for years, the fact that such rules apply in the relations with the UK since 1 January 2021 should be nothing new for EU operators (the novelty is rather its application to cross-trade inside the EU for UK operators). The specific administrative arrangements related to the use of the IMI system will only be applicable in the EU-UK context from 2 February 2022 (the same date as inside the EU). This does not mean that the posting rules would or could not apply already before that date, as indeed they have been

	applying to cabotage operations inside the EU (see above). In this context, we would like to highlight two specific provisions: (1) In accordance with Article 6(10) of Section 2 of Part A of Annex ROAD-1, "Each Party or, in the case of the Union, the Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to this Section and shall take all measures necessary to ensure that they are implemented and complied with. The penalties provided for shall be effective, proportionate and dissuasive. Each Party shall notify those provisions to the other Party by 30 June 2021." Polish authorities are therefore invited to send Polish rules on penalties by 30 June 2021 so they can be notified. (2) When laying down those rules, Member States should take into account Article 5(1) and (4) of Section 2 of Part A of Annex ROAD-1: "1. Each Party or, in the case of the Union, each Member State shall publish the information on the terms and conditions of employment, in accordance with national law and/or practice, without undue delay and in a transparent manner, on a single official national website […]. 4. Where, contrary to paragraph 1, the information on the single official national website does not indicate which terms and conditions of employment are to be applied, that circumstance shall be taken into account in accordance with national law and/or practice in determining penalties in the event of infringements to this Section, to the extent necessary to ensure the proportionality of those penalties."
Portugal	
Article ROAD.6 (f) (i to v) – we believe there is a mistake on the usage of the term "*road haulage operator*" to identify an economic operator as being exempt from licensing requirements and transport authorization. In this case, it should not refer to	In accordance with point (b) of Article ROAD.3, a road haulage operator is "any natural or legal person engaged in the transport of goods with a commercial purpose, by means of a vehicle". Unlike in Regulations (EC) No 1071/2009 and (EC) No 1072/2009, the term "road haulage operator" is much wider here and does not only include

an economic operator on road goods transportation – "road haulage operator" – but another whose core business is other than goods transports, for instance building contractors carrying machinery or materials; those carried goods, vehicles as well as the drivers, are employed by that economic operator. So we believe such a case refers to transport on it's behalf or as either ancillary or core activity. We therefore suggest that dispositions from Article 1 (5) (d) (i to v) of EU Regulation 1072/2009 be used to this situation – company / undertaking as below. Suggested drafting for **Article ROAD.6 (7)**: ***(f) transport of goods in vehicles provided that the following conditions are fulfilled:*** *(i) the goods carried are the property of the ~~road haulage operator~~ **undertaking** or have been sold, bought, let out on hire or hired, produced, extracted, processed or repaired by the operator;* *(ii) the purpose of the journey is to carry the goods to or from the ~~road haulage operator's~~ **undertaking's** premises or to move them, either inside or outside the operator for its own requirements;* *(iii) the vehicles used for such transport are driven by personnel employed by, or put at the disposal of, the ~~road haulage operator~~ **undertaking** under a contractual obligation;* *(iv) the vehicles carrying the goods are owned by the ~~road haulage operator~~ **undertaking**, have been bought by it on deferred terms or have been hired; and* *(v) such transport is no more than ancillary to the overall*	professional road hauliers for hire and reward, but anybody carrying goods with a commercial purpose, hence also own account operators.

*activities of the ~~road haulage operator~~ **undertaking**;"*	
Please provide us with further clarifications regarding the applicable procedure and the format/authorization templates required on existing regular services (granted according to Regulation 1073/2009) to Ireland, by transiting the UK/using the UK landbridge (embarking/disembarking passengers from/in the UK).	The authorisation of regular services between the Continent and Ireland which use the GB land bridge should follow the procedure laid down in the EU-UK TCA (until the Interbus Protocol applies in both the EU and the UK) regardless whether passengers are taken on board or set down in the UK or not.
Can you confirm our understanding regarding the transport of goods by MS carriers from another MS to the UK, namely as we understand the provision, these transports are without restrictions, as it is a 'bilateral' transport from the EU to the UK and these transports are free of permits.	Article ROAD-4 permits journeys from any part of the Union to the UK, and back, by operators established anywhere in the Union. Under the Agreement, a MS operator can reach the UK from any part of the Union, provided they comply with the obligations in the Agreement, including the possession of a Community licence.

Question	**Answer**
It is our understanding that one of the subjects that needs to be made clear is whether operations between the United Kingdom and third non-EU countries can only be performed by EU road hauliers with ECMT/CEMT licences . Clarification would be useful on the issue whether it is possible to negotiate with the United Kingdom a permit-free regime or additional quotas for these operations, pending the ratification and after the ratification of the EU-UK Trade and Cooperation Agreement. We would also like to examine the prospect of whether it is possible operations to and from third countries to be explicitly allowed by the EU-UK Trade and Cooperation Agreement (or to be indicated that the EU-UK Trade and Cooperation Agreement does not affect the Member States right such operations to be negotiated and agreed). Moreover, we take into account the rules for access to the international	Answer under preparation.

road haulage market (Regulation (EC) No 1072/2009, Article 1 “Scope”, paragraph 2 and 3). And still operations to and from third countries are not covered by the EU-UK Trade and Cooperation Agreement. It covers only road haulage between, through and within the territories of the EU and the United Kingdom (EU-UK Trade and Cooperation Agreement, Heading three: Road Transport, Title I: Transport of Goods by Road, Article Road.2: Scope, paragraph 1). In addition, it should also be considered that ECMT/CEMT licences are not sufficient to cover all operations outside the EU. EU road hauliers have additional permits for operations to and from third countries (under bilateral agreements), but they cannot be currently used for operations to and from the United Kingdom.	
• Is it correct that, in relation to Regulation 1071/2009 and 1072/2009, the United Kingdom should be treated as a third country, unlike members of the EEA and Switzerland?	Answer under preparation.
Regulation 1071/2009 is applicable to both road transport of goods and passenger transport. However, part A, Section 1, of the Annex ROAD-1 of the Trade and Cooperation Agreement is only applicable to road transport of goods. Does this mean that there are no longer common rules on the admission to the occupation of road haulage operators in passenger transport?	Answer under preparation.
Article 13 of Part A, Section 1, mentions that the authorities of the United Kingdom shall keep a national electronic register of road transport undertakings. Does this mean that the United Kingdom will continue to take part in the ERRU Register?	Answer under preparation.
Does a transport manager who holds a certificate of professional competence, which was issued by the competent authorities of the United Kingdom before 1 January 2021, fulfil the requirement of professional competence in the sense of Regulation 1071/2009? And does the same thing apply to holders of certificates of professional competence, issued	Answer under preparation.

after 1 January 2021 by the competent authorities of the UK?	
Can the Trade and Cooperation agreement be qualified as a 'necessary agreement' in the sense of article 1, paragraph 2 of Regulation 1072/2009? Does this mean that Regulation 1072/2009 does apply during international road transport between the United Kingdom and the EU on the territory of the member state of loading or unloading, and to the territory of any member state crossed in transit?	Answer under preparation.
Which rules apply to international road transport between the United Kingdom and the EU, or international road transport between two member states, with transit through the United Kingdom, with regard to driving times and rest periods and the use of the tachograph? Regulation 561/2006 and Regulation 165/2014; Part B, Section 2-4 of Annex ROAD-1 of the Trade and Cooperation Agreement; or the ERTA-treaty?	Answer under preparation.
Is the answer to the previous question regarding driving times and rest periods different for passenger transport, since Part B, Section 2, is only applicable to road transport of goods?	Answer under preparation.
What are the consequences for the enforcement of driving times and rest periods and the use of the tachograph?	Answer under preparation.
Does Directive 92/106/EEG (combined transport) apply to transport between the United Kingdom and the EU?	Answer under preparation.
Certificate of Professional Competence (CPC) will be issued to professional drivers who hold a driving license valid for categories C1, C, C1E, and CE, but also for D, D1, DE and D1E. Only a certificate for professional drivers of the category C group is mentioned. Is the CPC not required for the category D group (passenger transport)?	Answer under preparation.
Is there now recognition of the Certificate of Professional Competence under Article ROAD 7, or does this still need to be assessed in the framework for training and for the mutual recognition of professional qualifications and monitored by the Partnership Council?	Answer under preparation.
In ROAD-1 part B the text of the Directive 2003/59/EC can be found and only the categories C1, C, CE and C1E are mentioned. An example qualification card shows that the certificate also applies to the categories D1, D, D1E and	Answer under preparation.

DE. Do the amendments to Directive 2018/645 / EC also apply to the UK, but without category D?	
Does this provide for the UK and EU Member States, the recognition of each other's CPC's in road freight transport and roadside checks?	Answer under preparation.
If the UK's Certificate of Professional Competence is recognized in the EU, does this still have to be implemented in the legislation of all the Member States?	Answer under preparation.
Can a holder with a UK Certificate of Professional Competence undertake periodic training in a Member State and subsequently renew the CPC from the UK with a new period of 5 years in the MS in which he lives or works?	Answer under preparation.
If a UK driving license is exchanged, can the Certificate of Professional Competence also be exchanged and issued on the Dutch driving license with a Code 95?	Answer under preparation.
If the UK's Certificate of Professional Competence can be exchanged, do we not exchange for the categories D1, D, D1E and DE?	Answer under preparation.
Does a holder of a Certificate of Professional Competence for category D1, D, DE, D1E from the UK who establishes himself in an EU member state, and wants to work as a professional driver in an EU member state, first obtain an initial qualification for category D?	Answer under preparation.
What will the vehicle registration certificates of the UK look like and with what kind of Type Approvals will the UK work, now that the e11 Type Approvals ceased to be valid as a consequence of the UK's withdrawal from the EU.	Answer under preparation.
Can the services based on the EUCARIS Treaty be reconnected to TESTA?	Answer under preparation.

Question	**Answer**
Does the Trade and Cooperation Agreement include provisions	The answer is negative. The substance of directive 2015/413 has not been incorporated

concerning DIRECTIVE (EU) 2015/413 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 March 2015 facilitating cross-border exchange of information on road-safety-related traffic offences and will it be applicable starting provisional application of said agreement on 1st of January?	into the EU-UK agreement. This means that the cross border exchange of information on road safety traffic offenses will not apply in our relations with the UK.
Can drivers undertaking transport of goods continue to drive in the EU and UK on a certificate of professional competence that is issued in the UK before 1 January 2021 and that would be valid if not for Brexit	As regards UK operators conducting operations in the EU under the Agreement, or EU operators conducting operations in the UK under the Agreement, we refer to Article 9 of Annex ROAD B(1): the substantive obligations on CPC can be evidence by a UK driver card for UK operators, and by an EU driver card for EU operators. As regards EU operators conducting operations in the EU, we refer to the message sent by DG MOVE to the members of the Land Transport Committee on 14 December, confirming information provided in the readiness notice on road transport of 13 July 2020: Whatever happens, deal or no deal, drivers and transport managers working for road transport operators established in the EU have to have a certificate of professional competence (CPC) issued by a competent authority of an EU Member State. In case such drivers / transport managers have a CPC issued by a competent authority of the United Kingdom, they should make sure that they get a CPC issued by a competent authority of an EU Member State before 1 January 2021, as the CPC of a driver / transport manager working for a road transport operator in the EU which has been issued by a UK authority will no longer be valid after the end of the transition period (as also indicated in points 1 and 2 of the Commission's preparedness note of 13 July 2020: https://ec.europa.eu/info/sites/info/files/brexit_files/info_site/road_transport_en.pdf). As a general rule, the competent authorities of each Member State have to check whether the requirements for the issuance of a CPC in that Member State are met (i.e. whether the driver / the transport manager has the required knowledge in the subject areas listed in Section 1 of Annex I to Directive 2003/59/EC and in Annex I to Regulation (EC) No 1071/2009 respectively).

	In the case of the driver CPC, it appears that the knowledge required to obtain such a CPC is for the most part not Member State specific which should allow for a pragmatic approach whereby any missing knowledge specific to a certain Member State, which someone with a CPC issued in the UK may not have, may be acquired in the course of a periodic training (i.e. no need to require a full repetition of the initial qualification) before the CPC is issued. In the case of a transport manager CPC, Annex I to Regulation (EC) No 1071/2009 requires knowledge of a number of areas also of national law, which someone with a CPC issued in another Member State may not have. The competent authorities of a Member State should make sure that the transport manager has acquired the relevant knowledge before issuing the CPC.
How is the requirements in the deal enforced. Will there be further EU legislation or are the Member states supposed to put legislation in place to enforce the deal, for instance if a British driver do not have a certificate or do not follow the rules on driving and resting times?	The Agreement will become an integral part of the EU legal order with ratification, without the need for national implementing measures to transpose or enact it in domestic law. The agreement makes specific provisions for cooperation between the Union and the UK on enforcement in its Annex. Specifically on CPC, we refer to Article 9 of Annex ROAD B(1). We also refer to Article 14 of Annex ROAD A(1), which makes provisions for administrative exchanges between Union and UK authorities to facilitate enforcement.
"We kindly ask the UKTF to confirm that Art. ROAD.4 para. 4 should be understood as follows: UK road haulage operators may undertake one operation within the territory of a single Member State if the initial laden journey from the UK is unloaded in this particular Member State. For example, a UK road haulage operator performs a laden journey from the UK to France. He unloads in France. He is now allowed	This is correct. A cabotage operation, i.e. load and unload in the territory of the same Member State may be conducted provided it follows an international journey from the UK to a Member State and is performed within 7 days in that Member State. In the example provided (UK-FR-BE-BE) the UK haulier is permitted to carry out a cabotage operation in France, but not in Belgium.

to perform a cabotage operation within France. However, he cannot undertake the initial laden journey from the UK, unload in France, pick up a new load in France, carry this load to Belgium, unload in Belgium and perform a cabotage operation within Belgium.	
Article ROAD.7 in conjunction with Article ROAD.4 paragraph 2 lit. b, Annex ROAD-1 Part B Section 1: It is noticeable here that although the Professional Driver Qualification Directive regulates the requirements for truck and bus drivers equally, reference is only made to the qualification requirements for truck drivers (cf. Annex 1 Part B Section 1 Article 1, p. 827). Thus, there are no statements in the agreement on the scope of application to the bus classes, on the exceptions, on the minimum age and on the learning content. In Annex 1 Part B Section 1 Article 5 paragraph 4 (p. 829) it is then pointed out for persons who change from road haulage to passenger transport and vice versa that only the contents necessary for the new activity have to be learned. It was thus seen that there are also requirements for bus drivers. Unfortunately, there is no reference to the qualification requirements for bus drivers. In Annex 1 Part B Section 1 Article 9 (p. 830) reference is then made to the "driver qualification card" as proof of an existing qualification, the illustration of which can be found in Appendix ROAD.B.1.2 (p. 837) and which also shows the bus classes (driver's license classes D1, D, D1E, DE). In connection with the reference to the designation of exemptions (e-mail 4.9.20, 1:40 p.m. " Brexit: FTA annex on road haulage - responses to COM replies), COM informed " The other	As regards buses, the draft Agreement on the transport of passengers by road (bus and coaches incorporate the relevant provisions of Interbus in Article X+3. Interbus in turn makes reference to provisions of EU law, in particular concerning the CPC for drivers (decision nr 1 of the Interbus Joint committee which incorporates in Interbus Directive 2003/59/EC on the initial qualification and periodic training of drivers). Annex ROAD-1 is only about freight transport. References to buses are present when relevant to the obligations in relation to freight.

exemptions listed in Art. 2(1) and 2(2) are clearly out of scope of Annex ROAD.B(1) as they refer to buses and coaches (Art. 2(1) lit. (d)) and non-commercial operations (Art. 2(1) lit. (f) and (g) and Art. 2(2))." Either the bus classes were completely forgotten or the intention is to treat them differently than truck drivers in the future.	
Annex 1 Part B Section 1 Article 8 paragraph 2 regulates the time limits for continuing education. However, the subsequent paragraph provides for the possibility of shortening or extending the period for further training by a maximum of two years. No reason is given for deviating from the regular five-year period for periodic training. According to EU law, however, a deviation from the time limit is possible, in particular for harmonization with the validity of the driver's license. Is the wording deliberately chosen without a reason?	The provision on the possible reduction or exemption from the periods mentioned in the first subparagraph have been deliberately simplified for the purpose of the Agreement with the UK.
It is our understanding that this section on Certificates of professional competence (CPC) only deals with drivers involved in the transport of goods, whereas the CPC Directive – on which this part seems to be based – covers both transport of goods and passengers. It is unclear to colleagues why this provision only covers transport of goods and why it doesn't also cover transport of passengers, or why there isn't a separate similar provision for passengers. We would be grateful for further information in order to understand the rationale for its non-inclusion and what provisions apply in its absence.	Answer: As regards buses, the draft Agreement on the transport of passengers by road (bus and coaches) incorporate the relevant provisions of Interbus in Article X+3. Interbus in turn makes reference to provisions of EU law, in particular concerning the CPC for drivers (decision nr 1 of the Interbus Joint committee which incorporates in Interbus Directive 2003/59/EC on the initial qualification and periodic training of drivers). Annex ROAD-1 is only about freight transport. References to buses are present when relevant to the obligations in relation to freight.
2. Under current EU CPC requirements, Driver training must be done in Member State of residence, or work i.e. Article 9 of Directive 2003/59/EC, copy/pasted below for ease of reference. The EU/UK Agreement appears to us to be silent on this aspect. Can the Commission clarify if the intention remains	Answer: The Agreement does not specifically regulate the place of training. However, the obligation in EU law remains applicable for obtaining a CPC in the Union. As regards EU operators conducting operations in the EU, we refer to the message sent by DG MOVE to the members of the Land Transport Committee on 14 December,

the same as under current law i.e. that Driver CPCs must be obtained in the UK or MS where the driver works or resides? Furthermore, what are the implications for drivers holding UK CPCs and working in the EU – the intention was that they would not be recognized from 1 January. Is this still the case? Article 9: Place of training Drivers referred to in Article 1(a) shall obtain the initial qualification referred to in Article 5 in the Member State in which they have their normal residence, as defined in Article 14 of Regulation (EEC) No 3821/85 . Drivers referred to in Article 1(b) shall obtain that qualification in the Member State in which the undertaking is established or in the Member State which issued a work permit to them. Drivers referred to in Article 1(a) and 1(b) shall undergo the periodic training referred to in Article 7 in the Member State in which they have their normal residence or the Member State in which they work.	confirming information provided in the readiness notice on road transport of 13 July 2020. The Agreement does not change this assessment: Whatever happens, deal or no deal, drivers and transport managers working for road transport operators established in the EU have to have a certificate of professional competence (CPC) issued by a competent authority of an EU Member State. In case such drivers / transport managers have a CPC issued by a competent authority of the United Kingdom, they should make sure that they get a CPC issued by a competent authority of an EU Member State before 1 January 2021, as the CPC of a driver / transport manager working for a road transport operator in the EU which has been issued by a UK authority will no longer be valid after the end of the transition period (as also indicated in points 1 and 2 of the Commission's preparedness note of 13 July 2020: https://ec.europa.eu/info/sites/info/files/brexit_files/info_site/road_transport_en.pdf). As a general rule, the competent authorities of each Member State have to check whether the requirements for the issuance of a CPC in that Member State are met (i.e. whether the driver / the transport manager has the required knowledge in the subject areas listed in Section 1 of Annex I to Directive 2003/59/EC and in Annex I to Regulation (EC) No 1071/2009 respectively). In the case of the driver CPC, it appears that the knowledge required to obtain such a CPC is for the most part not Member State specific which should allow for a pragmatic approach whereby any missing knowledge specific to a certain Member State, which someone with a CPC issued in the UK may not have, may be acquired in the course of a periodic training (i.e. no need to require a full repetition of the initial qualification) before the CPC is issued. In the case of a transport manager CPC, Annex I to Regulation (EC) No 1071/2009 requires knowledge of a number of areas also of national law, which someone with a CPC issued in another Member State may not have. The competent authorities of a Member State should make sure that the transport manager has acquired the relevant knowledge before issuing the CPC.

In the Annex ROAD, requirements have been laid down for posting of drivers (section 2). We are wondering if this section is without prejudice to national measures regarding the entry of natural persons, such as work permit requirements?	This is correct. We refer to the wording in the second paragraph of Article 1 of section 2 ("posting of drivers") of Part A of Annex ROAD-1, at page 820 of the published draft.
1. Road transport freight (*art. ROAD.4*): Could you please clarify if "*Party of establishment*" within the meaning of this chapter refers, as regards the European Union, to the territory of the EU in its entirety, regardless of the Member State of establishment of the transport operator? Can we understand that a road transport operator from MS1 is entitled to carry out operations from another EU MS than MS1 to / from the UK (*cross trade*)?	Answer: Article ROAD-4 permits journeys from any part of the Union to the UK, and back, by operators established anywhere in the Union. Under the Agreement, an operator from MS1 can reach the UK from any part of the Union.
2. Regarding road passenger transport: - if the procedure from *art. X + 6 para. (3)* also refers to regular services authorized under *Regulation (EC) 1073/2009* which should expire after the transition period, can the authorizations already granted still be used, until a new authorization is issued based on the characteristics set out in the Annex to the draft Agreement? Should new authorizations be required by January 1, 2021, we envisage that the practical application of such requirement is impossible.	ANSWER: In case a MS operator has an authorisation to operate regular services from the EU to the UK (and vice versa), a new authorisation must be issued. The existing authorisation which was granted under Regulation 1073/2009 is no longer valid to operate in the UK. The MS competent authorities shall issue the new authorisation, with the necessary adaptation to the service is necessary. The new authorisation shall no longer include the possibility for the MS operator to pick up and set down the (same) passengers on the UK territory as it is not allowed under article X+2. We also note that according to Article X+10, the authorisation or a certified true copy must be kept on the coach or bus. Please also note that your authorities must send a copy of the new authorisation to all authorities (including UK authorities) where passengers are picked up and set down and to the authorities of transit of the service.
3. Joint Political Declaration on Road Hauliers: Regarding the following paragraph: *To this end, and without prejudice of the rights of each Party to regulate the entry of natural persons into, or their temporary stay in, its territory**, the Parties agree to***	ANSWER: Subject to the obligations in the Agreement, the UK is free to set its own requirements for entry and stay. Information provided by the UK Government (https://www.gov.uk/guidance/transporting-goods-between-great-britain-and-the-eu-from-1-january-2021-guidance-for-hauliers#eu-hauliers-documents-licences-and-

facilitate appropriately within their respective laws the entry and temporary stay of drivers carrying out the activities permitted under Title I *[Transport of goods by road] of Heading Three [Road transport] of Part Two [Trade, transport and fisheries] of this Agreement.* - can you provide us with more clarity on UK's approach to entry conditions / potential visa requirements for EU drivers, after the end of the transition period, for each MS? This information is needed before 01.01.2021, in order to avoid disruptions at the future EU external border with the UK.	permits) states: *before 1 October 2021, EU, EEA and Swiss nationals can enter the UK with a passport or national identity card, as they do now. From 1 October 2021, EU, EEA and Swiss nationals will need a passport to travel to the UK.*
We would very much welcome some guidance from the Commission with respect to the issue of autorisation of regular bus transport (ROAD Transport of passengers by road, page 256, article X+6(3)). There are 3 remaining working days before the end of the transition period. Would it be possible to further explain provision: „, the relevant authorising authority under this Title may, on application or otherwise, issue the road transport operator with a corresponding authorisation granted under this Title."? Would an e-mail be sufficient? Would it be possible to share such a guidance with all MS?	In case a MS operator has an authorisation to operate regular services from the EU to the UK (and vice versa), a new authorisation must be issued. The existing authorisation which was granted under Regulation 1073/2009 is no longer valid to operate in the UK. The MS competent authorities shall issue the new authorisation, with the necessary adaptation to the service is necessary. The new authorisation shall no longer include the possibility for the MS operator to pick up and set down the (same) passengers on the UK territory as it is not allowed under article X+2. According to Article X+10, the authorisation or a certified true copy must be kept on the coach or bus. We therefore recommend the issuance of an authorisation describing all the elements of the service that can be performed, not just an e-mail. Please also note that your authorities must send a copy of the new authorisation to all authorities (including UK authorities) where passengers are picked up and set down and to the authorities of transit of the service.

Maritime	
Question	**Response**
Would the Commission be able to explain what is foreseen in the treaty for **dredging** as this is not explicitly mentioned? Is this covered under construction? To which extent are the vessels that are required for performing dredging tasks required to the use of flag?	Please see services and investment section
Has the EU received any indications from the UK on the future conditions relating to servicing the British offshore sector? Does the EU expect local content requirements?	Please see services and investment section
What conditions apply for seafarers with STCW certificates issued by EU Member States, to be engaged on board ships flying the flag of the United Kingdom.	This is a matter for the UK to decide. To our knowledge and on the basis of what UK has also publicly shared, all EU issued certificates for seafarers are going to be unilaterally recognised by UK. For more information please also check this link: https://www.gov.uk/guidance/seafarer-certificates-of-competency-requirements-between-the-uk-and-eu

Reference article(s)	Question	Answer
Title II – Services and Investment		
Chapter 1: General Provisions		
Article SERVIN 1.1 and seq. Services	When does the EU expect to initiate discussions regarding trade in services with the UK. Does the EU have special interests in this area at this point?	The Trade and Cooperation Agreement with the United Kingdom covers trade in services. See Title II of Heading One of Part Two of the Agreement: Articles SERVIN 1.1 and seq.
Article SERVIN 1.1(2) Right to regulate	With view to para 3 of Article LPF.1.2 and Chapter six of the LPF-Title on labour and social standards, does the right to regulate also covers areas such as labour/working conditions and labour protection, as well as occupational health and safety?	In Article SERVIN 1.1(2), the Parties reaffirm their the right to regulate within their territories to achieve any legitimate public policy objectives, as clearly resulting from the non-exhaustive nature of the list of objectives in Article SERVIN 1.1(2) ("such as"). Therefore, the right to regulate covers areas such as labour/working conditions and labour protection, as well as occupational health and safety.
Article SERVIN 1.1(3) Labour rules	Article SERVIN.1.1, 4: What is the scope of point 4? May we then still determine regional rules on access to the labour market entirely nationally?	Paragraph 4 of Article SERVIN 1.1 does not deal with access to the labour market, but with border-related measures. Access to the labour market would rather be addressed in paragraph 3. According to paragraph 3, a Party is not prevented from applying measures in relation to access to the labour market by natural persons of the other Party. The Party applying those measures (e.g. the EU) is not obliged to apply them for its whole territory, and measures can be adopted at national or regional level too.
Article SERVIN 1.1 Scope	Would the Commission be able to explain what is foreseen in the treaty for dredging as this is not explicitly mentioned? Is this covered under construction? To which extent are the vessels that are required for performing dredging tasks required to the use of flag?	Dredging is part of Construction services under the CPC classification used for the purposes of the Agreement (cf. Article OTH.1, point (d) [*]): construction work of waterways, harbours and riverworks, dams, irrigation and other waterworks). We understand that dredgers are considered to be vessels and would need a flag. [*] ""CPC" means the Provisional Central Product Classification (Statistical Papers Series M No.77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991)"
Article SERVIN	As the AVMSD (audiovisual media services directive) does not	Audiovisual services are excluded from the scope of the services

Reference article(s)	Question	Answer
1.1(5)(b) Audiovisual services	apply any more(?), which basis should/ could be used for addressing the issues previously tackled under the AVMSD? Which mechanism should/could be used for restricting TV programmes falling under the UK jurisdiction and dispute settlement? In our opinion this cannot be the Council of Europe's European Convention on Transfrontier Television (ECTT) as not all EU MS participate in ECTT, which also means that they should not be allowed to sign bilateral agreements with the UK either as the policy falls under EU's exclusive competence. Furthermore, from the national security perspective, ECTT provisions fall short of providing adequate measures for limiting the spread of problematic content. Also, the ECTT applies only to TV programmes and does not cover the entire AVMS field.	and investment and digital trade provisions of the EU-UK Trade and Cooperation Agreement, which is in line with well-established EU practice in trade Negotiations As of 1 January 2021, as the Commission recalled in its Communication COM/2020/324 '*Getting ready for changes - Communication on readiness at the end of the transition period between the European Union and the United Kingdom*', businesses established in the UK do no longer benefit from the country-of-origin principle of the Audiovisual and Media Services Directive. As a result, UK-based audiovisual media service providers need to comply with each of the rules of the relevant Member State in which they would want to provide their services. The Notice to stakeholders in the field of audiovisual media services furthermore explains that *"(…) EU Member States will be free to take whatever measures they will deem appropriate with regard to audiovisual media services coming from the United Kingdom as a third country and not satisfying the conditions laid down in Article 2 of the Audiovisual Media Services Directive, provided they comply with Union law and the international obligations of the Union and, where applicable, within the limits of the European Convention on Transfrontier Television (cf. recital 54 of the Audiovisual Media Services Directive)"*. Therefore, as regards audiovisual services which would not satisfy the conditions laid down in Article 2 of the Audiovisual Media Services Directive, the provisions and mechanism of the European Convention on Transfrontier Television (ECTT), such as mutual assistance, should be used in so far as the particular issue concerns countries which are parties to the ECTT (e.g. Estonia and the UK) and falls within the substantive scope of the ECTT, such as measures applied by television broadcasting services to protect minors.

Reference article(s)	Question	Answer
		In other cases, as explained in Recital 54 of Directive 2010/13/EC, Member States are free to take whatever measures they deem appropriate with regard to audiovisual media services which come from third countries and which do not satisfy the conditions laid down in Article 2, provided they comply with Union law and the international obligations of the Union.
Article SERVIN.1.4 Review	According to Article SERVIN.1.4 Review, a review shall be carried out every five years in accordance with Article FINPROV.3. Are statutory auditors included in the exception "financial services" in Article SERVIN.1.4 para 3?	In the Trade and Cooperation Agreement, Auditing Services are not included in the scope of financial services as defined by Article SERVIN 5.38.
Chapter 2: Investment liberalisation		
Article SERVIN 2.1 and seq. Competence for the investment chapter	Investment: Is this part in line with the opinion of the CJEU 2/15 (in which the court determined the shared powers in the field of investments)? For example, the agreement does not contain a definition of the types of investments to which it applies (direct, indirect), and the CJEU said that the EU shares competence with MS for investments that are not direct.	The Investment Chapter under the EU-UK Agreement deals exclusively with foreign direct investment, i.e. investment made by an investor of the other Party (natural or legal persons of a Party), who seeks to establish, is establishing or has established an enterprise with a view to creating or maintaining lasting economic links. The scope of the Investment Chapter as defined in Article SERVIN 2.1 (Scope – Investment) clarifies that it applies to measures affecting the establishment of an enterprise and operation of such an enterprise by investors of the other Party (or by covered enterprises), which needs to be seen in view of the relevant definitions in Article SERVIN 1.2, notably: "covered enterprise", "investor of a Party", "establishment" and "operation".
Article SERVIN 2.1 and seq. Investment protection (BITs)	What does the agreement mean for the BITs between the MS and the UK, does it replace them in the parts covered by this agreement (say national treatment and MFN), or is this agreement lex posterior in this sense?	Because of their incompatibility with EU law, intra-EU BITs were implicitly terminated as a whole under Article 59 of the Vienna Convention on the Law of Treaties at the time when their incompatibility with EU law first arose, namely when the last of the parties to the BIT acceded to the EU. Given that they have already been implicitly terminated, intra-EU BITs do not 'revive'

Reference article(s)	Question	Answer
		following the UK's withdrawal from the EU. The EU-UK Agreement therefore has no impact on these intra-EU BITS. This also applies to any sunset clauses, as may have been provided for therein, which, because of the BITs' termination, cannot be triggered. In view of the Achmea judgment and the political declaration of 15 January 2019, the Commission has urged Member States to proceed to the explicit termination of UK BITs on legal certainty grounds, in order to unambiguously remove these BITs from the legal order formally and explicitly, as practice has shown that these BITs have not always ceased to produce legal effects, such as arbitration proceedings.
Article SERVIN 2.1 and seq. Investment protection (BITs)	Does the Commission intend to propose to the Council to start the negotiations on the EU BIT with the UK? When? If not, how the investment protection and the resolution of investment disputes with the UK shall be regulated?	The Council's mandate of February 2020 authorising the negotiations with the United Kingdom did not include the negotiations of provisions on investment protection or resolution of investment disputes. The Commission does not intend at this stage to request a new mandate on this issue. For investor-to-State disputes, investors will need to have recourse to the domestic courts of the relevant State. For State-to-State disputes on the application of the Trade and Cooperation Agreement, the dispute settlement rules of the Agreement apply.
Article SERVIN 2.1 and seq. Investment protection (BITs)	As regards to investment protection, we would like to know if and when does the Commission plan to start with the negotiations for a bilateral investment treaty between the EU and the UK? Or does the trade and cooperation agreement automatically replace the already existing BITs between different Member States and the UK?	The Council's mandate of February 2020 authorising the negotiations with the United Kingdom did not include the negotiations of provisions on investment protection or resolution of investment disputes. The Commission does not intend at this stage to request a new mandate on this issue. For investor-to-State disputes, investors will need to have recourse to the domestic courts of the relevant State. For State-to-State disputes on the application of the Trade and Cooperation Agreement, the dispute settlement rules of the Agreement apply. The Trade and Cooperation Agreement does not "replace" the old

Reference article(s)	Question	Answer
		BITs between some Member States and the United Kingdom. Because of their incompatibility with EU law, intra-EU BITs were implicitly terminated as a whole under Article 59 of the Vienna Convention on the Law of Treaties at the time when their incompatibility with EU law first arose, namely when the last of the parties to the BIT acceded to the EU. Given that they have already been implicitly terminated, intra-EU BITs do not 'revive' following the UK's withdrawal from the EU. The EU-UK Agreement therefore has no impact on these intra-EU BITS. This also applies to any sunset clauses, as may have been provided for therein, which, because of the BITs' termination, cannot be triggered. In view of the Achmea judgment and the political declaration of 15 January 2019, the Commission has urged Member States to proceed to the explicit termination of UK BITs on legal certainty grounds, in order to unambiguously remove these BITs from the legal order formally and explicitly, as practice has shown that these BITs have not always ceased to produce legal effects, such as arbitration proceedings.
Article SERVIN 2.5 Senior management	Article SERVIN 2.5: This article refers to senior management and boards of directors. How should this provision be interpreted? Is there a definition of what would fall under the scope of "senior management"?	"senior management and boards of directors" is the expression used in the title of Article SERVIN 2.5. The text of the Article, where the obligation is set, refers to "executives, managers and members of boards of directors". There is no definition of "executive" or of "manager" for the purposes of Article SERVIN 2.5. However, there is a definition of "manager" for the purposes of the definition of intra-corporate transferee in Article SERVIN 4.1. The definition can give an indication of what could be understood by that term.
Article EXC.1 (1) and (2), Article EXC.4	In our view, the right to submit to a review (e.g. authorisation and/or notification procedure) the direct or indirect acquisition of a company or firm (or a part thereof) or the establishment of a	We confirm that the application of the investment screening mechanisms, which are based on security and public order, is fully preserved under Articles EXC.1 (1) and (2), as well as EXC.4 of the

Reference article(s)	Question	Answer
Investment control	new company/firm on grounds of security or public order under existing or future national legislation, and in accordance with applicable existing or future EU legislation ("investment screening"), will be fully preserved through exceptions in the text of the Trade and Cooperation Agreement between the EU and the UK (TCA). According to our assessment, relevant exceptions in this respect are notably Article EXC.1 para. 1, para. 2 lit. a of the TCA. In the absence of specific commitments regarding Northern Ireland, these exceptions to the investment liberalisation chapter are applicable for investors both from Great Britain and from Northern Ireland. Please confirm.	Trade and Cooperation Agreement between the EU and the UK and is possible with regard to investors both from Great Britain and from Northern Ireland.
Articles SERVIN 2.2-2.4 Branches	Notably our preliminary analyses of the agreement indicate that the ANNEX SERVIN.1 sets out measures non-compliant with i.e. Articles SERVIN.2.2-2.4 and refers only to specific forms in which it is possible to set up a company in [MS]. ANNEX SERVIN.1 is crafted in a negative list format, thereby what is not indicated in it as a restriction can be considered as allowed. Any limitations for the company branches under "[MS] reservation" are not indicated. Thus, it should be presumed that the issues related to the establishment of branches by entrepreneurs from the UK in [MS] are regulated in part two, section one, title II - "Services and investments" of the concluded TCA. Our reading is that these provisions, in particular Articles SERVIN 2.2-2.4, may result in the obligation to enable entrepreneurs from the UK to set up branches in the EU on the current terms and to allow the continuation of the existing ones. I would be grateful for the Commission's observations in this regard.	After closer analysis of your question, we believe that your statement is not correct. Indeed, Articles SERVIN 2.2-2.4, result in the obligation to enable entrepreneurs from the UK to set up branches in the EU and to allow the continuation of the existing ones subject to the horizontal and sectorial reservations (in annexes 1 and 2) applying to the whole of the EU or, where applicable, to [MS] alone. In addition, it must be noted that the agreement does not oblige EU or [MS]authorities to grant UK branches any internal market treatment (so there is no continuity of the current conditions under existing branches operate). In particular, domestic (EU-wide and Polish) regulatory and surveillance provisions should apply to those branches and there will no longer exist an obligation to accept that such branches remain subject to the UK regulatory framework and supervision.
Article SERVIN 2.4	With regard to most favoured nation treatment (MFN) for	The MFN clause in the Trade and Cooperation Agreement with the

Reference article(s)	Question	Answer
MFN Article SERVIN 3.5 MFN	services and investment chapters – how do the provisions of MFN differ from the EU-Japan or other EU FTA agreements? What are the legal implications of it?	United Kingdom is similar to the one in the EU-Japan Agreement. The clause ensures that if the United Kingdom, autonomously or as a result of a future FTA, grants a better treatment to a third country in relation to establishment, operation of established enterprises or cross-border trade in services (e.g. wider market opening), then the United Kingdom should grant the same better treatment to the European Union – and vice-versa). However, there is a difference with the agreement with Japan: in the case of the Trade and Cooperation Agreement with the United Kingdom, financial services are excluded from the MFN clause (see point (a) of Reservation 16 of Annex SERVIN-2 for the EU, and the equivalence reservation 9 in the UK schedule).
Article SERVIN 2.4 MFN	Art. SERVIN 2.4: Most favoured nation treatment (MFN). We note that the Agreement includes a MFN rule for investment. - We understand that Art. SERVIN 2.4 also covers favourable treatment accorded to an investor on the basis of international agreements concluded by one of the parties (see Art. SERVIN 2.4 para.5). Is our understanding correct that this also include any future trade agreements entered into by either the UK or the EU ("forward-looking MFN clause")? - With a view to previous EU FTAs also containing such MFN obligations (e.g. CETA Art. 8.7, EU/JPN EPA Art. 8.9) we would ask the COM to elaborate on the benefits arising from the EU/UK TCA which are to be granted to other EU trading partners on the basis of such MFN obligations.	Your understanding is correct. It is a forward-looking MFN clause. In general, the benefits arising from the EU/UK Trade and Cooperation Agreement will indeed need to be granted to other trading partners with which the EU has concluded trade agreements, by virtue of similar MFN forward-looking clauses included in such agreements (i.a. CETA Art. 8. or EU/JPN EPA Art. 8.9). However, please note that, in some instances, the obligation to grant MFN is subject to reservations (see, for instance, reservations for investment in fisheries) and exceptions (see, in the case of the Trade and Cooperation Agreement, Art. SERVIN 2.4, paragraph 3).
Chapter 3: Cross-border trade in services		
Articles SERVIN 3.1 and seq. Cross-border	Could the Commission confirm that this chapter only concerns services and not persons moving across borders to deliver services?	Chapter 3 on cross-border trade in services does not deal with movement of natural persons for business purposes, but the provision of services from the territory of a Party to the territory of the other. Provision by natural persons moving across borders is

Reference article(s)	Question	Answer
trade in services / scope		addressed in Chapter 4.
Article SERVIN.3.3 Local presence & establishment	Is there a central definition of what constitutes establishment under "Article SERVIN.3.3: Local presence"?	The definition of "establishment" in point (h) of Article SERVIN 1.2 applies.
Articles SERVIN 3.1 and seq. Cross-border sales of pharmaceutical products	ANNEX SERVIN-2: FUTURE MEASURES, (c) Retail sales of pharmaceutical, medical and orthopaedic goods, other services provided by pharmacists (CPC 63211), - Is mail order from UK to a MS still allowed at all (especially concerning medicinal products)? - Shall medical prescriptions from the UK be accepted in the EU? Shall medical prescriptions from the EU be accepted in the UK?	The EU (with the exception of six Member States) preserves the right through a future policy space reservation not to accept the mail order of pharmaceutical products from States outside the EEA, as indicated in reservation 3 (c) of Annex SERVIN-2 (page 685 of the document published in the OJ). In addition, your MS has preserved the right to require local presence for the distribution and retail of pharmaceutical products (Reservation 3, (c) in Annex SERVIN-1, page 599 of the document published in the OJ). As a result, the right to distribute or sell pharmaceutical products from the United Kingdom to your MS is not covered by the Trade and Cooperation Agreement. Therefore, your MS may prevent the cross-border sales of pharmaceutical products from the United Kingdom. There is nothing in the agreement which prevents your MS from allowing the cross-border retail of pharmaceutical products if it so chooses as this is not regulated by the EU. However, if your MS chooses to do so, the same treatment would need to be granted to other countries as well. The Trade and Cooperation Agreement does not contain rules on the recognition, in one Party, of the prescriptions issued by a medical practitioner of the other Party. It is true that such recognition is provided for amongst Member States in Article 11 of Directive 2011/24, but this provision no longer applies as of the end of the transition period. Please see more information on this topic, in relation to the end of the transition period here (in section 7.3):

Reference article(s)	Question	Answer
		https://ec.europa.eu/info/sites/info/files/file_import/travelling_sv_7.pdf It is further noted that, in accordance with EU pharmaceutical law, any medicinal product imported into the European Union must have a marketing authorisation by the relevant Member State or by the Commission (in the centralised procedure).
Article SERVIN 3.5 MFN	We note that the Agreement includes a MFN rule also for cross-border trade in services. We kindly ask the COM to elaborate on our questions regarding the investment part (see question 1 above) also in respect of Art. SERVIN 3.5.	There is also a forward-looking MFN clause covering cross-border trade in services, under which the EU commits to grant UK services and service suppliers (and vice-versa) any better treatment granted to services and services suppliers from a third country, even if that better treatment results from a future trade agreement (unless one of the reservations against the MFN obligation or an exception apply).
Chapter 4: Entry and temporary stay of natural persons for business purposes		
Article SERVIN 4.1 and seq. Posting of workers		There is no longer free movement of persons for the purposes of providing services and/or working between the EU and the United Kingdom. Putting an end to such free movement was one of the main objectives of the United Kingdom. As a result, the possibility to provide services in the United Kingdom or to move to the United Kingdom as a worker will depend indeed of United Kingdom law. The EU-UK Agreement contains however some rules on the entry and temporary stay of natural persons for business purposes, limited to certain categories of persons and certain activities. Among those categories, the closest to the notion of "posted workers" (within the sense of directive 96/71) would be the Contractual Service Suppliers category. This category covers, however, highly skilled professionals only with university degrees linked to the activities carried out (e.g. engineer) and are essentially "white collar" employees. For the conditions, see the definition of contractual service supplier in Article SERVIN 4.1, the

Reference article(s)	Question	Answer
		conditions in SERVIN 4.4 and the sector or activities covered and the reservations in annex SERVIN-4. If the posting of workers refer to the "intra-group" transfers, the EU-UK Agreement also contains rules on intra-corporate transferees. See the definition in Article SERVIN 4.1, the conditions in SERVIN 4.2 and the reservations in annex SERVIN-3.
Article SERVIN 4.1 and seq. Posting of workers		The goal of the EU-UK trade agreement is to establish the basis for the future relationship, not to address the transition between the situation of membership and the new relationship. The issues related to the disentanglement process were addressed in the Withdrawal Agreement, which contain a number of rules to deal with that transition. The Withdrawal Agreement, however, do not contain rules on the grandfathering of the conditions for the provision of services which where ongoing. We invite you to read the readiness notice on posted workers that we published earlier this year: Available, here: https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/getting-ready-end-transition-period_en#readiness-notices We also invite you to consider the reply to the previous question.
Article SERVIN 4.1 and seq. Posting of workers	Given that the Agreement does not include rules for the posting of UK workers in the EU or vice-versa, but allowing a transitional measure to be applied, we would appreciate further information as to the categories of workers that can be posted to the UK starting with 1st of January 2021, for instance if the persons covered by mode 4 (mentioned above) may fall in the category of posted workers.	There is no longer free movement of persons for the purposes of providing services and/or working between the EU and the United Kingdom. Putting an end to such free movement was one of the main objectives of the United Kingdom. As a result, the possibility to provide services in the United Kingdom or to move to the United Kingdom as a worker will depend indeed on United Kingdom law. The EU-UK Trade and Cooperation Agreement contains however some rules on the entry and temporary stay of natural persons for

Reference article(s)	Question	Answer
		business purposes, limited to certain categories of persons and certain activities. Among those categories, the closest to the notion of "posted workers" (within the sense of directive 96/71) would be the "Contractual Service Supplier" category. This category covers, however, highly skilled professionals only with university degrees linked to the activities carried out (e.g. engineer) and are essentially "white collar" employees. For the conditions, see the definition of contractual service supplier in Article SERVIN 4.1, the conditions in SERVIN 4.4 and the sector or activities covered and the reservations in annex SERVIN-4. If the posting of workers refers to the "intra-group" transfers, the EU-UK Agreement also contains rules on intra-corporate transferees. See the definition in Article SERVIN 4.1, the conditions in SERVIN 4.2 and the reservations in annex SERVIN-3. The EU-UK Trade and Cooperation Agreement does not address the transition between the situation of membership (including the transition period) and the new relationship. The issues related to the disentanglement process were addressed in the Withdrawal Agreement, which contain a number of rules to deal with that transition. The Withdrawal Agreement, however, do not contain rules on the grandfathering of the conditions for the provision of services which where ongoing. We invite you to read the readiness notice on posted workers that we published earlier this year: Available, here: https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/getting-ready-end-transition-period_en#readiness-notices . This reply does not address the rules on social security coordination in the EU-UK Trade and Cooperation Agreement. Please note in that connection that the rules on social security coordination are ancillary to the underlying movement of persons

Reference article(s)	Question	Answer
		and that, as such, those social security coordination do not grant any right to move between the European Union
Article SERVIN 4.1 and seq. Posting of workers	We would like the Commission to give some clarifications regarding posted workers. In which sectors is it allowed to post workers? Which documents do posted workers need to work (work permit, social security A1)?	There is no longer free movement of persons for the purposes of providing services and/or working between the EU and the United Kingdom. Putting an end to such free movement was one of the main objectives of the United Kingdom. As a result, the possibility to provide services in the United Kingdom or to move to the United Kingdom as a worker will depend indeed on United Kingdom law. The EU-UK Trade and Cooperation Agreement contains however some rules on the entry and temporary stay of natural persons for business purposes, limited to certain categories of persons and certain activities. Among those categories, the closest to the notion of "posted workers" (within the sense of Directive 96/71 concerning the posting of workers in the framework of the provision of services) would be the category "Contractual Service Supplier". This category covers, however, highly skilled professionals only with university degrees linked to the activities carried out (e.g. engineer) and are essentially "white collar" employees. The category of "independent professionals" is similar, but for self-employed person. For the conditions in respect of both categories, see the definition of contractual service supplier in Article SERVIN 4.1, the conditions in SERVIN 4.4 and the sector or activities covered and the reservations in annex SERVIN-4. If the posting of workers refers to the "intra-group" transfers, the EU-UK Agreement also contains rules on intra-corporate transferees. See the definition in Article SERVIN 4.1, the conditions in SERVIN 4.2 and the reservations in annex SERVIN-3. Beyond the above categories, the EU-UK Trade and Cooperation Agreement does not provide for any rule on the movement of employees for the purposes of supplying services.

Reference article(s)	Question	Answer
		Please see the readiness notice on posted workers that we published earlier this year: Available, here: https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/getting-ready-end-transition-period_en#readiness-notices For social security aspects, please see the rules on social security under the Agreement.
Article SERVIN 4.1 and seq. Posting of workers	[MS] understands the Chapter 4 does not preclude any national regulation concerning informative obligations as regards the performance of economic activities of the British employers through the entry and temporary stay in [MS] of natural persons referred to in this Chapter. Could the Commission confirm it? According to our national legislation an employer, both from the EU or non-EU country, is obliged to submit a declaration on "the posting of a worker", if he or she temporarily refers a worker to carry out the work in the territory of [MS]: • in connection with the performance of a contract concluded by that employer with an entity established in the territory of [MS] • to a branch or an undertaking owned by a group of undertakings which includes that employer, established in the territory of [MS] • as a temporary employment agency or a placement agency hiring out the worker to a user employer in [MS]or to a user employer in another country, when this user employer subsequently refers a worker temporarily to carry out the work in the territory of [MS]. It is not a prior approval procedure. It was introduced as implementation of the EU directives regulating the posting of	Article SERVIN 4.1(3) states the following: "*3. Notwithstanding the provisions of this Chapter, all requirements provided for in the law of a Party regarding work and social security measures shall continue to apply, including laws and regulations concerning minimum wages and collective wage agreements*." Therefore, Chapter 4 (Entry and temporary stay of natural persons for business purposes) does not preclude the application of national rules on informative obligations arising from labour law obligations. Concerning "posting of workers", please note that there is no longer free movement of persons for the purposes of providing services and/or working between the EU and the United Kingdom. Putting an end to such free movement was one of the main objectives of the United Kingdom. As a result, the possibility to provide services in the United Kingdom or to move to the United Kingdom as a worker will depend indeed on United Kingdom law. Similarly, it will depend on EU law and/or Member State law if it is about the possibility to provide services in a Member State or to move to a Member State as a worker. The EU-UK Trade and Cooperation Agreement contains however some rules on the entry and temporary stay of natural persons for business purposes, limited to certain categories of persons and certain activities. Among those categories, the closest to the

Reference article(s)	Question	Answer
	workers. However in [MS] it applies to both, the EU and non-EU employers. A foreign employer established in EU country or in a third country posting a worker to [MS] must also designate a person staying in the territory of [MS] during the posting, authorized to act as an intermediary in contacts with National Labour Inspectorate and to send and receive documents or notifications concerning the posting of workers. Additionally, an employer established in a non-EU country posting a worker to [MS] is obliged to designate a person staying in the territory of [MS], who acts in the name of the employer and is authorised to represent that employer before the National Labour Inspectorate and other authorities. We intend to continue to require such obligations from the British employers, including those who employ contractual service suppliers in sectors, subsectors specified in Annex SERVIN-4 or other natural persons that are covered by the Agreement.	notion of "posted workers" (within the sense of Directive 96/71 concerning the posting of workers in the framework of the provision of services) would be the category "Contractual Service Supplier". This category covers, however, highly skilled professionals only with university degrees linked to the activities carried out (e.g. engineer) and are essentially "white collar" employees. The category of "independent professionals" is similar, but for self-employed person. For the conditions in respect of both categories, see the definition of contractual service supplier in Article SERVIN 4.1, the conditions in SERVIN 4.4 and the sector or activities covered and the reservations in annex SERVIN-4. If the posting of workers refers to the "intra-group" transfers, the EU-UK Agreement also contains rules on intra-corporate transferees. See the definition in Article SERVIN 4.1, the conditions in SERVIN 4.2 and the reservations in annex SERVIN-3. Beyond the above categories, the EU-UK Trade and Cooperation Agreement does not provide for any rule on the movement of employees for the purposes of supplying services. Please see the readiness notice on posted workers that we published earlier this year: Available, here: https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/getting-ready-end-transition-period_en#readiness-notices As regards issues on social security coordination in relation to mode 4 beneficiaries, please see the replies to questions on social security coordination.
Article SERVIN 4.1 and seq.	[MS] would appreciate if the Commission added some clarifications in Q&A published on the EC website as regards	We understand that your refer to the question "What about posted workers?" in the Q&As published[1] on the agreement[2].

[1] "What about posted workers?

Reference article(s)	Question	Answer
Posting of workers / information obligation	posting of workers in order to avoid confusion of entrepreneurs providing services in the UK or in the EU MSs and their employees temporary posted for this purpose. It would be of much help especially for those who are not yet familiar with the GATS and mode 4 terminology and therefore might not know where to look for the relevant provisions in the Agreement. We are afraid that the sentence in Q&A "*The Agreement does not include rules for the posting of UK workers in the EU, or vice-versa*." might be misunderstood, especially in the contexts of provisions in the Article SERVIN.4.1 and 4.4, as well on provisions on posting of drivers and Protocol on CSS. The subjective scope of 'contractual service suppliers" and "intra-corporate transferees" as defined in the Article SERVIN.4.1 paragraph 5 and "posted workers" as defined in the EU directive seems partially similar, although named differently, and despite the fact that it is not an intra-EU mobility.	First of all, we note that this question refers to social security rules only – it appears under the heading "SOCIAL SECURITY COORDINATION AND VISAS FOR SHORT-TERM VISITS". Secondly, we note that the first sentence of that answer says the following: "*The posting of workers is part of the free movement of services within the EU, subject to conditions*." This has been explained in the reply to the first question. Thirdly, the following sentence ("*The Agreement does not include rules for the posting of UK workers in the EU, or vice-versa. This means that, for example, […]*") refer to the social security rules on posting of workers.
Article SERVIN 4.1 and seq. Posting of workers / contact points	Has the Commission any knowledge as regard a contact point in UK, where the entities interested to provide services in the UK and to refer their workers there, may be provided with the detailed information ? Although the UK is not obliged anymore to ensure the information on the single official national website and to run a liaison office on posting of workers, we have noticed recently growing demand for those information.	The Trade and Cooperation Agreement provisions on mode 4 do not request the parties to provide for a contact point. We draw your attention to the transparency obligations under Article SERVIN 4.6. The United Kingdom provides information on visa-related requirements here: https://www.gov.uk/browse/visas-immigration Consular offices of the United Kingdom could be of assistance.

The posting of workers is part of the free movement of services within the EU, subject to conditions. The Agreement does not include rules for the posting of UK workers in the EU, or vice-versa. This means that, for example, a worker sent by the UK to the EU to work will have to pay social security contributions in the EU Member State and will be subject to the legislation of that country.
It was however agreed that in this area, and as a transitional provision, Member States may request, upon notification to the Commission, to continue the posting system as it exists now for a period of up to 15 years. Member States can terminate the posting system earlier.
During this period of time, posted workers will then pay their social security contributions in the Party that sent them (i.e. the UK in the example provided)."

[2] https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_2532

Reference article(s)	Question	Answer
Articles SERVIN 4.2 and 4.4 Mode 4 and national treatment	Chapter 4, Article SERVIN 4.2 1(c) and 4.4 1(c) states that each Party shall accord to specific categories, during their temporary stay in its territory, treatment no less favourable than that it accords, in like situations, to its own natural persons. Can the Commission elaborate on (and perhaps exemplify) which kind of treatment these articles refer to?	The mode 4 provisions of the Trade and Cooperation Agreement with the United Kingdom are no different in nature from similar provisions in previous free trade agreements with other trading partners. The "national treatment" obligation is at the basis of the free trade agreements and applies in the area of services in the sense of GATS Article XVII. With respect to the treatment granted to natural persons in their quality of service suppliers, that includes matters such as e.g. licensing requirements, qualification requirements or authorisations.
Article SERVIN 4.4. Contractual services suppliers and construction servcies	Taking into account UK reservations with respect to Contractual services suppliers (CSS) for Construction and related services, namely CPC 514 and 516, stipulated in Annex SERVIN-4 (stating for UK - CSS: unbound): will EU companies - in practice - still be able to provide these services on contractual basis in the UK? Where can companies get related information?	The United Kingdom has not taken any commitments under the Agreement in relation to contractual service suppliers and independent professionals for the purposes of construction and related engineering services. This means that the possibility for EU companies to provide such type of services in the United Kingdom through temporary movement will depend on the possibilities offered by United Kingdom's domestic law. Companies may possibly contact the trade departments of the UK embassy in their MS or of the MS embassy in London to understand whether and under which conditions could the provision of those services be possible in the United Kingdom. We note that the EU has hardly taken any commitments in relation to contractual service suppliers and independent professionals for those services either. Only five EU Member States (BE, DK, ES, NL, SE) have no reservations in relation to contractual service suppliers and only one (NL) in relation to independent professionals.
Article SERVIN.4.4 Contractual services suppliers	As regards the temporary movement of natural persons for business purposes ('mode 4'), the EU-UK Agreement also facilitates the movement of "contractual service suppliers" or "independent professionals" to supply services under certain	The United Kingdom indicated to us during the negotiations that it had the intention to adapt its domestic legislation on immigration (including notably visa schemes) to ensure that prospective beneficiaries of mode 4 commitments could enter the United

Reference article(s)	Question	Answer
and independent professionals	conditions. The Agreement includes definitions (Article SERVIN.4.1: Scope and definitions) and a list of sectors and sub-sectors where services can be supplied (ANNEX SERVIN-4). We would be interested to know which are the applicable rules in the UK immigration system which facilitate the movement of the two categories, if there is an immigration route already set in this respect, including details about eligibility conditions, visa application, documents to be provided and so on. It would be useful to receive further information in this area in order to inform economic operators that might be interested to supply services in the UK starting with 1st of January 2021 and that wish to send their employees on temporary assignments to the UK	Kingdom. UK's website with information on visas is here: https://www.gov.uk/browse/visas-immigration See the following, in particular: https://www.gov.uk/international-agreement-worker-visa If you need additional information on the United Kingdom's visa regime, it may be more reliable to obtain it from the United Kingdom's embassy in [MS].
Article SERVIN.4.4 Contractual services suppliers and independent professionals Work permit	Article SERVIN.4.4: Could the Commission confirm that a work permit procedure may still be imposed?	A work permit may be required in respect of contractual service suppliers and independent professionals. However, for sectors committed in those categories, host state authorities do not have discretion to deny those work permits, where required. See Article SERVIN 1.1(3) and Article SERVIN 4.1, paragraphs 2 and 3. Requiring a work permit is waived by the Agreement in relation to Business Visitors for establishment purposes (Article SERVIN 4.2(1)(a)(ii) and to Short Term Business Visitors (Article SERVIN 4.3(2).
Article SERVIN.4.1 and seq. Maximum period of stay	The recently concluded TCA provides for the possibility of temporary presence of natural persons for business purposes (so-called "Mode 4" of service delivery). The agreement foresees 4 categories of eligible persons (business visitors for establishment purposes - stays up to 90 days within any six-month period; short-term business visitors – stays up to 90 days within any six-month period; contractual service suppliers – stays up to 12 months and independent professionals – stays up to 12 months). The question arises whether these categories of natural persons are entitled to stay up to 90 days within any six-month period or	The mode 4 provisions of the Trade and Cooperation Agreement with the United Kingdom are no different in nature from similar provisions in previous free trade agreements with other trading partners. The UK nationals who fall under the mode 4 categories of natural persons will be able to stay in the EU for the maximum period of stay provided for in the Trade and Cooperation Agreement. The Trade and Cooperation Agreement rules refer to a maximum period of stay in the EU (the Party), not in the individual Member States.

Reference article(s)	Question	Answer
	up to 12 months within each particular EU Member State or on the whole territory of the EU as a Party of TCA? In this context is our understanding correct that even if business visitors for establishment purposes and short-term business visitors are entitled to stay up to 90 days within any six-month period within each particular EU Member State, they are still bound by the Schengen rules in case of entry and stay for business purposes on the territory of the Schengen Member State(s) in the framework of visa-free movement which limit stays up to 90 days within any six-month period in the whole Schengen area? Furthermore, will all Mode 4 categories of natural persons eligible under TCA be covered by social security coordination?	All categories of persons concerned are expected to comply with the relevant visa requirements in the EU. In the case of stays in the EU for periods of less than 90 days in a 6-month period, the current EU rules provide for visa-free entry and stay of UK nationals. However, if those persons carry out a paid activity, the relevant Member State where the paid activity will take place may, in accordance with Article 6(3) of Regulation (EU) 2018/1806, request a visa. In the case of stays longer than 90 days in a 6-month period the person concerned will need to request a visa in the Member State (or Member States) in which they will be staying. In particular, in the case of contractual service suppliers and independent professionals, their stay in the EU is linked to a specific services contract – and therefore, in practice, to the Member State (or Member States) where such contract is implemented. Please note that Ireland is in a different situation– because of the Common Travel Area with the United Kingdom. Finally, persons falling under the mode 4 categories will fall under the scope of the social security coordination provisions if the conditions for applying the Social Security Protocol are fulfilled. However, the Social Security Coordination rules will be different depending on the category of persons concerned.
Articles SERVIN 4.1 and seq Movement of artists	Could the Commission explain to which extent the treaty has provisions in place for the temporary movement of business travellers, specifically for artists? There were some news reports that the EU rejected more ambitious provisions from the UK in this regard. If so, could the Commission explain why this was not included?	The EU-UK Trade and Cooperation Agreement includes commitments in relation to the entry and temporary stay of natural persons for business purposes, in articles SERVIN 4.1 to 4.6 and in Annexes SERVIN 3 and 4. The categories of professionals covered are in line with those in recent EU FTAs (notably EU-Japan or EU-Mexico): business visitors for establishment purposes, intra-corporate transferees, short-term business visitors, contractual services suppliers and independent professionals. They are also in line with the EU's proposal of March 2020 for an agreement and

Reference article(s)	Question	Answer
		with the draft schedules on which the Member States were consulted during the summer 2020. The EU normally does not take commitments beyond those categories of professionals (entertaining services are not included in the schedules in Annex SERVIN 4 for contractual service suppliers and independent professionals; nor are they included in the list of permissible activities for short term business visitors in Annex 3). EU artists will be able to perform in the United Kingdom, following the immigration rules that the United Kingdom has specifically designed for this purposes: https://www.gov.uk/permitted-paid-engagement-visa If "creative workers" are employed in the United Kingdom, they may ask for a visa for a longer duration: https://www.gov.uk/temporary-worker-creative-and-sporting-visa UK artists will be able to perform in the EU Member States if allowed by the relevant national legislation.
Chapter 5: Regulatory framework, Section 1 Domestic regulation		
Chapter 5: Regulatory framework, Section 2 Provisions of general application + Annex SERVIN 6		
Article SERVIN.5.13 Professional qualifications / joint recommendations		The aim of Article SERVIN 5.13 is to develop recognition arrangements between the Parties: that is, the EU and the United Kingdom. "Joint recommendations" are the recommendations jointly prepared by the professional bodies or authorities of the Parties. That is, of the United Kingdom, on the one hand, and of the EU, on the other hand. Annex SERVIN 6 contains guidelines on how to prepare the joint recommendations.
Article	The Commission has answered our previous question in the	There are two stages in the procedure and each one has its very

Reference article(s)	Question	Answer
SERVIN.5.13 Professional qualifications / procedure for the negotiation of arrangements	following sense "*The aim of Article SERVIN 5.13 is to develop recognition arrangements between the Parties: that is, the EU and the United Kingdom. "Joint recommendations" are the recommendations jointly prepared by the professional bodies or authorities of the Parties. That is, of the United Kingdom, on the one hand, and of the EU, on the other hand Annex SERVIN 6 contains guidelines* on how to prepare the joint recommendations." Taking into account this reply we have some additional doubts: - What is the procedure for reaching the arrangements with the UK? How are we expected to act by the Member States? Should we meet with our professional organizations to send a single proposal or do you expect to receive proposals different from all States and professional organizations? Since the recommendations are called 'joint recommendations' to whom does the term 'joint' refer? Will we receive any specific proposal from the Commission in order to begin the procedure? - What is the foreseen timetable for reaching the arrangements?	different procedural elements. The first stage, which is about reaching a joint recommendation by the professional bodies or authorities of a specific profession of the EU and the UK, ends with the submission of this joint recommendation to the Partnership Council. The second stage concerns decision-making in the Partnership Council, including the fulfilment of EU-internal requirements, until adoption. We understand your question is limited to the former stage. The process is entirely in the hands of professional bodies or authorities in charge of a specific profession. Consequently, there will be no Commission proposal. This bottom-up approach ensures that arrangements meet the needs of the professions on both sides. Member States are of course free to support their bodies or authorities at national level to launch preparations at European level (this will typically involve business associations as there are in principle no European professional authorities). The professional body at European level would then need to contact its counterpart (body or authority) at UK level so that both can jointly draw up a joint recommendation. This is what the term "joint" refers to, so this needs to be a single proposal. No particular procedural requirements apply, as they are not necessary. The Guidelines in Annex SERVIN-6 facilitate the preparation of a joint recommendation. We would like to recall that the Canadian professional authorities and the European professional body have achieved such joint recommendation and submitted it to the relevant CETA Committee. Member States have been consulted on the follow-up in 2020. Because it is for professional bodies or authorities to initiate and submit a joint recommendation the Commission cannot impose a timetable to them.

Reference article(s)	Question	Answer
Article SERVIN.5.13 Professional qualifications / procedure for the negotiation of arrangements	Article SERVIN.5.13: What are the next steps regarding the creation of the framework for the recognition of professional qualifications, and is this expected to function in a similar way to other FTA (i.e., such as CETA with Canada)?	The framework established by the Agreement is expected to function in a similar way to other FTAs such as the one with Canada. The next step would be for the professional bodies or authorities of the interested professions to prepare joint recommendations on the recognition of professional qualifications and submit them to the Partnership Council. The Guidelines in Annex SERVIN-6 that have been simplified compared to CETA will support this process.
Article SERVIN.5.13 Professional qualifications / procedure for the negotiation of arrangements	How the term „professional bodies or authorities, which are relevant for the sector of activity concerned in their respective territories" in Article SERVIN 5.13. should be interpreted? For instance, Polish tax advisers are grouped in only one professional self-governing National Chamber of Tax Advisers (NCoTA). Interpreting Art. SERVIN.5.13 para 2 literally, it could be understood Polish NCoTA should develop common recommendations with the relevant professional organization or several professional organizations of advisers in the UK. On the other hand, in other EU countries, tax advisors are sometimes concentrated in several professional organizations. In this case common recommendations can be understood as common for all organizations on this territory. In our opinion, Art. SERVIN.5.13 para 2 requires some clarifications, as it seems that this term can be interpreted in two possible ways.	The term "professional bodies or authorities, which are relevant for the sector of activity concerned in their respective territories" should be understood by reference to the regulated profession concerned (sector of activity). For instance, if the objective is to prepare a joint recommendation in respect of qualifications for tax advisers, the joint recommendation should be prepared by the bodies or authorities concerned by that profession. This is irrespective of whether those bodies or authorities are active in relation or responsible for more regulated professions. The term "professional bodies or authorities" must also be interpreted with regard to the fact that recognition arrangements can only be concluded between the EU and the United Kingdom, not between a Member State and the United Kingdom, and that it needs to cover qualifications acquired in the Union, not only in a Member State. Therefore, the joint recommendation must on the EU side be submitted by either a professional body covering the EU as a whole (e.g. an EU-wide business association whose members are national bodies or authorities) or jointly by the relevant professional bodies or authorities from the Member States. A joint recommendation by professional bodies or authorities from Poland and the United Kingdom would not be sufficient.
Article	Concerning Mutual Recognition of professional qualifications,	This footnote explains that the Parties (the EU and the United

Reference article(s)	Question	Answer
SERVIN.5.13 footnote on alternative agreements	what is the purpose/meaning of the new footnote 23 concerning article SERVIN 5.13 which states; For greater certainty, this Article shall not be construed to prevent the negotiation and conclusion of one or more agreements between the Parties on the recognition of professional qualifications on conditions and requirements different from those provided for in this Article.?	Kingdom) could reach arrangements on recognition of professional qualifications under different terms that those foreseen in Article SERVIN.5.13, e.g. without the preparation of a joint recommendation. Under international law, this faculty has always existed irrespective of the footnote. If an arrangement on recognition of professional qualifications between the Parties was reached under such different conditions, the procedure for its adoption would not be that of Article SERVIN.5.13. Any such possible arrangement would be a supplementary agreement to the Trade and Cooperation Agreement in accordance with Article COMPROV.2, unless the Parties decide otherwise.
SERVIN Art. 5.13 footnote on alternative agreements	SERVIN Art. 5.13. Professional Qualifications - Footnote 23 states: „For greater certainty, this Article shall not be construed to prevent the negotiation and conclusion of one or more agreements between the Parties on the recognition of professional qualifications on conditions and requirements different from those provided for in this Article.“ - What is the exact meaning of footnote 23? 1. Do “the Parties” mean the EU COM and UK? Or does it also mean that Member States are free to conclude agreements with UK? 2. If the Parties conclude agreements on the recognition of professional qualifications on conditions different from those provided for in this Article, will these agreements still be considered as being part of the agreement as foreseen in Title 1 Art. Compar.2 Para 1?	This footnote explains that the Parties (to be understood as the EU and the United Kingdom) could reach arrangements on recognition of professional qualifications under different terms that those foreseen in Article SERVIN.5.13, e.g. without the preparation of a joint recommendation. Under international law, this faculty has always existed irrespective of the footnote. If an arrangement on recognition of professional qualifications between the Parties were reached under different conditions, the procedure for its adoption would not be that of Article SERVIN.5.13. Any such possible arrangement would be a supplementary agreement to the Trade and Cooperation Agreement in accordance with Article COMPROV.2, unless the Parties decide otherwise.
Annex SERVIN-6	What is the purpose and meaning of the new paragraph 8 in the annex SERVIN 6 “Guidelines for arrangements on the recognition	This paragraph was added following discussions with the United Kingdom during the negotiations on professional qualifications.

Reference article(s)	Question	Answer
	of professional qualifications which states "An arrangement may specify different mechanisms for the recognition of professional qualifications within a Party. It may also be limited, but not necessarily so, to setting the scope of the arrangement, the procedural provisions, the effects of recognition and additional requirements, and the administrative arrangements."?	The first sentence reflects the fact that within a Party, rules on professional qualifications may differ (in particular within the EU) and that this should be considered in view of proposing the mechanisms for recognition which could, within the same agreement, be different depending on the different domestic approaches. The second sentence explains that the recognition arrangement could be limited to essentially procedural measures rather than the establishing the actual conditions for recognition. This paragraph would provide more flexibility to the professional bodies and authorities that should prepare the joint recommendation and could be an alternative in particular if a recognition based on the material rules governing qualifications is too difficult to achieve due to the extent of divergence within a Party or between the Parties. We recall that the guidelines are non-binding.
Annex SERVIN-6	[MS] would like to understand reasoning for inclusion of Annex SERVIN.6 in the TCA (the guidelines for mutual recognition agreements) Would this Annex facilitate negotiations of MRA in regulated professions making it quicker in comparison to CETA MRAs?	Annex SERVIN-6 contains Guidelines for arrangements on the recognition of professional qualifications. These Guidelines should help the professional bodies and authorities to prepare the joint recommendations referred to in Article SERVIN 5.13 – these bodies and authorities are under the obligation to take account of the Guidelines (see paragraph 5 of that Article). We have reworked Article SERVIN 5.13 and the Guidelines, compared to the Agreement with Canada, to make it easier for the professional bodies and authorities to prepare the joint recommendations. For instance, we have clarified that the Partnership Council has a role in developing the arrangement so that professional bodies or authorities do not have to invest time into drafting a legal text before submitting a joint recommendation. Compared to CETA, the Guidelines have become more concise. On

Reference article(s)	Question	Answer
		the other hand, they support flexibility by underlining that it is legitimate to leave discretion or even conclude merely procedural arrangements.
Chapter 5: Regulatory framework, Section 3 Delivery services		
Article SERVIN.5.14 Delivery services	Article SERVIN.5.14: There should be a definition of postal services, with the wording of the postal directive. (2)(d) In this wording the emphasis is on postal services, for which there is no definition. On the other hand, it seems that the goal is broader and to have delivery services, which would make this substitution. (g) It should be noted that the definition of delivery services is very broad. So, being drafted like this, courier and express services are included in the universal service, which we believe is not what it is intended. Therefore, we propose to change to postal services (and include the definition of postal services, as mentioned above).	General comment: the Trade and Cooperation Agreement has been agreed with the United Kingdom. There is no scope for renegotiation at this stage, the only possible changes that could be requested are correction of errors. Additionally, we note that the United Kingdom accepted the Section on Delivery Services as proposed by the EU in March 2020, without changes. So the final text is the text that the EU had proposed. As you can imagine, we cannot now request changes to a text that the EU had originally proposed. Finally, it is important to recall that the goal of the Section on delivery services is not replicate the EU Directives. Rather, it establishes international obligations for the Parties. The EU international agreements do not use the same terminology as EU internal rules. The drafting of our proposal aims at ensuring that, by respecting EU law (in its own terminology), the EU and its Member States will automatically be compliant with the provisions of the agreement.
Chapter 5: Regulatory framework, Section 4 Telecommunications services		
Article SERVIN.5.21 Article SERVIN.5.22	2) Article SERVIN.5.21: Definitions shall be in line with those of the EECC, namely as regards the definition of “final user”, “user” and “consumer” (cf. article 2 at https://eur-lex.europa.eu/legal-content/PT/TXT/HTML/?uri=CELEX:32018L1972&from=PT#d1e2917-36-1). (h) Suggest aligning with the concept of provider with significant market power. (j) This definition seems to be restricted	General comment: the Trade and Cooperation Agreement has been agreed with the United Kingdom. There is no scope for renegotiation at this stage, the only possible changes that could be requested are correction of errors. Additionally, we note that the United Kingdom accepted most of

Reference article(s)	Question	Answer
Article SERVIN.5.23(5) Article SERVIN.5.25(5) Article SERVIN.5.30 Article SERVIN.5.32 Telecoms	to geographic numbers / telephone service at a fixed location. We suggest adopting a definition covering the non-geographic numbers / mobile telephone service. (q) Suggest including: "(…), overall,for remuneration, (…). (r) Suggest aligning with the disposition of the EECC, adding "depending on national conditions". 3) Article SERVIN.5.22: (e) Suggest including "Information requested shall be proportionate to the performance of the regulatory authorities' tasks and treated in accordance with the requirements of confidentiality." (2) Suggest including: "Parties shall ensure that regulatory authorities have separate annual budgets. The budgets shall be made public." (4) Suggest including: "This body, which may be a court, shall have the appropriate expertise to enable it to carry out its functions effectively. The merits of the case shall be duly taken into account and the appeal mechanism shall be effective. Where the appeal body is not judicial in character, written reasons for its decision shall always be given and its decisions shall also be subject to review by an impartial and independent judicial authority. Decisions taken by appeal bodies shall be effectively enforced." Consider including one more bullet, with the following content: "Parties shall ensure that the head of a regulatory authority, or where applicable, members of the collegiate body fulfilling that function within a regulatory or their replacements may be dismissed only if they no longer fulfil the conditions required for the performance of their duties which are laid down in advance in national law. The decision to dismiss the head of the regulatory authority concerned, or where applicable members of the collegiate body fulfilling that function shall be made public at the time of dismissal. The dismissed head of the regulatory authority, or where applicable, members of the	Section on Telecommunication Services as proposed by the EU in March 2020 (there are very limited changes in this section). In this connection, we note that the following extracts from the Trade and Cooperation Agreement identified in questions 2, 3, 4, 5 and 7 are unchanged compared to the text proposed by the EU in March 2020: - The definitions of "major supplier", "number portability", "telecommunications service" and "universal service", referred to in question 2; - Point (e) of paragraph 1, paragraph 2 and f paragraph 4 of Article SERVIN.5.22, referred to I question 3; - Paragraph 5 of Article SERVIN.5.23, referred to in question 4; - Paragraph 5 of Article SERVIN.5.25, referred to in question 5; - Article SERVIN 5.32, referred to in question 7. And Article SERVIN 5.30, referred to in question 6, is almost identical to the EU proposed text of March (the only change is the addition of a new paragraph 3 at the request of the UK). As you can imagine, we cannot now request changes to text that the EU had originally proposed. Finally, it is important to recall that the goal of the Section on telecommunications services is not replicate the EU Directives. Rather, it establishes international obligations for the Parties. The EU international agreements do not use the same terminology as EU internal rules. The drafting of our proposal aims at ensuring that, by respecting EU law (in its own terminology), the EU and its Member States will automatically be compliant with the provisions of the agreement.

Reference article(s)	Question	Answer
	collegiate body fulfilling that function shall receive a statement of reasons and shall have the right to request its publication, where this would not otherwise take place, in which case it shall be published.". 4) Article SERVIN.5.23(5): Suggest including: " (…), which may include costs for international cooperation, harmonisation and standardisation, market analysis, monitoring compliance and other market control, as well as regulatory work involving preparation and enforcement of secondary legislation and administrative decisions, such as decisions on access and interconnection." 5) Article SERVIN.5.25(5): Too vague a wording. It can give rise to various interpretations and disputes. 6) Article SERVIN.5.30: This article could be improved by adding reference to coordination mechanisms on spectrum management and numbering (e.g. the use of numbering resources for fraudulent practices in international communications). 7) Article SERVIN.5.32: Consider further detail on this provision, including (i) prices must be cost-oriented, (ii) costs should not be charged to consumers in a way that discourages portability;	
Article SERVIN. 5.22(1) independent authority	*„We ask the European Commission to confirm the following reading/interpretation of Article SERVIN. 5.22 paragraph 1 of the Trade and Cooperation Agreement:* - *The wording in Article SERVIN.5.22 paragraph 1 first sentence that "Each Party shall establish or maintain a telecommunications regulatory authority […]" refers to the telecommunications regulatory authorities at national level (i.e. in the different Member States and in Great Britain). It does by no means create the necessity or the basis to establish a telecommunications regulatory authority at EU level.*	We confirm that your reading of Article SERVIN 5.22 is correct. The EU-UK Agreement does not oblige the EU to establish a single regulatory authority for electronic communications at EU-level. It does oblige the EU, in contrast, to have its whole territory covered by one or several regulatory authorities (which can be adopted or maintained at MS level). Moreover, littera (c) of paragraph 1 aims at ensuring that regulation is done in an autonomous manner, avoiding conflict of interest. There is no reason that such principles are contrary to the fact that regulators must respect constitutional law.

Reference article(s)	Question	Answer
	- *The requirement in Article SERVIN. 5.22 paragraph 1 lit. c) with regard to the independence of the telecommunications regulatory authorities does not prevent national supervision in accordance with national constitutional law (in line with Article 8 paragraph 1 Sentence 2 of directive 2018/1972/EU).* *It would be highly appreciated if the European Commission could confirm this reading in writing."*	
Chapter 5: Regulatory framework, Section 5 Financial services + Joint Declaration on financial services regulatory cooperation		
Joint Declaration on financial services regulatory cooperation		The process set out in the declaration is separate from the Agreement itself. At the same time it is fully in line with the approach advocated by the Commission during the negotiations: regulatory cooperation shall be established by means of an Memorandum of Understanding which ensures that parties maintain full regulatory and decision-taking autonomy. As regards equivalence, no decisions on the UK are planned for the moment. In any further process Member States will be fully involved.
Joint Declaration on financial services regulatory cooperation	Based on the confirmation of EU/UK's unrestricted sovereign powers as to prudential financial regulation confirmed by this Article, we would appreciate it if the Commission could share her perspective on next steps, estimated schedules and her view as to an involvement of Member States with regard to developing an MoU on EU/UK's future structured regulatory cooperation on financial services (as announced in their respective Joint Declaration of December 24, 2020). In addition and in the same context, [MS] would also be interested to learn about how the Commission is envisioning, as of today, to move forward with regard to her respective equivalence determinations.	The cooperation framework to be established as set out in the Joint Declaration on Financial Services Regulatory Cooperation should allow for: - bilateral exchanges of views and analysis relating to regulatory initiatives and other issues of interest; - transparency and appropriate dialogue in the process of adoption, suspension and withdrawal of equivalence decisions; and - enhanced cooperation and coordination including in international bodies as appropriate. As explained to Member States, this cooperation will entails non-binding voluntary regulatory cooperation. We'd like to build on experience with have with other jurisdictions, for instance the US. This would provide for a flexible structure; build on trust from

Reference article(s)	Question	Answer
		both sides, and deliver fruitful cooperation. And recognise that each side retains full autonomy in its own decisions. As with all our regulatory and supervisory cooperation frameworks, the Commission will aim to ensure maximum transparency with Member States and the European Parliament. The purpose of such working arrangements is not, and will not be, to secure market access rights which the UK has lost since 1 January. Moreover, it cannot constrain EU's equivalence process. As regards the equivalence assessment process, the Commission started an unprecedented parallel process of assessment in many equivalence areas. We have sent questionnaires covering 28 areas – and got replies from the UK during the summer. The difficult context of the negotiations made us pause the assessment process. We made two exceptions in areas relevant for financial stability: we adopted an equivalence decision for CCPs in September, with a duration of 18 months. We made clear that EU firms are expected to reduce their excessive reliance on UK infrastructures. And we have adopted an equivalence decision for CSDs in November, specifically to allow the completion of the transfer process for Irish issuers. As a next step, we would be sending follow up questions. The timing has to be seen in the context of the forthcoming discussion on setting up a framework for regulatory cooperation.
Article SERVIN. 5.39 Prudential carve-out	Art. SERVIN 5.39 (Prudential Carve-out) - Art. SERVIN. 5.39, 1 a) does not explicitly mention the protection of "consumers" of financial products as a legitimate prudential reason for parties to adopt/maintain sovereign financial regulation. However, based on the fact that examples in Art. 5.39, para 1) are not exhaustive ("such as…") and that consumer-related aspects are also mentioned in other parts of this chapter (i.e.	Article SERVIN 5.39 provides for a general and wide exception for all prudential reasons. The examples in the article refers in a non-exhaustive list of prudential reasons to, amongst others, investors, investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier, which in many cases are also consumers of financial services. Moreover, the cross-sectorial protection of service consumers is covered by the general exceptions which are identical to those under the

Reference article(s)	Question	Answer
	explicit inclusion of "consumer credit" in Art. 5.38, (a), ii)) or Art. 5.40 (confidential information)), we would conclude that the protection of consumers of financial products will generally also be covered by this carve-out (for example, beyond the examples mentioned in 1a), protection of consumers as credit holders). Could Commission confirm that this understanding is correct?	GATS, hence by the exception for "(i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;".
Headnote in Annexes SERVIN-1 and 2 Financial services	Can the Commission explain why the previous paragraph 13 of Headnote in ANNEX I on financial services has been eliminated in the EU services offer? Are these safeguards included elsewhere? With respect to financial services: The European Union may require financial service suppliers established in its territory to perform in its territory functions and activities that are critical for the continuous and effective provision of the service or that are otherwise operationally important and need to be subject to robust internal controls and ongoing effective supervision in the EU. The European Union may adopt or maintain on a non-discriminatory basis any measures that would submit the performance by third parties of such functions and activities, including those that are critical for the continuous and effective provision of the service or that are otherwise operationally important, regardless of where they are carried out, to regulatory requirements and supervision in the EU.	The previous headnote 13 was removed following discussions with the United Kingdom as part of the overall package. This headnote provided a clarification that the EU could take action in the area of delegation and outsourcing. However, as this headnote only contained a clarification, the absence of it does not limit the EU's right to regulate in these areas.
Chapter 5: Regulatory framework, Section 6 International maritime transport services		
Article SERVIN 5.45 and seq.	Has the EU received any indications from the UK on the future conditions relating to servicing the British offshore sector? Does the EU expect local content requirements?	We are not sure that we understand the exact scope of this question. What is exact scope of "servicing" for you? The heading refers to maritime transport services only. Is the question related to maritime transport between UK ports and UK offshore platforms? (If so, we note that maritime transport from a UK port to a UK offshore platform would be "national maritime cabotage" for the purposes of the Trade and Cooperation Agreement and, as such, not covered by the Service and Investment provisions of the

Reference article(s)	Question	Answer
		Trade and Cooperation Agreement). Or, on the contrary, is the question referring to the provision of installation and maintenance related services and other kind of services (which ones?)? To what is "local content requirements" related? We would be happy to provide a more useful reply if we were to understand the question.
Chapter 5: Regulatory framework, Section 7 Legal Services		
Article SERVIN 5.47 and seq.	With regard to legal services – could Commission please explain the rationale behind putting a separate legal services sub-section in the Domestic Regulation section (sub-section 7)?	The Commission would like to refer to its consultation document WK 13451/2020 INIT of 23 November 2020. Both in GATS and in FTAs like the EU-Japan EPA a large majority of Member States have generous commitments on foreign legal consultants providing legal services with regard to advice, arbitration and mediation on home country law and international law. The UK had confirmed that new disciplines covering those legal services would be of significant interest to them even if reservations could be maintained, due to the improved readability of commitments on legal services that it entails. As confirmed by many Member States during the consultation, the new section and the respective restructuring of the reservations have not modified the level of commitments of the EU on legal services but rather clarified the existing reservations for the sector.
Article SERVIN.5.49(4)	In Article SERVIN.5.49 para 4 the last word is "accountants". Are auditors referred to?	Article SERVIN 5.49(4) does not contain an exhaustive list of professions for which it can be required that a certain percentage of the shareholders, owners, partners, or directors of a legal person are qualified or practice a certain profession. Lawyers and accountants are mentioned as examples ("such as"); therefore, auditors could be covered as well. We note in this connection that headnote 13 in Annex SERVIN 1 and headnote 12 in Annex SERVIN 2 contain a clarification similar to that of the second sentence of Article SERVIN 5.49(4) – also with lawyers and accountants as example.

Reference article(s)	Question	Answer
Title III – Digital Trade		
Chapter 2 Data flows and personal data protection		
Article DIGIT.6 Data flows	Art. DIGIT.6 cross-border data flows. We note that the provision on cross-border data flows reflects the EU text proposal. This is also true for the closed list of prohibited restrictions in para. 1. - As the UK had proposed a CPTPP based approach with a more general prohibition to restrict free flow of data, we would kindly ask the COM to give some background on the discussions between the parties which in the end made the UK accept the EU proposal.	We rejected the United Kingdom's CPTTP based approach. Eventually, the United Kingdom was able to accept our approach in Article DIGIT.6 following the changes to Article DIGIT.7 (see below).
Article DIGIT.7 Protection of personal data	Language deviates from the classic text developed with the participation of the MS and implemented by the EU in negotiations with third countries. The most problematic is the second paragraph in the part »(…) *provided that the law of the Party provides for instruments enabling transfers under conditions of general application34 for the protection of the data transferred*«. The text makes the adoption of measures for the protection of personal data, including cross-border data transfers, conditional on an additional condition unknown to the GDPR. At the same time, such a condition may mean circumventing the case law of the Court of Justice of the EU (Schrems II).	Article DIGIT.7 is in line with the mandate received: to address data flows subject to exceptions for legitimate public policy objectives, while not affecting the Union's personal data protection rules (§47 of the negotiating directives). Compared to the initial EU proposal, the wording of this Article has been adjusted to address some specific concerns of the United Kingdom, which had proposed a very different provision. However, the agreement reached with the UK in this respect neither fundamentally changes the approach nor the balance aimed in the initial EU proposal on data flows and data protection. In particular, it fully preserves the EU red lines with respect to the fundamental rights nature of data protection. Article DIGIT.7 preserves the Parties' regulatory autonomy and policy space in the area of personal data protection. It is an effective exception that covers all possible measures provided that (i) they are genuinely adopted for the protection of personal data and (ii) provide for instruments enabling data transfers under conditions of general application (i.e. they should not be arbitrary or target a specific third country, in particular). This approach is fully in line with the GDPR, which authorises data

Reference article(s)	Question	Answer
		transfers under certain conditions of general application and which provides for a variety of transfers mechanisms (the existence of one single transfer mechanism would satisfy the conditions in Article DIGIT.7).
Article DIGIT.7 Protection of personal data	Regarding the Title on Digital Trade, could the Commission please explain (in detail) the changes made to the article on Protection of personal data and privacy (DIGIT.7), as compared to the EU model text tabled earlier? What is the goal and significance of the changes?	Article DIGIT.7 is in line with the mandate received: to address data flows subject to exceptions for legitimate public policy objectives, while not affecting the Union's personal data protection rules (§47 of the negotiating directives). Compared to the initial EU proposal, the wording of this Article has been adjusted to address some specific concerns of the United Kingdom, which had proposed a very different provision. However, the agreement reached with the UK in this respect neither fundamentally changes the approach nor the balance aimed in the initial EU proposal on data flows and data protection. In particular, it fully preserves the EU red lines with respect to the fundamental rights nature of data protection. Article DIGIT.7 preserves the Parties' regulatory autonomy and policy space in the area of personal data protection. It is an effective exception that covers all possible measures provided that (i) they are genuinely adopted for the protection of personal data and (ii) provide for instruments enabling data transfers under conditions of general application (i.e. they should not be arbitrary or target a specific third country, in particular). This approach is fully in line with the GDPR, which authorises data transfers under certain conditions of general application and which provides for a variety of transfers mechanisms (the existence of one single transfer mechanism would satisfy the conditions in Article DIGIT.7).
Article DIGIT.7 Protection of	In the Chapter Digital trade, article 7, the Commission has made some modifications to the standard articles used in the negotiations. How should paragraph 2 be interpreted, especially	Article DIGIT.7 is in line with the mandate received: to address data flows subject to exceptions for legitimate public policy objectives, while not affecting the Union's personal data

Reference article(s)	Question	Answer
personal data	the last part of this paragraph: ''provided that the law of the Party provides for instruments enabling transfers under conditions of general application for the protection of the data transferred''?	protection rules (§47 of the negotiating directives). Compared to the initial EU proposal, the wording of this Article has been adjusted to address some specific concerns of the United Kingdom, which had proposed a very different provision. However, the agreement reached with the United Kingdom in this respect neither fundamentally changes the approach nor the balance aimed in the initial EU proposal on data flows and data protection. In particular, it fully preserves the EU red lines with respect to the fundamental rights nature of data protection. Article DIGIT.7 preserves the Parties' regulatory autonomy and policy space in the area of personal data protection. It is an effective exception that covers all possible measures provided that (i) they are genuinely adopted for the protection of personal data and (ii) provide for instruments enabling data transfers under conditions of general application (i.e. they should not be arbitrary or target a specific third country, in particular). This approach is fully in line with the GDPR, which authorises data transfers under certain conditions of general application and which provides for a variety of transfers mechanisms (the existence of one single transfer mechanism would satisfy the conditions in Article DIGIT.7).
Article DIGIT.7 Protection of personal data	Article DIGIT 7 contains some adjustments compared with the EU text proposal for example in para 7.2 where the elements of safeguards seems to have been replaced by a reference that measures for data protection can be taken provided that there is a mechanism enabling transfers with general conditions for the protection of the data transferred. Can the Commission explain the reason for and purpose of this adjustment of article DIGIT 7.2?	Article DIGIT.7 is in line with the mandate received: to address data flows subject to exceptions for legitimate public policy objectives, while not affecting the Union's personal data protection rules (§47 of the negotiating directives). Compared to the initial EU proposal, the wording of this Article has been adjusted to address some specific concerns of the United Kingdom, which had proposed a very different provision. However, the agreement reached with the UK in this respect neither fundamentally changes the approach nor the balance aimed in the initial EU proposal on data flows and data protection.

Reference article(s)	Question	Answer
		In particular, it fully preserves the EU red lines with respect to the fundamental rights nature of data protection. Article DIGIT.7 preserves the Parties' regulatory autonomy and policy space in the area of personal data protection. It is an effective exception that covers all possible measures provided that (i) they are genuinely adopted for the protection of personal data and (ii) provide for instruments enabling data transfers under conditions of general application (i.e. they should not be arbitrary or target a specific third country, in particular). This approach is fully in line with the GDPR, which authorises data transfers under certain conditions of general application and which provides for a variety of transfers mechanisms (the existence of one single transfer mechanism would satisfy the conditions in Article DIGIT.7).
Article DIGIT.7 Protection of personal data	Art. DIGIT.7 We note that the exception regarding the protection of personal data contained in the Agreement deviates from the standard EU text proposal. - Para. 1 does not explicitly qualify the protection of personal data as a fundamental right, however mentions the "right" of an individual and "high standards" in this respect. Is our understanding correct that this deviation in para. 1 is rather a question of wording than a change of substance? What is the COM's assessment? - Para 2. says "Nothing in this Agreement shall prevent a Party from adopting or maintaining measures on the protection of personal data and privacy…". This wording clearly deviates from the standard EU text ("Each Party may adopt and maintain the safeguards it deems appropriate to ensure the protection of personal data and privacy…"). - Could the Commission elaborate against this background	Article DIGIT.7 is in line with the mandate received: to address data flows subject to exceptions for legitimate public policy objectives, while not affecting the Union's personal data protection rules (§47 of the negotiating directives). Compared to the initial EU proposal, the wording of this Article has been adjusted to address some specific concerns of the United Kingdom, which had proposed a very different provision. However, the agreement reached with the United Kingdom in this respect neither fundamentally changes the approach nor the balance aimed in the initial EU proposal on data flows and data protection. In particular, it fully preserves the EU red lines with respect to the fundamental rights nature of data protection. Article DIGIT.7 preserves the Parties' regulatory autonomy and policy space in the area of personal data protection. It is an effective exception that covers all possible measures provided that (i) they are genuinely adopted for the protection of personal data and (ii) provide for instruments enabling data transfers under

Reference article(s)	Question	Answer
	the reading of para. 2 of Art. DIGIT.7? Would it be correct to assume that this does not grant policy space to self-assess whether a certain measure restricting data flows is actually appropriate for the protection of personal data? It rather seems to exempt measures which objectively serve the purpose of data protection which might then be subject to review.	conditions of general application (i.e. they should not be arbitrary or target a specific third country, in particular). This approach is fully in line with the GDPR, which authorises data transfers under certain conditions of general application and which provides for a variety of transfers mechanisms (the existence of one single transfer mechanism would satisfy the conditions in Article DIGIT.7).
Articles DIGIT 6 and DIGIT 7 Data flows, personal data protection	[MS] noticed Articles DIGIT.6 and DIGIT.7 are stipulated differently than under other EU trade agreements, i.e. more ambitious. Can the COM explain the reasons for this change? Would these articles set a new standard for currently negotiated FTAs and the review of the EU-JAP FTA?	Article DIGIT.7 is in line with the mandate received: to address data flows subject to exceptions for legitimate public policy objectives, while not affecting the Union's personal data protection rules (§47 of the negotiating directives). Compared to the initial EU proposal, the wording of this Article has been adjusted to address some specific concerns of the United Kingdom, which had proposed a very different provision. However, the agreement reached with the United Kingdom in this respect neither fundamentally changes the approach nor the balance aimed in the initial EU proposal on data flows and data protection. In particular, it fully preserves the EU red lines with respect to the fundamental rights nature of data protection. Article DIGIT.7 preserves the Parties' regulatory autonomy and policy space in the area of personal data protection. It is an effective exception that covers all possible measures provided that (i) they are genuinely adopted for the protection of personal data and (ii) provide for instruments enabling data transfers under conditions of general application (i.e. they should not be arbitrary or target a specific third country, in particular). This approach is fully in line with the GDPR, which authorises data transfers under certain conditions of general application and which provides for a variety of transfers mechanisms (the existence of one single transfer mechanism would satisfy the conditions in Article DIGIT.7).

Reference article(s)	Question	Answer
Chapter 3 Specific provisions		
Article DIGIT.9 Cultural events online	Art. DIGIT.9. Do services provided online also include possible cultural events?	In accordance with Article DIGIT.5, the definitions of Title II (Services and Investment) also applies to the Title on Digital Trade. This includes the definition of "service" in Article SERVIN 1.2: "(o)"service" means any service in any sector except services supplied in the exercise of governmental authority". Additionally, following a clarification in §1 of ART.DIGIT.9, a cultural event to be considered as an online service would need to be provided by electronic means and without a service provider and a consumer being simultaneously present. Having said this, audiovisual services are excluded from the scope of both Titles II (see Article SERVIN 1.1(5)(b) and Title III (see Article DIGIT.2(2)).
Article DIGIT.11 e-authentication and trust services	Article DIGIT.11: except for this article (Electronic authentication and electronic trust services), which remains very general in nature, there is no mention of the eIDAS regulation. - Does this mean that this regulation is no longer applicable in the UK? - If this is the case, what will be the consequences for the (qualified) trusted service providers established in the UK that offered their services to enterprises and citizens of another member state of the EU? - What will be the consequences for the (qualified) trusted service providers established in a member state of the EU who offered their services to enterprises and citizens of the UK? - How does the Commission position itself regarding the information published on the website of the UK Commissioner's Office (https://ico.org.uk/for-organisations/data-protection-at-the-end-of-the-transition-period/information-rights-at-the-end-of-the-transition-	The Commission published in May 2020 a sectoral guidance notice on e-signature (electronic identification and trust services for electronic transactions) to the intention of stakeholders – that notice update another one of 2018. It was already clarified in that notice that, after the end of the transition period, the EU rules in the field of electronic identification and trust services for electronic transactions, in particular Regulation (EU) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market, no longer apply to the United Kingdom. https://ec.europa.eu/info/relations-united-kingdom/overview/consequences-public-administrations-businesses-and-citizens-eu_en#sectoral-guidance-notices The notice provides explanations as to the consequences in the EU. Concerning the regulatory regime in the United Kingdom, this is now a matter of UK domestic law.

Reference article(s)	Question	Answer
	period-frequently-asked-questions/?utm_source=twitter&utm_medium=iconews&utm_term=687f3f83-72f2-4217-8374-4230fc338f16&=utm_content%2cutm_campaign): "Does eIDAS still apply? The eIDAS regulation covers electronic ID and trust services. It is an EU regulation and will no longer apply in the UK after the end of the transition period. However, the government has incorporated the eIDAS rules as they apply to trust services, but not electronic identification, into UK law from that date. In practice, if you are a UK trust service provider, you should assume that you will still need to comply with eIDAS rules. For more information, see our Guide to eIDAS. If you offer trust services in the EU, you may also still need to comply with EU eIDAS law in other member states after the end of the transition period. The UK will no longer regulate that aspect of your services. But we intend to continue working closely with EU supervisory authorities."	
Article DIGIT.13(2) Consumer protection	Article DIGIT.13(2) refers to the importance of cooperation between consumer protection agencies – are formal modalities/agreements at EU level foreseen in this area? If so how would this formally be developed?	Article DIGIT.16 provides for cooperation between the Parties on regulatory matters in the context of digital trade, including in relation to the protection of consumers. Beyond such cooperation on regulatory matters between the Parties, the Agreement does not include any formal modality on the cooperation between consumer protection authorities of the UK and the EU (or its Member States). Any agreement on that matter would require a new Council mandate for negotiation.
Article DIGIT.15 open government data	Article DIGIT.15 Open government data - Does „governmental data" also include research data which are produced or collected by governmental bodies (so called Ressortforschungseinrichtungen)?	Article DIGIT.5(2)(i) defines "government data" as "data owned or held by any level of government and by non-governmental bodies in the exercise of powers conferred on them by any level of government."

Reference article(s)	Question	Answer
	- What means "regularly updated"? How quickly should the data be made accessible (what is about grace periods, what is about real time data)? - Do the requirements relate only to data that have already been made public? Does the restriction in paragraph 3 therefore refer to the entire article?	We note however that Article DIGIT.15 does not establish an obligation to make government data publicly available, but rather it aims at ensuring some minimum criteria if such data is made publicly available – and yet, the provision in respect of those criteria is not binding ("shall endeavour" "to the extent practicable"). Therefore, there is no real obligation to update data. We note that the EU has domestic legislation on this issue which is stricter: https://ec.europa.eu/digital-single-market/en/european-legislation-reuse-public-sector-information By complying with such EU law instrument, the EU is already well beyond the soft-law requirements of Article DIGIT.15.
Title IV – Capital movements, payments, transfers and temporary safeguard measures		
Title V – Intellectual Property		
Chapter 1: General Provisions		
Article IP.3, (f) Person of a party	Art IP.3, (f): the scope of this disposition must be verified for each Intellectual Property Right (IPR). In particular the scope of the term « a person of a Party ». Does this mean that this is a person having the nationality of one of the Parties? If this is not the case, quid regarding persons with the nationality of a third country who would fulfil the eligibility for protection criterion?	In addition to the general definition of a "natural person of a Party" in point (l) of Article OTH/1 of Heading SIX, which applies across the Agreement, the specific nature of certain intellectual property rights requires a specific definition of a "national" applicable in the intellectual property title. Article IP.3 (f) provides for a definition of a "national" through a reference to the TRIPS Agreement and to the relevant multilateral agreements, as applicable. In particular in the case of copyright and related rights, the eligibility for protection is often determined on a criteria that is different from a person's nationality. For example, under the WIPO Performances and Phonograms Treaty in combination with the Rome Convention, performers benefit for a national treatment if the performance takes place in another contracting state, irrespective of their nationality. The definition in Article IP.3 seeks to capture these specific situations.
Chapter 2: Standards concerning intellectual property rights		

Reference article(s)	Question	Answer
Article IP.7 and seq. Copyright	With regards to TITLE V: INTELLECTUAL PROPERTY, the content of the agreement is very similar to articles in different directives concerning copyright. Is the content in the agreement to be understood in the same manner as in the original directives and would it be possible to receive an overview of the articles and directives which the content in the agreement refers to.	In line with the Council mandate (§§50 and 51), the Intellectual Property title of the EU-UK Agreement provides for additional regulatory commitments on protection and enforcement of intellectual property rights beyond the TRIPS Agreement and the WIPO conventions standards. In relation to copyright, it aims at preserving the current high levels of protection, including for instance in relation to collective management of rights or on rights such as the resale right for artists' visual works (not covered by international conventions and of particularly importance for EU artists given London's place in the art market). Please note that Articles IP.7 to IP.17 of the EU-UK Agreement are very similar to the initial EU proposal of March 2020; changes following the negotiations are rather marginal. While some of the copyright provisions of the EU-UK Agreement are inspired by the language of existing EU rules, the EU-UK Agreement is an international agreement to be interpreted autonomously, it is not EU law. In this connection, we draw your attention to Article COMPROV.13 in Part One on Common and Institutional Provisions, dealing with the interpretation of the EU-UK Agreement. 

Reference article(s)	Question	Answer
		The EU law instruments that are most relevant to the content of the EU-UK Agreement are the following: - Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society: notably Articles 2 to 7. Relevant for Articles IP.7 to IP.10 and IP.15 to IP.17 of the EU-UK Agreement. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02001L0029-20190606 - Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property: notably Article 8. Relevant for Article IP.11 (Broadcasting and communication the public of phonograms published for commercial purposes) of the EU-UK Agreement. https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32006L0115 - Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights: notably Articles 1, 2, 3 and 8. Relevant for Article IP.12 (Term of Protection) of the EU-UK Agreement. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02006L0116-20111031 - Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art. Relevant for Article 13 (Resale right) of the EU-UK Agreement.

Reference article(s)	Question	Answer
		https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32001L0084 - Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market. Relevant for Article 14 (Collective manage of rights) of the EU-UK Agreement. https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=uriserv:OJ.L_.2014.084.01.0072.01.ENG
Article IP.11 Copyright	In light of the recent decision from the ECJ (C-265/19 - Recorded Artists Actors Performers) regarding the division of competences in relations with third States how should the relationship with the UK provided in the agreement be implemented into national law?	We presume that the question refers to Article IP.11 on Broadcasting and communication to the public of phonograms published for commercial purposes. Under Article IP.11, the EU and the UK commit to provide a right in order to ensure that a single equitable remuneration is paid to performers and producers of phonograms when a phonogram is used for broadcasting or any communication to the public. Article IP.11, in combination with Article IP.6 on national treatment, means that the EU and UK must accord national treatment, i.e. provide this right to the nationals of the other party as if they were its own nationals. This right is harmonized in the EU by Directive 2006/115/EC on rental right and lending right and on certain rights related to copyright in the field of intellectual property (the Rental and Lending Directive). The UK nationals will benefit from the national treatment in the EU in accordance with Directive 2006/115 (and vice versa – the EU national benefit from national treatment in the UK in accordance with its domestic system). No specific national implementation by Member States is required as the Rental and Lending Directive is already implemented in Member States. Member States are only precluded from limiting the rights or benefits under Article IP.11.

Reference article(s)	Question	Answer
Article IP.23(1) Trade marks and fair use	Article IP.23(1) sets out that each Party shall provide for limited exceptions to the rights conferred by a trademark, such as the fair use of descriptive terms including geographical indications. Article 14(1)(b) of Regulation (EU) 2017/1001 provides that an EU trademark shall not entitle the proprietor to prohibit a third party from using "signs or indications which are not distinctive or which concern the … geographical origin … of the goods or services". Article IP.23(2) is similar to Article 14 of Regulation 2017/1001. Given that this Regulation does not have a provision like Article IP.23(1), will Article IP.23(1) make it necessary to amend EU law?	Article IP.23(1) is a general rule on the exceptions to the rights conferred by a trademark in line with Article 17 of the TRIPS Agreement. This is standard text in EU free trade agreements. Article IP.23(2) provides for specific examples of such limited exceptions as allowed under Article IP.23(1). EU Regulation (EU) 2017/1001 and Directive (EU) 2015/2436 are in full compliance with the TRIPS Agreement as well as with Article IP.23. There is no need to amend the relevant EU law. For more details, see recital 21 of Regulation (EU) 2017/1001 (and similar recital 27 of Directive (EU) 2015/2436): "(21) *The exclusive rights conferred by an EU trade mark should not entitle the proprietor to prohibit the use of signs or indications by third parties which are used fairly and thus in accordance with honest practices in industrial and commercial matters. In order to ensure equal conditions for trade names and EU trade marks in the event of conflicts, given that trade names are regularly granted unrestricted protection against later trade marks, such use should be only considered to include the use of the personal name of the third party. It should further permit the use of descriptive or non-distinctive signs or indications in general. Furthermore, the proprietor should not be entitled to prevent the fair and honest use of the EU trade mark for the purpose of identifying or referring to the goods or services as those of the proprietor. Use of a trade mark by third parties to draw the consumer's attention to the resale of genuine goods that were originally sold by or with the consent of the proprietor of the EU trade mark in the Union should be considered as being fair as long as it is at the same time in accordance with honest practices in industrial and commercial matters. Use of a trade mark by third parties for the purpose of artistic expression should be considered as being fair as long as it is at the same time in accordance with honest practices in industrial*

Reference article(s)	Question	Answer
		and commercial matters. Furthermore, this Regulation should be applied in a way that ensures full respect for fundamental rights and freedoms, and in particular the freedom of expression." We think that Article 14 of Regulation (EU) 2017/1001 and Article 14 of Directive (EU) 2015/2436 should be interpreted in the manner described in those recitals.
Chapter 4: Other provisions (including Geographical indications)		
Article IP.57 Geographical indications	Is the Trade Specialised Committee on Intellectual Property the relevant Committee to discuss GIs? Does the Commission have any sense of the arrangements that will be put in place to facilitate discussions on existing GIs if issues were to arise, or discussions on the review arrangements regarding future GIs?	The Trade Specialised Committee on Intellectual Property would be the relevant Committee to discuss issues in relation to protection of geographical indications. Issues in relation to the protection of existing geographical indications must be addressed under the institutional framework of the Withdrawal Agreement, notably the Specialised Committee on Other Separation Issues. Any future discussion on the review regarding the protection of future geographical indications will also depend on the United Kingdom's appetite for it.
Article IP.57 Geographical indications	Article IP.57 reaffirms the framework provided for in the Withdrawal Agreement with regard to geographical indications. This means that future GI are not covered by the new agreement. With that in mind, what will be the interplay between trademarks and future GI? Will a future EU GI not prevent a similar trademark registration in the UK?	In the absence of any future agreement with the United Kingdom on geographical indications, any geographical indications registered in the European Union as from 1 January 2021 will only be protected in the European Union (and in Northern Ireland – pursuant to the Protocol on Ireland/Northern Ireland of the Withdrawal Agreement [*]), but not in the United Kingdom. [*] Please see the readiness notice on geographical indications. https://ec.europa.eu/info/relations-united-kingdom/overview/consequences-public-administrations-businesses-and-citizens-eu_en#sectoral-guidance-notices For obtaining protection in the United Kingdom as geographical indication, the producers concerned will need to apply for registration of the relevant geographical indication before the United Kingdom authorities under the United Kingdom domestic

Reference article(s)	Question	Answer
		rules: https://www.gov.uk/guidance/protected-geographical-food-and-drink-names-uk-gi-schemes In addition, producers concerned may also apply for trade mark protection in the United Kingdom. Preventing the registration of trade marks in the United Kingdom by third parties, where such trade marks would conflict with the geographical indication, will only be possible under UK domestic rules.
Article IP.57 Geographical indications	Article IP.57 – Revision on GI's – we would appreciate any clarifications by the COM regarding the legal protection in the United Kingdom for EU GI products that will be recognized through the quality schemes starting January 1st 2021.	In the absence of any future agreement with the United Kingdom on geographical indications, any geographical indications registered in the European Union as from 1 January 2021 will only be protected in the European Union (and in Northern Ireland – pursuant to the Protocol on Ireland/Northern Ireland of the Withdrawal Agreement [*]). For obtaining protection in the United Kingdom as geographical indication, the producers concerned will need to apply for registration of the relevant geographical indication before the United Kingdom authorities under the United Kingdom domestic rules: https://www.gov.uk/guidance/protected-geographical-food-and-drink-names-uk-gi-schemes [*] Please see the readiness notice on geographical indications. https://ec.europa.eu/info/relations-united-kingdom/overview/consequences-public-administrations-businesses-and-citizens-eu_en#sectoral-guidance-notices We recall that the geographical indications registered in the European Union before 1 January 2021 remain protected by the Withdrawal Agreement – this acquis is preserved.
Articles IP.23, IP.53, IP.57	In the context of Withdrawal Agreement EU agri-food and wine products GIs protected till the end of the transition period will	In the absence of any future agreement with the United Kingdom on geographical indications, any geographical indications

Reference article(s)	Question	Answer
Article SME.2	retain their protection without any re-examination also from 1.1.2021 and further. We understand the relevant Articles on GIs in new agreement (IP.23, IP.53, IP.57, SME.2) that EU and UK agreed that both parties will lay down own rules for the recognition and protection of designations at national level. The articles allow the UK and the EU to agree and lay down their own rules for the recognition and protection of designations and to set out a future geographical indications policy to ensure the effective implementation of geographical indications policy at national level. New agreement also determines a review clause. From this point of view, we expect that the EU will establish common rules with the UK that will recognize all EU products with a recognized geographical indication and establish a recognition system that will be equivalent to the UK as all EU members. QUESTION In this context we would like to ask Commission to provide more practical information how the process of new GIs products recognition will be conducted?	registered in the European Union as from 1 January 2021 will only be protected in the European Union (and in Northern Ireland – pursuant to the Protocol on Ireland/Northern Ireland of the Withdrawal Agreement [*]), but not in the United Kingdom. [*] Please see the readiness notice on geographical indications. https://ec.europa.eu/info/relations-united-kingdom/overview/consequences-public-administrations-businesses-and-citizens-eu_en#sectoral-guidance-notices For obtaining protection in the United Kingdom as geographical indication, the EU producers concerned will need to apply for registration of the relevant geographical indication before the United Kingdom authorities under the United Kingdom domestic rules: https://www.gov.uk/guidance/protected-geographical-food-and-drink-names-uk-gi-schemes In addition, producers concerned may also apply for trade mark protection in the United Kingdom.
Article IP.57 Geographical indications	Art. IP.57 - The Agreement does not contain a geographical indications chapter, but a rather broad review clause without any timeline. Are there any concrete plans regarding negotiations on bilateral rules on geographic indications? Is there an envisaged timeframe for such negotiations?	At this stage, there is no envisaged timeframe for any possible negotiation with the United Kingdom on the reciprocal protection of geographical indications, which will depend on both sides appetite for it. In the absence of any future agreement with the United Kingdom on geographical indications, any geographical indications registered in the European Union as from 1 January 2021 will only be protected in the European Union (and in Northern Ireland – pursuant to the Protocol on Ireland/Northern Ireland of the Withdrawal Agreement [*]). For obtaining protection in the United Kingdom as geographical indication, the producers concerned will

Reference article(s)	Question	Answer
		need to apply for registration of the relevant geographical indication before the United Kingdom authorities under the United Kingdom domestic rules: https://www.gov.uk/guidance/protected-geographical-food-and-drink-names-uk-gi-schemes [*] Please see the readiness notice on geographical indications. https://ec.europa.eu/info/relations-united-kingdom/overview/consequences-public-administrations-businesses-and-citizens-eu_en#sectoral-guidance-notices We recall that the geographical indications registered in the European Union before 1 January 2021 remain protected by the Withdrawal Agreement – this acquis is preserved.
Title VI – Public procurement		
Article PPROC.2 UK's GPA offer	Public Procurement, Art. PProc 2 - How does the Commission evaluate the level of commitment of the UK's coverage schedule under the Government Procurement Agreement (GPA) which is incorporated in the EU-UK Trade and Cooperation Agreement? Is the level of ambition comparable to the EU's coverage schedule?	The United Kingdom's GPA schedule is comparable to that of the EU. We refer to the several documents transmitted to the Member States via the Council's Trade Policy Committee in relation to the accession of the United Kingdom to the GPA.
Article PPROC.4 Website	Article PPROC.4: both parties shall establish / maintain a single point of access on the internet, making accessible, free of charge, information with regard to covered procurement (notices, summary notices, contract award notices, etc.). Are both single points ready to start working on 01/01/2021? If not ready yet, what is the expected deadline? Are they EN only? Where can we find the respective links/URL's? The EU is going to make use of the existing TED or to create a new point of access?	For the EU, TED is the single point of access on the internet. For the UK, it is the "contracts-finder" website: https://www.gov.uk/contracts-finder It includes links to the websites for Scotland, Wales and Northern Ireland.
Article PPROC.9 abnormally low	Public Procurement, Art. PProc 9 - What is the interplay of Art. PProc. 9 and the envisaged instrument on foreign subsidies? Should the article be read	The resulting Article PPROC.9 is less ambitious than the original EU proposal of March 2020 as the United Kingdom refused to accept stricter rules in view of the expected review of its legislation.

Reference article(s)	Question	Answer
tenders	as allowing for an exclusion of bidders that have received subsidies?	https://www.gov.uk/government/news/new-plans-set-out-to-transform-procurement-providing-more-value-for-money-and-benefitting-small-business We consider that Article PPROC.9 would not be, as such, a sufficient legal basis for exclusion of a bidder receiving foreign subsidy. However, this Article does not prevent the application of the EU rules on abnormally low tenders that allow for exclusion of bidders that have received State aid in certain circumstances.
Article PPROC.13 national treatment for locally established suppliers	Public Procurement, Art. PProc 13 - We understand Art. PProc 13 as extending the principle of national treatment, for non-covered procurement, to European companies established in the UK and vice-versa. European companies without commercial presence with substantial business operations in the UK do not fall within the scope of the provision. Can you confirm this understanding? How do you expect the situation to evolve in terms of access to non-covered procurement for European companies without commercial presence in the UK (e.g. for procurement below the thresholds)?	Article PPROC.13 indeed only applies in respect of locally established suppliers. This is an important achievement. In reality, the EU grants national treatment to companies formed in accordance with the law of a Member State irrespective of capital (cf. the Treaty on the Functioning of the European Union) – therefore, we have an interest in securing equivalent guarantees in third countries. We already obtained a provision similar to Article PPROC.13 in the Agreement with Mexico. Article PPROC.13 is even more important since in reality most of the actual access to another country's procurement markets, even within the EU, is "indirect" procurement (through establishment) rather than direct (cross-border). For below the thresholds procurement, the UK is likely to set up some sort of domestic preference (e.g. for UK's SMEs) and a lighter public procurement regime for contracting entities. This is why the national treatment for locally established suppliers is important, as it will be the location of the supplier rather than the origin of its capital that will count. See a recent UK's Procurement Policy Note and associated guidance: https://www.gov.uk/government/publications/procurement-policy-note-1120-reserving-below-threshold-procurements
Article PPROC.13	What does „any procurement" in Article PPROC.13 mean? Does it	Article PPROC.13 of the Trade and Cooperation Agreement covers

Reference article(s)	Question	Answer
national treatment for locally established suppliers	cover any procurement at all, including services which have been excluded according to the Annex or even GPA? Or does it only cover the procurement as covered by this Agreement, or also the procurement covered by GPA?	''any procurement". This includes procurement not covered by the GPA and procurement not covered by Annex PPROC-1 of the Trade and Cooperation Agreement. The exceptions are: - (see footnote 41) the procurement of the three services listed in Note 3 to the EU schedule in Subsection B.1 of Annex PPROC-1 and in Note 3 to the United Kingdom schedule Subsection B.1 of Annex PPROC-1; and - (see paragraph 2 of Article PPROC.13) any procurement covered by the security and general exceptions. We note that the national treatment granted is for the suppliers that are established in the other Party's territory through a legal person of the other Party (e.g. a "Limited company" in the United Kingdom owned by an Austrian investor). The national treatment obligation does not oblige the Parties to subject the below the thresholds procedures to specific public procurement rules, as long as the treatment accorded remains non-discriminatory.
Annex PPROC-1, Section B quantification of offers	Public procurement, Annex Proc-1, Section B - Can you quantify the additional market coverage in the UK resulting from the procuring entities and services added to the GPA schedule? Is there a specific reason why the thresholds for additionally covered services are specified in GBP instead of SDR?	The EU's public procurement market is relatively open by default; as a result, it is in the EU's interest to bind market access to third country markets. The quantification of the additional market coverage has little meaning from that perspective. In the Trade and Cooperation Agreement with the United Kingdom, the additional entities covered are subject to the EU public procurement rules; and the additional services have been already open to competition from third countries (e.g. Japan). The thresholds for some additional services were specified in Euros in the EU offer (see sub-section B1), because corresponding to the EU rules. The UK therefore used GBP as currency.
Annex PPROC-1: PUBLIC PROCUREMENT Sub-section B2	The provision of certain health services (CPC 931, 91122, 87206, 87209) is not covered in ANNEX PPROC-1: PUBLIC PROCUREMENT Sub-section B2. However, we understand that UK based providers may still be included in public tenders for the provision of health	The procurement of the health services referred to in the question by contracting authorities/entities in the United Kingdom is subject to the general rules applying to procurement not covered by international commitments.

Reference article(s)	Question	Answer
	services. Can the Commission confirm this understanding is correct?	Accordingly, should the UK decide, for public procurement concerning those service, to treat differently UK based companies depending on their ownership, such differential treatment would not be in breach of UK's commitments under the PP title of the agreement. The procurement of the health services referred to in the question by contracting authorities/entities in the European Union is subject to the general rules applying to procurement not covered by EU's international commitments. We note that there is nothing in the Trade and Cooperation Agreement that would prevent UK-based providers from being included in an [MS] public tender for the provision of health services. We refer in that connection to the Commission's '*Guidance on the participation of third-country bidders and goods in the EU procurement market*' (https://ec.europa.eu/docsroom/documents/36601).
Annex PPROC-1, Section B areas excluded from the agreement	In which areas – apart from those explicitly named in the Notes to the Public Procurement Annex – do both the Agreement and GPA not apply?	Note 3 in the Annex was proposed by the United Kingdom which did not want the Trade and Cooperation Agreement to be seen as having any impact on the National Health Service. Because the schedules of the EU and the United Kingdom are identical, we included the same note in our schedule. We however note that neither the EU commitments under the GPA nor those under sub-section B1 of Annex PPROC-1 include the services mentioned in Note 3. Therefore, note 3 does not really have any impact. As far as coverage of services is concerned, both the GPA commitments and the public procurement commitments under the Trade and Cooperation Agreement are listed in positive lists. Therefore, procurement not covered under those lists is not subject to the GPA and the public procurement provisions of the Trade and Cooperation Agreement. Other areas of cross-border procurement not covered by both the Trade and Cooperation Agreement and the GPA include, inter alia,

Reference article(s)	Question	Answer
		the following: procurement below the thresholds, service concessions, procurement in certain utilities sectors (postal services, extraction of oil and gas and exploration for, or extraction of, coal or other solid fuels), defence procurement and procurement by most EU institutions and bodies (except the European Commission, the Council and the European External Action Service).
Articles PPROC.1 and seq. Implications of incorporating the GPA	What are the legal consequences of incorporating multiple articles of the GPA into the Agreement in case of a breach of one of these articles? For example, in case of infringement, is one of the Agreements to be treated preferentially or are they equal to each other?	Incorporation of certain provisions of the GPA into the Trade and Cooperation Agreement means they become an integral part of the latter. It is possible that a Party could be in breach of both the GPA and the public procurement commitments under the Trade and Cooperation Agreement at the same time. In that event, it could be possible for the aggrieved Party to take action in view of obtaining redress under any of the two agreements. Both agreements are international treaties and, from a legal point of view, none of them takes precedence over the other. It is too early to say what would be the EU's position in such an event and whether the EU should treat one of the two agreements in a preferential manner for the purposes of seeking redress.
Articles PPROC.1 and seq. information for contracting authorities and relationship with Withdrawal Agreement	When will more detailed online information for contracting authorities and economic operators regarding public procurement be made available by the Commission? In particular, information regarding the relationship between the Brexit withdrawal agreement, the GPA and the EU-UK agreement and the implications for ongoing and new procedures would be helpful.	At this stage, the Commission has not decided to prepare a guidance note on this issue. We note, however, that in the Title on SMEs of the Agreement the Parties committed to have a website with information, including on procurement. Article SME.2(3) says the following: "3. Each Party shall include an internet link in the website provided for in paragraph 1 to websites of its own authorities with information related to the following: […] (e) laws and regulations on public procurement, single point of access on the internet to public procurement notices as provided

Reference article(s)	Question	Answer
		for in Title VI [Public procurement] of this Heading and other relevant provisions contained in that Title; […]" At this stage, for access to information regarding public procurement notices in the United Kingdom, see https://www.gov.uk/contracts-finder The general Commission's website on market opportunities created by international agreements (in the process of being updated) is: https://trade.ec.europa.eu/access-to-markets/en/content/ We also note that for any procurement that will fall outside the scope of the GPA and of the Trade and Cooperation Agreement, the Commission already published a guidance note in 2019: Guidance on the participation of third country bidders and goods to the EU procurement market": https://ec.europa.eu/docsroom/documents/36601 or here: https://op.europa.eu/en/publication-detail/-/publication/c3f90a8b-4bc5-11ea-8aa5-01aa75ed71a1/language-en Concerning the interaction between a) the rules on public procurement of the Withdrawal Agreement and b) the rules of the GPA and the EU-UK Trade and Cooperation Agreement: we note that Articles 75 and seq. (on public procurement) of the Withdrawal Agreement apply to public procurement procedures launched before 31 December 2020, until their completion. Article FINPROV.2 of the Trade and Cooperation Agreement states the following with respect to the relation with the Withdrawal Agreement: "This Agreement and any supplementing agreement apply without prejudice to any earlier bilateral agreement between the United Kingdom of the one part and the Union and the European Atomic Energy Community of the other part. The

Reference article(s)	Question	Answer
		Parties reaffirm their obligations to implement any such Agreement." The Trade and Cooperation Agreement (and the GPA) will therefore apply to public procumbent procedure launched on or after 1 January 2021.
Articles PPROC.1 and seq. guidance note on public procurement	Does the Commission envisage issuing a guidance note explaining new arrangements/changes in the area of public procurement?	At this stage, the Commission has not decided to prepare a guidance note on this issue. We note, however, that in the Title on SMEs of the Agreement the Parties committed to have a website with information, including on procurement. Article SME.2(3) says the following: "3. Each Party shall include an internet link in the website provided for in paragraph 1 to websites of its own authorities with information related to the following: […] (e) laws and regulations on public procurement, single point of access on the internet to public procurement notices as provided for in Title VI [Public procurement] of this Heading and other relevant provisions contained in that Title; […]" At this stage, for access to information regarding public procurement notices in the United Kingdom, see https://www.gov.uk/contracts-finder The general Commission's website on market opportunities created by international agreements (in the process of being updated) is: https://trade.ec.europa.eu/access-to-markets/en/content/ We also note that for any procurement that will fall outside the

Reference article(s)	Question	Answer
		scope of the GPA and of the Trade and Cooperation Agreement, the Commission already published a guidance note in 2019: Guidance on the participation of third country bidders and goods to the EU procurement market": https://ec.europa.eu/docsroom/documents/36601 or here: https://op.europa.eu/en/publication-detail/-/publication/c3f90a8b-4bc5-11ea-8aa5-01aa75ed71a1/language-en
Title VII – SMEs		
Article SME.1 and seq. information on services	General: Over the last couple of days we have received a lot of questions from SMEs concerning the implementation of the services chapter. For SMEs it is highly complex to read any trade treaty as they need to understand whether the service they are providing is covered in the agreement, look up whether any additional requirements are included in the agreement and/or any national requirements are imposed in one of the two Parties. In that regard, it would be highly welcomed if the Commission would be able to provide an SME-friendly overview of the coverage/requirements for each category of services either on the Access2Markets website or on a dedicated SME website.	The Access2Markets website already provides for some information in the area of services, including on the export of services; we are examining how best to enhance that information.
Article SME.2 website	Article SME.2: Both Parties commit to establishing an accessible website for SMEs. Could the Commission clarify how this website will be set-up on the EU-side? What will be the link with the Access2Markets database? Is there already more information on how the UK intends to inform SMEs?	The Access2Markets website will be the accessible website for SMEs for the purposes of the agreement: https://trade.ec.europa.eu/access-to-markets/en/content
Article SME.3, 2(a) and (b) contact point	Each party will designate a specific contact point. Could the Commission provide more information on who will fulfil this role on the EU-side? How will this contact point fulfil the obligations under article SME.3, 2(a) and (b)?	Following the arrangements already in place with other SME Chapters in Trade Agreements, the role of EU "SME Contact Point" will be fulfilled by two Commission officials designated by DG GROW and DG TRADE respectively. Concretely, delivering on the obligations under article SME.3, 2(a) and (b) will notably imply interaction between the EU SME Contact

Reference article(s)	Question	Answer
		Point and EU SME stakeholders (EU Member States, business organisations, SME stakeholders). Based on practice from other existing bilateral cooperations on SMEs, this can also lead to specific work programmes (that may include trainings and webinars, exchanges of best practices…) subject to subsequent discussions with our UK counterparts and inputs from EU stakeholders.
Article SME.2 website	Article SME.2: each Party shall establish / maintain its own publicly accessible website with information regarding the trade part of this agreement, including link to a database that is electronically searchable by tariff nomenclature code and that includes information with respect to access to its market (tariffs, quotas, excise duties, VAT, rules of origin, customs procedures, etc). Will both websites be ready to start working on 01/01/2021? If not ready yet, what is the expected deadline? Are they EN only? Where can we find the respective links/URL's? Will the EU establish a new portal or will it use the new portal ACCESS2MARKETS?	The Access2Markets website will be the EU's website for SMEs for the purposes of the agreement: https://trade.ec.europa.eu/access-to-markets/en/content We have not yet received information from the United Kingdom on its website.

MS QUESTIONS AND UKTF DRAFT ANSWERS ON ENERGY TITLE OF EU-UK TRADE AND COOPERATION AGREEMENT

ENERGY		
Topic & Article	**Questions**	**Answers**
Article 2 para. 1 (e) ENER Definition of "distribution system operator"	Please explain the background of the changes in the wording of the definition of "distribution system operator" compared to the definition in the Gas Directive. Explanation: In the definition of "distribution system operator" under Art. 2 (1) (e) ENER, one provision was not adopted in comparison to the Gas Directive ("...***who carries out the function of distribution***..."). We understand that, accordingly, distribution does not have to be the (sole/main) purpose of the company and is only linked to the responsibility for/ execution of the network operation, i.e. companies from other sectors can also be a DSO, and would like to know the background.	The agreement does not use exactly the same definitions as EU legislation. The definitions of 'transmission system operator' and 'distribution system operator' in the agreement mean that whoever carries out that function is separate from the function of supply. It provides for this clarification.
Article 2 para. 1 (p) (ii) Definition of "transmission"	At the end of the definition for gas TSO the definition stipulates: 'but not including supply'. This is not clear to us. TSOs and their high-pressure pipelines may have exit points to end customers like power plants. TSOs have to follow the rules on unbundling but they do have exit points for delivery to consumers. Does the abovementioned last part of the definition need a different wording or is the meaning of the aforementioned sentence a different one?	The agreement does not use exactly the same definitions as EU legislation. The definitions of 'transmission system operator' and 'distribution system operator' in the agreement mean that whoever carries out that function is separate from the function of supply. It provides for this clarification.
Article 2 para. 1 (q) ENER Definition of "transmission system	Please explain the background of the differences or additions in the wording of the definition of "transmission system operator"	The agreement does not use exactly the same definitions as EU legislation. The definitions of 'transmission system operator' and 'distribution system

operator"	compared to the definition in the Gas Directive. Explanation: With regard to the definition of "transmission system operator" under Art. 2 (1) (q) ENER, we have noticed the following changes or additions compared to the Gas Directive: "*means a natural or legal person who carries out the function of transmission **OR** [instead of "and"] is responsible for operating, ensuring the maintenance of, and, if necessary, developing the electricity or gas transmission system in a given area and, where applicable, its interconnections with other systems, and for ensuring the long-term ability of the system to meet reasonable demands for the transport of gas or electricity, **as the case may be***". We assume that this is intended to achieve greater flexibility or softening on the part of the UK and would like to know the background.	operator' in the agreement mean that whoever carries out that function is separate from the function of supply. It provides for this clarification. The agreement also reflects the UK system for Scotland.
ENER.3	What are practical implications of the priority given, in some cases, to the provisions of the Services / Investment Title, instead of those of the Energy Title (see also Article ENER.3: Relationship with other Titles)	The provisions in article ENER.3 have been devised to ensure that provisions in the Agreement related to services and investments also apply to the energy sector and Title. Accordingly, services and investments-related issues relevant to the Energy Title should be regulated by the relevant provisions in the Service and Investments Title of the Agreement.
ENER 6.3	The Trade and Cooperation Agreement ensures continued market access to the British energy market which is positive. However, it does not seem to completely mirror the existing EU framework when it comes to participation in capacity markets for foreign market players. Which effect will this have for the market players who wishes to participate in the British capacity market?	Article ENER 6.3 of the Trade and Cooperation Agreement ensures that capacity mechanisms are clearly defined, transparent and non-discriminatory. It was agreed that the each party will not be obliged to open its capacity mechanism to capacity located in the other party's territory. Hence, the Agreement does not require the UK to open its capacity market to foreign market players.

Article ENER.13: Efficient use of electricity interconnectors	According to Article ENER.13 the availability of capacity of electricity interconnectors is to be maximised, while respecting the most efficient use of systems. We understand this provision to mirror Article 16 para 8 of the electricity market Regulation (EU) 2019/943. According to that Article 16, there should be no limit on the availability of the volume of interconnection capacity in the internal EU electricity market, which is deemed to be the case when at least 70% of the interconnection capacity is available. However, there is no reference to this 70%-threshold in either Article ENER.13 or any other Article and Annex ENER-4 of the draft EU-UK Trade and Cooperation Agreement. In this context, we would be grateful for further clarification: • How does the COM understand the "maximisation" of available capacity? How does this relate to the 70%-threshold in Article 16 para 8 of Regulation (EU) 2019/943 and will the 70% principle also be applicable to the use of electricity interconnectors under the draft EU-UK Trade and Cooperation Agreement? • If so: What is the reasoning behind this interpretation? • If not: How can an equal treatment of electricity exchange in the internal electricity market on the one side (where 70% principle applies) and between UK and EU on the other side be guaranteed?	The arrangements for electricity trade over interconnectors referred to in article ENER.13, and further detailed in Annex ENER-2, are to be developed by Transmission System Operators (TSOs) in a way that maximize the benefits of trade in electricity, within certain limitations. The objective is not make these arrangements as efficient as possible (which is instead the objective of the internal electricity market), but to set in place separate arrangements with clear limitations (in particular in terms of limited market data accessible to the UK via the new algorithm to be developed by the TSOs) and, within these limits, to seek the maximum level of efficiency (cf. also the joint EU-UK declaration on Annex ENER-4). As a result, the benefits of trade in electricity between the EU and the UK, while being considerable, are not comparable to those within the EU, where the objective remains to achieve the highest level of efficiency in the electricity trade, with no limitations applied.
ENER.13	May the principle of maximisation of electricity trade in Art. ENER 13 para 1 lit b) lead to privileging electricity trade with the UK compared to the inter EU electricity trade? Or will the principle of "non discrimination" and the principle of "most efficient use of	The arrangements for electricity trade over interconnectors referred to in article ENER.13, and further detailed in Annex ENER-2, are to be developed by Transmission System Operators (TSOs) in a way that maximize the benefits of trade in electricity, within certain limitations.

	systems" avoid such privileging of the electricity trade with the UK? How does the Commission assess the missing reference to the minimum trade capacity of 70% that applies for inter EU trade? May this lead to a lower share of the use of the Interconnector capacity with UK in case of internal EU congestions or will the maximisation principle lead to higher trade capacities despite internal EU congestions?"	The objective is not make these arrangements as efficient as possible (which is instead the objective of the internal electricity market), but to set in place separate arrangements with clear limitations (in particular in terms of limited market data accessible to the UK via the new algorithm to be developed by the TSOs) and, within these limits, to seek the maximum level of efficiency (cf. also the joint EU-UK declaration on Annex ENER-4). As a result, the benefits of trade in electricity between the EU and the UK, while being considerable, are not comparable to those within the EU, where the objective remains to achieve the highest level of efficiency in the electricity trade, with no limitations applied.
ENER.13 ENER.14 ENER.19	Article ENER.13: Efficient use of electricity interconnectors: how will each party ensure 13 1 (f) is carried out –what processes/bodies will be involved? 13.3 and 13.5 – what are the expected timelines, practical steps and involvement of different bodies expected in this? How will Member States be involved?	The modalities for the development of specific arrangements for the day-ahead timeframe referred to in article ENER-13 (1) point f and article ENER-14, are detailed in Annex ENER-4. The process for developing new arrangements is detailed in Article ENER-19 and will involve amongst others transmission system operators and regulatory authorities. The TCA requires that the Union and the UK take the necessary steps to ensure the conclusion as soon as possible of a multi-party agreement relating to the compensation for the costs of hosting cross-border flows of electricity. Transmission system operators will be involved in this process.
ENER.13 ENER.14 ENER.19	Article ENER.14: Can the Commission give more information on the process for developing the new day ahead model, including detailed timelines for the different elements that will be required and the detailed role of the Specialised Committee on Energy in this process. Does 14.2 provide for SCE ability effectively to override the proposal developed in the process in	The process and timeline for developing the new day head target model is detailed in Articles ENER-13, 14, 19 and Annex ENER-4. Prior to developing the Target model, Transmission System Operations (TOs) have to carry out a cost benefit analysis and an outline of the proposals (3 months after entry into force). TSOs then have to submit the draft technical procedures to the

	this Article and Annex 4 (i.e. technical procedures)? Is there provision for stakeholder engagement as part of the development process?	regulatory authorities for their opinion (10 months after entry into force). As part of this work, we assume that TSOs carry out appropriate consultation with market parties on the draft technical procedures. Finally, the Specialised Committee on Energy may recommend that the technical procedures be implemented in the domestic arrangements of the Union and the UK 15 months after entry into force. According to Article ENER.14 (2), in case the Specialised Committee on Energy decides not to recommend the implementation of the technical procedures developed by the TSOs , as per article ENER.19 and Annex ENER-4. the Specialised Committee on Energy shall take decisions and make recommendations to TSOs to develop alternative procedures apt to achieve the goals set in Annex ENER-4.
ENER.13 ENER.14 ENER.19	More generally, if any tasks flow from Special Committee carrying out its work under Articles 13, 14, 19 and Annex 4, which entity will carry that work out? Is more information available on the interactions between the various parts of Article ENER.13, 14 and 19. Is there a flow chart or document setting out the interactions and dependencies?	The strands of works foreseen in Articles ENER.13, 14, 19 and Annex ENER-4 provide for a number of tasks to be implemented either by the Specialised committee on Energy, the TSOs or the regulators. Once the Specialised Committee on Energy is set up it will be clearer how the work will be carried out in practice (i.e. possibly under certain dedicated working groups). At present no flow chart has been developed.
ENER.15 ENER.19	In relation to the efficient use of gas interconnectors (ENER.15) and cooperation between gas transmission system operators (ENER.19), is it planned that there would be a co-ordinated approach for the three Member States who have natural gas interconnectors to the UK (BE, IE, NL) – e.g. in the case of the coordination of procedures as set out in paragraph 2(b) of ENER.15?	Articles ENER.15 and ENER.19 of the TCA establish a framework for the development of arrangements and technical procedures for the efficient use of gas interconnectors. However, those arrangements may not involve or imply participation by United Kingdom transmission system operators in Union procedures relating to the use of interconnections. Currently, commercial arrangements developed by transmission system operators to comply with their

		obligations Commission Regulation (EU) 2017/459 of 16 March 2017 establishing a network code on capacity allocation mechanisms in gas transmission systems are not Union Procedures in the sense of the TCA. This is without prejudice to the status of any future procedures or arrangements which may be developed.
ENER.17(7)	To what degree will the cooperation framework focus on specific regional issues between the UK and individual Member States?	Some of the cooperation frameworks could focus where relevant on specific regional issues. For example, under Article ENER. 17(7), appropriate frameworks shall be developed for cooperation on security of supply. Depending on the issues at stake, a regional approach to such cooperation should be possible, either on an ad hoc or in a more structured basis (e.g. discussions relevant for the EU countries that are members of the "UK risk group" under the security of gas supply regulation).
ENER.17 ENER.18	Can further information be provided at this stage on how the frameworks for cooperation with respect to the security of supply of electricity and natural gas will be developed?	The framework for cooperation on security of supply, referred to in article ENER.17, is further detailed in article ENER.18 (Risk preparedness and emergency plans). The Commission will ensure appropriate follow-up in the coming weeks, providing in particular to the UK its plans to address identified risks affecting the security of supply of electricity or natural gas, and will request that the UK shares with the Union its own plans as soon as possible.
ENER.18 ENER.19 ENER.20	Articles ENER 18, ENER19 and ENER20 provide for cooperation by the Parties, TSOs, and Regulators. In article 18.2 this includes "the measures needed to prepare for, and mitigate the impact of, an electricity or natural gas crisis". Can the commission give its view on the degree to which these measures are voluntary by both parties?	The provisions in the Energy title related to the security of supply (cf. art. ENER-17 and ENER-18) are not of a voluntary nature. In particular, the measures referred to in article ENER-18 (2) shall be part of plans that the Parties have a clear obligation to develop and update. It is for each party to decide, based on the risk identified, which measures are appropriate to minimise risks and to remove or mitigate the effects of a crisis. Those measures however need to comply with the requirements in article ENER-

		18(3).
ENER.18 ENER.19 ENER.20	Articles ENER 18, ENER19 and ENER20 provide for cooperation by the Parties, TSOs, and Regulators. In article 18.2 this includes "the measures needed to prepare for, and mitigate the impact of, an electricity or natural gas crisis". Can the commission give its view on the degree to which these measures are voluntary by both parties?	The provisions in the Energy title related to the security of supply (cf. art. ENER-17 and ENER-18) are not of a voluntary nature. In particular, the measures referred to in article ENER-18 (2) shall be part of plans that the Parties have a clear obligation to develop and update.
ENER.19	Could the COM go into more detail what is envisaged under this provision? The Specialised Committee on Energy should agree on guidance on the working arrangements and frameworks for cooperation for dissemination to transmission system operators as soon as practicable.	The Specialised Committee on Energy will request transmission system operators to develop a memorandum of Understanding to set out efficient and inclusive working arrangements between Entsoe and UK TSOs for electricity on the one hand and Entsog and UK transmission system operators for gas on the other hand. The cooperation should cover all areas necessary for the effective implementation of the agreement.
ENER.20	The Trade and Cooperation Agreement paves the way for cooperation between the TSO's on e.g. offshore wind. This cooperation will according to the agreement be supervised by a new Specialised Committee on Energy. The Commission seems, however, not to take part in this Committee and the supervision of the cooperation since this will be handled by ACER and the British Counterpart in this area. Can the Commission elaborate on this and explain in more detail, how the Committee is intended to function. Who will be the representative in the Committee and how will they be chosen?	The Specialised Committee on Energy is in charge of securing the implementation of the provisions of the Energy chapter of the Trade and Cooperation Agreement, as well as allowing high level/political discussions and information exchange between the Parties. The Commission will co-chair this Committee for the EU side. The Specialised Committee will also supervise the implementation of article ENER-20, related to cooperation between regulatory authorities.
ENER.21	Why is there only a static reference to the RED and EED, when the COM will soon propose amendments to these two directives? Was a dynamic reference discussed? How will the future sources be referenced/	The reference to REDII and the NECPs was included in the negotiating mandate of the Commission. The UK was not interested in more stringent criteria (or following the adjustments necessary to reach the -55% GHG target).

	updated? What function does para. 4 have in this regard (updates)? [Comment: the same question goes for the 40% climate target, which is de facto outdated]	Para 4 requires only that the Parties keep each other informed, it does not imply compliance with future requirements/targets.
ENER.22	Does para. 2 ("Biofuels, bioliquids and biomass [comment: Article 29 of the RED uses "biomass fuels" instead of "biomass", which is more correct] shall only be supported as renewable energy if they meet robust criteria for sustainability and greenhouse gas emissions saving, which are subject to verification.") apply to the scope of Article 29 of the RED and why was "biomass" used instead of "biomass fuels", which is more correct? Does the wording "robust criteria" (translated as "strikt" in German) refer to the minimum (!) standards set out in Article 29 of the RED? Why is there no reference to the RED in this Article, like in Article ENER 21(2)?	The agreement does not use exactly the same definitions as European legislation. There is no clear equivalence between 'robust criteria' and REDII. However, European legislation can be expected to guide the Commission's approach to these subjects when verifying the implementation of the agreement. The UK rejected references to EU legislation.
ENER.23	The Trade and Cooperation Agreement contains an opportunity for the United Kingdom to be part of the North Seas Cooperation again. What are the relations between the new Specialised Committee on Energy and the North Seas Cooperation? Will the new Committee be another platform for discussion offshore wind?	The Specialised Committee on Energy will aim to secure the implementation of the provisions of the Energy chapter of the Trade and Cooperation Agreement, as well as allowing high level/political discussions and information exchange between the Parties. Specifically it will overview the implementation of the general obligation for the parties under Article ENER.23 to cooperate in the development of offshore renewable energy and enable the creation of the specific forum, building on the North Seas Energy Cooperation, for technical discussions on the matters listed in points (a) to (f) of article ENER 23.2.
ENER.23: Cooperation in the development of offshore renewable	We welcome that in Article ENER. 23 it is agreed that the Parties shall cooperate in the development of offshore renewable energy by means of the creation of a specific forum for technical discussions between the	The Commission will develop and propose a way to operationalise this provision in the near future. In principle, the UK will not be reintegrated in the North Seas Energy Cooperation as such, as this is a forum for the EU, its Member

energy	Commission, Member States, and the UK including relevant authorities as well as stakeholders on Offshore Wind building on the North Seas Energy Cooperation. In this context, we would like to submit the following questions: • What is the envisaged **relationship** between the specific forum for technical discussions and the **North Seas Energy Cooperation**? In particular, should the North Seas Energy Cooperation be further developed to become the specific forum, or will a new forum be created besides the North Seas Energy Cooperation? • Which **responsibilities** will the Commission and EU Member States have in the specific forum for technical discussions? Will the Commission and Member States have **equal competences** as in the North Seas Energy Cooperation? • What is the envisaged **process of implementing the specific forum for technical discussions** and how are the current EU Member States of the North Seas Energy Cooperation going to be involved in the process (such as a possible MoU)?	States and EU stakeholders, based on the EU acquis and internal market. A specific memorandum of understanding with the UK, involving all stakeholders, is a possible way forward to be considered.
Period of application ENER.33	The periods of application of the Agreement in relation to the Energy chapter (See also Article ENER.33: Termination of this Title). Why there is a deadline of application for such an important Title in so short time of period? What would happen in case the Partnership Council may decide not to extend the Application of this Title after 31 December 2026?	The provisions contained in article ENER.33 mirror those in the Fisheries Title [cf. article 1 of Annex FISH-4 (Protocol on access to waters)], and were the result of the need to ensure sufficient leverage to the EU side to ensure a continued access to British waters also after the end of the adjustment period provided for in article 1 of Annex FISH-4 (Protocol on access to waters).

		This issue was further addressed during the presentation of the Energy Title the Commission provided to the Council WPUK on 15 January 2021.
ANNEX ENER-2	ANNEX ENER-2: ENERGY AND ENVIRONMENTAL SUBSIDIES Paragraph 5 : The last sentence of the paragraph makes a distinction between improving energy efficiency either by reducing energy consumption directly OR per unit of production. However, no such distinction is made in the sentence above where there is no reference to less CO2-emmission per unit of production. Could the Commission clarify why this is the case?	Whereas the third and last sentence of the paragraph 5 of Annex ENER-2 refers to subsidies aiming at improving energy efficiency, the previous sentence addresses the issue of decarbonisation. These two provisions are different because they aim at tackling different issues. The first sentence of paragraph 5 aims at ensuring that decarbonisation is overall achieved across the production chain, and not just in one of its stages, which could result in possible advert effects on remaining parts of the production chain. More concretely, decarbonisation at the level of the industry in terms of direct emission should not be annulled by an increase in indirect emissions (i.e. in the electricity sector for instance). The second sentence of paragraph 5 aims at ensuring that decarbonisation aid is provided for direct emissions only and not for (non-verifiable) potential emission reductions at the level of suppliers, clients, transport companies, etc. This is to avoid that decarbonisation aid is used as a pretext to support local content and reshoring of activities. As far as energy efficiency is concerned, the EU-UK Trade and Cooperation Agreement does not contain a definition of energy efficiency. EU law instead contains definitions of energy efficiency, which refer to either a decrease of energy consumption for the same output (compared to previous situation or to standard equipment) or an increase of the output for the same amount of energy. The last part of the third sentence of paragraph 5 aims at clarifying that both definitions of energy efficiency are covered (and not only the first one). As for decarbonisation efforts referred to in the second sentence, the distinction

		between the reduction of energy consumption (not CO2-emmission) directly or per unit of production is neither applicable nor needed, since reference is instead made in this sentence to the overall industrial activity and direct emissions deriving therefrom.
<u>Carbon pricing</u>		
Carbon pricing	The Trade and Cooperation Agreement commits the United Kingdom to establish a system for carbon pricing. Is the United Kingdom positive towards linking this system to EU ETS at some point?	The EU-UK Trade and Cooperation Agreement (TCA) provides that the Parties will give serious consideration to linking their respective carbon pricing systems in a way that preserves the integrity of these systems and provides for the possibility to increase their effectiveness (cf. TCA, Title XI, Chapter seven, Article 7.3 (6)). At the time of the conclusion of the negotiations, the UK had just adopted its domestic ETS system (see, inter alia, Statutory Instrument 2020 No. 1265, The Greenhouse Gas Emissions Trading Scheme Order 2020, made 11th November 2020, https://www.legislation.gov.uk/uksi/2020/1265/made), which is in place since 1 January 2021. There were then no sufficient elements to either define or negotiate the parameters for a linking agreement. However, over the past months the UK has expressed an interest in a linking agreement under certain conditions (see UK proposal for an Energy Agreement published in March 2020). Should the Parties wish to link their ETS systems, this would be subject to an agreement to be negotiated separately in the future.
Carbon pricing	How will EU make sure/monitor that the British system for carbon pricing is fair according to EU ETS – and will not benefit the British energy intensive enterprises?	Pursuant to Article 7.3 of Title XI, Chapter seven of the TCA, the UK committed to implement a system of carbon pricing as of 1 January 2021 and to ensure that it covers at least greenhouse gas emissions

		from electricity generation, heat generation, industry and aviation. As mentioned above, on 1 January 2021 the UK established a domestic ETS, which is similar to the EU ETS. The TCA contains strong binding and enforceable safeguards to ensure that the level of climate protection will be maintained. A strong principle of non-regression, including on carbon pricing, is included in Article 7.2, ensuring that the current level of climate protection in the EU and in the UK will continue to be upheld. This means that both sides agree to ensure that, at a minimum, the level of climate protection in place at the end of the transition period shall be guaranteed also in the future. Moreover, each Party also commits to seeking to increase its levels of protection over time. All these commitments are subject to a dedicated dispute settlement procedure with the possibility to seek temporary remedies should the UK fail to put itself into compliance following a finding of a breach of a commitment by a panel of experts.
ETS-Linking Article 7.3 (Carbon-Pricing)	According to the agreement, the Parties shall cooperate on carbon pricing and, furthermore, seriously consider linking the EU ETS and the UK ETS. Does the Commission intend to start a process, e.g. consultations or negotiations, potentially leading to a linking agreement in 2021?	The EU-UK Trade and Cooperation Agreement (TCA) provides that the Parties will give serious consideration to linking their respective carbon pricing systems in a way that preserves the integrity of these systems and provides for the possibility to increase their effectiveness (*cf.* TCA, Title XI, Chapter seven, Article 7.3 (6)). At the time of the conclusion of the negotiations, the UK had just adopted its domestic ETS system (see, inter alia, Statutory Instrument 2020 No. 1265, The Greenhouse Gas Emissions Trading Scheme Order 2020, made 11th November 2020, https://www.legislation.gov.uk/uksi/2020/1265/made), which is in place since 1 January 2021. There were then no

		sufficient elements to either define or negotiate the parameters for a linking agreement. However, over the past months the UK has expressed an interest in a linking agreement under certain conditions (see UK proposal for an Energy Agreement published in March 2020). Should the Parties wish to link their ETS systems, this would be subject to an agreement to be negotiated separately in the future. The Commission will first need to get a sufficient understanding of the new UK ETS in order to decide whether the opening of negotiations on a linking agreement would be recommendable.

	Question	Reply
1	FISH 8 : access to waters, together with Annex FISH 4: protocol on access to waters. Is it correct that fishermen do NOT need an authorization to fish in UK waters for the first 5,5 years mentioned in the agreement? Does this mean EU fishermen can indeed fish in UK waters from the 1st of January 2021 without any need for authorization/documentation? If so, this means that the authorization procedure in the contingency-measure will not apply?	The UK has committed, in the Protocol in Annex FISH-4, to grant EU vessels full access to its waters to fish the stocks listed in Article 2(1)(a)-(c) of that Annex. In accordance with the internal rules of the EU (Section 2 of Chapter II of Regulation (EU) 2017/2403), flag Member States should send to the Commission the relevant information, and the Commission will forward the details of the relevant Union fishing vessels to the UK without delay.
2		
3		
4		
5	First of all, the delegation would find it useful to have a technical meeting with the negotiators from DG MARE and the Member States concerned.	The Commission is committed to coordinate the implementation of the agreement with the relevant authorities of Member States. You will be informed in due time of any such meeting planned by the lead DG.
6	You will find some preliminary questions below: The transition period for fisheries till 30 June 2026 is short, and it is unclear how another important quota shift could be avoided afterwards. Which guarantees and negotiation levers are foreseen by the Commission to avoid this? Can the Commission demonstrate that the measures in art. 9 and 14 are sufficiently dissuasive, also when only one or two Member States would be affected?	Please note that the quota shares are stable beyond 2026. Article FISH.9 concerns access to waters, where the regime will change in July 2026. To change the quota shares would be a violation of the agreement (in this case, Article FISH.14 and the general rules on governance and dispute resolution apply) or the termination of the heading "fisheries" (in this case, Article FISH.17 applies).
7	When will the Commission issue the fishing authorizations to allow EU fishermen to start their activities in British waters from the 1st of January 2021?	In accordance with the internal rules of the EU (Section 2 of Chapter II of Regulation (EU) 2017/2403), flag Member States should send to the Commission the relevant information, and the Commission will forward the details of the relevant Union fishing vessels to the UK without delay.
8	How will stakeholders be involved in the future annual negotiations?	The Commission will continue to engage in an open, transparent and regular dialogue with a variety of stakeholders according to

		the rules set.
9	**Article Fish.12: Alignment of management areas:** Lemon sole and witch, turbot and brill are important associated species in the directed fisheries for sole in the North Sea. Possible changes to the shares of these stocks from 2022 onwards would affect some Member States disproportionally. This would be on top of the important quota shift that is already agreed in the timeframe 2021-2026. This is also the case for plaice 7de (Channel), which is particularly important for the Belgian fleet. Whiting in the Celtic Sea is an important "choke" species for all Member States concerned. Annex FISH.1 already includes a shift for this stock.	The Commission takes note of these comments.
10	**Comments by annex:** Annex FISH.1: the distribution among Member States should also take into account the "minimum vitale" of certain fleets, and possible choke species in mixed fisheries.	The distribution of quota among Member States is planned to take place according to the same method as before the withdrawal of the UK from the EU. No changes to the internal allocation are envisaged.
11	We would be very grateful if the Cion could confirm that the UK are obliged to provide us with access on the 1st of January. From our reading it is implied in the Annex but it is not explicit in the text of the agreement.	The UK will provide access to EU vessels on 1 January as foreseen according to Annex FISH-4 of the Trade and Cooperation Agreement.
12	On voisinage arrangements, we would be grateful for confirmation of our reading of the text that such arrangements are preserved by Article FISH.19 'Relationship with other agreements': '1. Subject to paragraph 2, this Heading (i.e. Heading Five: Fisheries) shall be without prejudice to other existing agreements concerning fishing by vessels of a Party within the area of jurisdiction of the other Party.'	We confirm your interpretation.
13	In respect of Annex --Article 2 we would be grateful for clarification as to the meaning reasonably commensurate, how it is to be decided and what happens if the two sides do not agree: *1. By derogation from Article FISH.8(1), (3), (4), (5), (6) and (7) [Access to waters] of Heading V [Fisheries], during the adjustment period each Party shall grant to vessels of the other Party full access*	As part of the TCA, and during a transition period until 30 June 2026, each of the Parties have agreed to grant to vessels of the other Party full access to its waters to fish specified TAC and non-quota stocks in the respective EEZs; and in a specified part of the waters of the Parties between six and twelve nautical miles (Annex FISH.4, Article 2); and to the so-called Crown

	to its waters to fish: *(a) stocks listed in Annex FISH.1 and Annex FISH.2A, B and F at a level that is reasonably commensurate with the Parties respective shares of the fishing opportunities;*	dependencies of the UK (Article FISH.10). This access may come with clear conditions and specific provisions for each category mentioned above. Dispute settlement mechanisms are set out in Article FISH.14 and the Dispute Settlement provisions in Part six of the TCA apply to the Heading on Fisheries in the TCA. Annex FISH.4 is integral part of Heading V of the TCA, should there be a need to have recourse to them.
14	What is the situation with respect to access to waters from 1 January 2021 for EU vessels in UK waters? Has the Commission sent a list of the relevant EU-vessels to the UK authorities? How fast is UK considered to be able to approve and issue authorisations/licenses? Is the Commission discussing allowing access to waters from 1 January 2021 as a temporary roll-over as discussed at the December Council? **On the access to UK waters from 1 January, and the rules governing this access we ask for a very swift reply.** It might here be helpful to send a letter to all Member states on the foreseen timing for the different steps in having a full functioning agreement, including concerning access. **This is naturally a recurring and burning question from our industry.**	The rules governing access are included in the Trade and Cooperation agreement and the SMEFF regulation (Section 2 of Chapter II of Regulation (EU) 2017/2403).
15	What is the situation with respect to access from 1 January 2021 for UK vessels in EU waters? Is the Commission discussing allowing reciprocal access from 1 January as a temporary roll-over as discussed at the December Council? How will the list of UK vessels that have an authorization/license to fish in EU waters be communicated to the national control authorities?	The UK will have access to EU waters. Authorisations will be given to UK vessels as foreseen by the SMEFF regulation.
16	What control measures will EU inspectors be required to take for UK vessels, on the basis of what data?	In relation to fisheries control, provisions of Fisheries Control System (FCS) applicable to third country vessels will apply. A complex set of rules relies on 4 main pillars: • Fisheries Control Regulation (2009) – basic legal act on fisheries control rules • Regulation on Illegal, Unregulated and Unreported (IUU)

		Fishing (2008) • Regulation for on the sustainable management of external fleet - SMEFF Regulation (2017) • Regulation establishing the European Fisheries Control Agency - EFCA (2005 & 2016) While these Regulations represent the four pillars of the FCS, other control provisions are still nowadays present in a number of other legislative acts
17	What is the situation with respect to possible access for EU vessels to Norwegian waters from 1 January?	Access to Norwegian waters is not within scope of the agreement. MS will be informed by the relevant Commission services asap on the state of play of those negotiations.
18	Which UK technical measures will EU have to apply, and what control measures must be adhered to for EU vessels when fishing in UK waters?	The UK will be free to set its own technical measures and control measures for its waters, within the limits of Article FISH.4 of the EU-UK Trade and Cooperation Agreement, and its international obligations.
19	We ask for an overview of the value of the compromise for each species – in line with the offer, dated 18 December, notably for new species included. We would also like to know what is the basis for the calculations?	Please refer to Annex FISH.1-3 for the negotiated quota shares. For any support of your calculations on value, please direct your specific question to the lead policy DG.
20	What is the exact relationship between Fish Article 9 and Fish Article 14? Is it correct that Article 9 only applies when preliminary TACs are set?	Article FISH.9 provides for compensatory measures if the UK withdraws or reduces access, which it is entitled to do within the limits of Article FISH.8. Article FISH.14 provides for remedies if, in the view of the EU, the UK breaches the rules of this heading of the agreement. To this adds the possibility of the dispute resolution provided for in the EU-UK Trade and Cooperation Agreement. Hence, Article FISH.9 and Article FISH.14 are conceptionally different. Both provisions also apply reciprocally, also vis-à-vis the EU.
21	With respect to Fish Article 12: How were the relevant stocks	They have been selected during the negotiation discussions,

	selected?	when establishing a commonly agreed final list of shared TACs.
22	What is the relationship between Fish Article 11, Fish Article 19, the IUU regulation and NEAFC regulation in general? Do the notification periods in article 11 for example supersede the notification periods in the NEAFC and IUU regulations?	The provisions of the TCA do not supersede the regulations mentioned in your question.
23	Article 15 concerns data sharing. What exact data is foreseen shared? Is VMS data foreseen shared?	Level of detail on data sharing is currently under clarification with the UK. MS will be informed as soon as possible
24	Concerning the level and species of non-quota species caught in UK waters, how will the COM coordinate or set provisions for this access?	It is foreseen that the Specialised Committee on fisheries will develop multi-year strategies for the conservation and management of non-quota stocks. During the stability period, until 30 June 2026 , access to fish non quota stocks will be at a level that equates to the average tonnage fished by that Party in the waters of the other Party during the period 2012-2016; After the stability period, access to fish non quota stocks will be decided annually taking into account the multi-year strategies that have been developed.
25	**General – Access to UK waters** The Commission has indicated that the UK has committed, in the Protocol in Annex FISH-4, to grant EU vessels full access to its waters to fish the stocks listed in Article 2(1)(a)-(c) of that Annex. In accordance with the internal rules of the EU (Section 2 of Chapter II of Regulation (EU) 2017/2403), we have sent the latest updated list of vessels for which authorization in UK waters that would be needed to the Commission on 24 December 2020. Could the Commission clarify how access to UK waters will be organized and the respective roles of the Commission and the UK in this? And why are the species mentioned Annex I excluded from access? What does this imply for fisheries on non-quota species?	The UK is to provide access to EU vessels on 1 January in accordance with Annex FISH-4 of the Trade and Cooperation Agreement (TCA). The procedural elements and role of the Commission and Member States are set out in Regulation 2017/2403, in particular its Article 14. Regarding your questions on "Annex I", there is no Annex I in the TCA, nor an Annex I on "species" in Regulation (EU) 2017/2403. In accordance with Article 14 of Regulation 2017/2014 (the SMEFF Regulation), the procedures for obtaining an authorisation/licence from the United Kingdom will apply on 1 January 2021. The Commission services have submitted the lists of vessels as

		provided by the Member States. The UK is making an important effort to process all the requests and will make the best endeavours to reply with assurance of (provisional) licencing before 31 December midnight (23:00 pm GMT). The UK intends to issue the licences centrally, on a temporary basis through lists of vessels communicated to the Commission. In the weeks after, these temporary licenses would be turned into full licenses issued to the individual owners of the vessels. Regarding the questions referring to "Annex I", it should be pointed out that there is no Annex I in the TCA, nor an Annex I on "species" in Regulation (EU) 2017/2403. We assume your question refers to Annex Fish.1 of the TCA. It should be pointed out that by virtue of Article 8 of the fisheries heading, Access to the stocks listed in this Annex is covered, as well as access to non-quota stocks
26	**General – access to other waters** What timelines and next steps does the Commission foresee to ensure access to Norwegian waters?	Access to Norwegian waters is not within scope of the TCA. With regard to the access, quotas and quota exchanges between the Norway and the EU, the formal consultations have not yet taken place. In absence of agreed TACs for the jointly managed and shared fish stocks, the Council has adopted temporary fishing opportunities during the December Council, including for quota exchanges set provisionally on the basis of 2020 levels for Quarter 1 of 2021. These provisional arrangements are currently being discussed with Norway but there has been no agreement yet. The same applies to the reciprocal access for pelagic stocks (mackerel, herring and blue whiting) which is also subject to ongoing discussions. Pending the formal consultations with Norway on all these aspects, it needs to be highlighted that in the meantime EU Member State vessels are not authorised by Norway to access the Norwegian waters and cannot therefore operate in the Norwegian EEZ, Jan Mayen's Fishing Zone or Skagerrak under the

		usual reciprocal access scenario. For the latter, the Commission services are currently interacting with Norway with a view to agree on provisional access arrangements.
27	**General - parties to the agreement** Is it correct that only the EU and the UK are party to this agreement, and that therefore no negotiations with the devolved regions are expected on fisheries?	Your interpretation is correct.
28	**Article 3** Regarding sub 1(h): What definition of vessel is meant in this article? Is the definition meant to include reefers / transportation vessels for example? If so, please note that in our view, this does not follow from the current wording. And following this under sub 1(h)(ii), is with 'registration in the Union' specifically referred to the EU Fishing Fleet-register?	For the purpose of the Fisheries heading of the TCA, a vessel refers to a fishing vessel. Registration in the Union, means a vessel registered in a Member State. EU law requires a fishing vessel to be listed in the EU fleet register as well.
29	**Article 4** It is unclear what the measures in this article entail. Clarity on this article is essential, as this article applies from the 1st of January onwards. As to article 4, paragraph 2 it is unclear what is meant with the following: "...unless ***it*** also applies the same measures to its own vessels". Does 'it' refer to the 'other Party'? And then does this mean that the UK can only apply UK rules and regulations to Union fishing vessels fishing in UK water, if and to the extent the same rules and regulations already apply to the Union vessels on the basis of EU law? And vice versa? Are the EU rules and regulations only applicable to UK vessels in Union waters, only if and to the extent that the same rules and regulations already apply to the UK vessels on the basis of UK law?	In accordance with international law, the UK may set its own conservation, management and control measures in respect of its waters, within the limits of Article FISH.4 TCA. "it" refers to the Party that applies measures to vessels of the other Party. It means that, if the UK submits EU vessels to measures in its waters, the UK has to submit also UK vessels to these measures in its waters. Within EU waters, UK vessels will be subject to EU rules on the condition that those rules also apply to EU vessels within EU waters.

30	**Article 5** Regarding sub 2: it is unclear what rules should be complied with. Without clarity we cannot ensure compliance.	In respect to compliance and enforcement applicable to third country vessels within EU waters a complex set of rules is applicable: A complex set of rules relies on 4 main pillars: • Fisheries Control Regulation (2009) – basic legal act on fisheries control rules • Regulation on Illegal, Unregulated and Unreported (IUU) Fishing (2008) • Regulation for on the sustainable management of external fleet - SMEFF Regulation (2017) • Regulation establishing the European Fisheries Control Agency - EFCA (2005 & 2016) • other control provisions are listed in other legislative acts The United Kingdom adopted a new Fisheries Bill containing new rules. The Commission will send information on this to the MS as soon as it has received the relevant information form the UK.
31	**Article 6** Regarding sub 8 : in-year transfers with the UK will be vital in preventing choke situations. Therefore this mechanism should be established as soon as possible. Who would participate in the Committee that decides on this mechanism? When will this come into place, in view of the lively practice of transfers in the past? And how should we interpret the fact that " The Parties shall consider making transfers of fishing opportunities for stocks which are, or are projected to be, underfished available at market value through this mechanism." ?	Regarding participation in the "Specialised Committee on Fisheries", the rules as set by the Council in its Decisions on signature, provisional application and conclusion apply. The reference to underfished stocks intends to clarify that stocks for which the TACs are not fully utilized, can be the basis for quota transfers.
32	**Article 8** Many aspects of this article will not enter into force the next 5,5, years. We express the wish to discuss the implications of this article in depth with the Commission. Before that time there are 2 questions on the part of this article that will apply from the 1st of	Control and enforcement are exercised by each Party in accordance with their respective legal framework. As part of these sovereign rights and in accordance with Article 8(7) of the fisheries Heading, non-compliance by an individual vessels or group of vessels can be a ground for not issuing not

	January 2021. Regarding sub 7: what does "take into account compliance" mean? Can (non-)compliance for example only be taken into consideration if there is a court ruling regarding the relevant non-compliance? In other words: under what circumstances is (non-)compliance a relevant factor in granting access? Can individual vessels be refused access to UK waters on the basis of this paragraph?	allowing access.
33	**Article 8, 4(c)** In the Basic Regulation of the CFP a MS grants access to the UK in the 0-12 mile-zone. In the agreement this seems now to be limited to the 6-12 miles. Is the MS now entitled to grant access on its own accord for the 0-6 miles? Or is access not possible anymore in the 0-6 miles?	Access to the territorial waters in the TCA is confined, during the adjustment period and thereafter, to the 6-12 nm zone. As from 1 January 2021, the basic Regulation no longer applies to the United Kingdom. Consequently there is no legal basis to allow access to the 0 to 6 nm zone, in absence of an agreement on the matter with the UK. Access to the coastal waters of a third country is an exclusive external competence of the EU. -
34	**Article 9** What type of measures are 'compensatory measures'?	Cf. Article FISH.9(1) (suspension of "access to [...] waters and the preferential tariff treatment granted to fishery products").
35	**Article 11** Does this article *only* apply to Guernsey and/or Jersey registered vessels?	Yes
36	**Article 15** What is meant by "necessary information" regarding data sharing? Will the Commission ask for data via official request? Does it entail separate registration of catches for EU and UK waters will be required?	The Commission services are in intense discussions with the UK on these aspects and will inform the MS thereof as soon as possible. Meanwhile a technical meeting with the MS on this took place.
37	**Reservation No. 13 – Fishing and water** Does sub 1 imply that the UK can require from EU-vessels fishing in	It is unclear to which Article reference is made. However, it can be confirmed that on the basis of the relevant provisions, EU

	the UK-waters, to comply with UK-discardban/landing obligations regulations under the Fisheries Act, that might deviate from the EU-discardban/landing obligation-specifications? This question also applies in relation to pulse-fisheries.	vessels will have to comply with UK rules in the UK waters.
38	**ANNEX 4** In this annex the following text is included: " To fish non quota stocks at a level that equates to the average tonnage fished by that Party in the waters of the other Party during the period 2012-2016". Is this on a stock-by-stock basis or is this on the level of accumulated total tonnage of all non-quota stocks concerned? In both cases, how should this be monitored and by whom?	This is on a stock basis. The lead DG will inform the MS on the monitoring aspects.
39	**Question 1. State aid Fisheries:** Is it correct that *no* restrictions are applicable with regard to the possibilities for the UK to give subsidies to its fishing industry (with the exception of Northern-Ireland in light of article 10(2) of the Withdrawal Agreement and article 3 of JC Decision based thereupon)? Could the Commission confirm this or explain why this is incorrect? The Dutch authorities come to this preliminary conclusion based upon the following: The Partnership Agreement according to article LPFS 3.2, paragraph 5, explicitly excludes subsidies related to trade in fish and fish products from the application of the subsidy control arrangements laid down in chapter 3 of Title XI (level playing field). In Heading Five (Fish) no specific arrangements have been adopted concerning subsidies related to trade in fish and fish products. Annex 2 to the WTO Agreement on Agriculture is not applicable to subsidies related to trade in fish and fish products.	We have forwarded this question to the team in charge of implementing the IE/NI protocol.
40		
41	1) What is the situation with respect to access from 1 January 2021 for UK vessels in EU waters?	The UK has committed, in the Protocol in Annex FISH-4, to grant EU vessels full access to its waters to fish the stocks listed in

		Article 2(1)(a)-(c) of that Annex. In accordance with the internal rules of the EU (Section 2 of Chapter II of Regulation (EU) 2017/2403), flag Member States should send to the Commission the relevant information, and the Commission will forward the details of the relevant Union fishing vessels to the UK without delay.
42	Besides, a potential reading of annex FISH 4 which applies to access until 30th of June 2026 seems to avoid the necessity to deliver an authorisation to European vessels in U.K EEZ because its provisions exclude this process described by articles 5 and 8. Is it a correct?	This is not the case. In accordance with EU rules (Section 2 of Chapter II of Regulation (EU) 2017/2403), flag Member States should obtain an authorization. The MS are to send to the Commission the relevant information, and the Commission will forward the details of the relevant Union fishing vessels to the UK without delay.
43	Has the Commission sent a list of the relevant EU-vessels to the UK authorities? How fast is UK considered to be able to approve and issue authorisations/licenses?	The lead DG is in close contact with the UK authorities to ensure as much as possible the continuity of fishing activities in UK waters as of 1 January. To this effect, the lead DG has asked you for the list of vessels for which authorisations and licences to fish in UK waters should be requested. The Commission has submitted the lists of vessels as provided by the Member States. The UK is making an important effort to process all the requests and will reply with assurance of (provisional) licencing before 31 December midnight (23:00 pm GMT).
44	Is the Commission discussing allowing access to waters from 1 January 2021 as a temporary roll-over as discussed at the December Council? How will the list of UK vessels that have an authorization/license to fish in EU waters be communicated to the national control authorities? On the access to UK waters from 1 January, and the rules governing	The Commission is going to apply (provisionally) the TCA as from 1 January 2021, including the Fisheries Heading. It is recalled that the "contingency Regulation" (EU) 2020/2227 amending Regulation (EU) 2017/2403 (OJ L437, 28.12.2020, p. 102) is not going to apply (Article 2 of Regulation (EU) 2020/2227). The Commission will provide information on practical questions regarding the implementation of these provisions as soon as possible, in due time for their application in accordance with

	this access we ask for a very swift reply.	Regulation 2017/2403.
45	For Guernesey and Jersey waters, we understand that the access are also forbiden until the delivery of autorisations. What will be the system of theses autorisations? Do they will be delivered by London or by Guernesey and Jersey authorities? Do we need to send them to London which will serve Jersey and Guernesey?	Regulation (EU) 2017/2403 also applies in respect of the waters of the Crown Dependencies. Fishing activities within the waters of the UK crown Dependencies will only be possible by vessels in possession of a licence issued by the relevant authorities of the Crown dependencies. The Marine Management organization (London) will serve as a single authority for the purpose of obtaining such authorisations/licences. This means that for each of the Crown Dependencies a list of eligible vessels is to provided to the Commission that will send these lists to the MMO. The procedural aspects of Regulation 2017/2403 apply. It is to be noted that with regard to the implementation of FISH.10, the EU's interlocutor is always the United Kingdom. Only the United Kingdom is Party to the TCA, including the Fisheries Heading, and all obligations stemming from the Fisheries Heading of the TCA, including FISH.10, are incumbent on the UK. It is a matter of the UK's internal constitutional arrangements how the will involve the Crown Dependencies.
46	It might here be helpful to send a letter to all Member states on the foreseen timing for the different steps in having a full functioning agreement, including concerning access. This is naturally a recurring and burning question from our industry, as well as a very sensitive issue for a large part of our sector.	In accordance with Article 14 of Regulation 2017/2403 (the SMEFF Regulation), the Commission forwarded the details of the relevant Union fishing vessels to the United Kingdom. The United Kingdom indicated that in respect of access to its EEZ, it will endeavor to issue temporary fishing authorizations for the relevant EU vessels before the end of 31 December 2020. Such licences will be valid as a contingency measure for a period of three weeks, after which 'full' licences will be issued to the relevant EU operators.

		As soon as the United Kingdom informs the Commission that the details of the Union fishing vessels have been approved and authorisations/licences have been issued, the Commission shall inform the concerned flag Member State accordingly.
47	What control measures will EU inspectors be required to take for UK vessels, on the basis of what data? This issue is very urgent. We would be grateful of a very swift reply.	In relation to fisheries control, provisions of Fisheries Control System (FCS) applicable to third country vessels will apply. A complex set of rules relies on 4 main pillars: • Fisheries Control Regulation (2009) – basic legal act on fisheries control rules • Regulation on Illegal, Unregulated and Unreported (IUU) Fishing (2008) • Regulation for on the sustainable management of external fleet - SMEFF Regulation (2017) • Regulation establishing the European Fisheries Control Agency - EFCA (2005 & 2016) While these Regulations represent the four pillars of the FCS, other control provisions are still nowadays present in a number of other legislative acts
48	4) What is the situation with respect to possible access for EU vessels to Norwegian waters from 1 January? We ask for a very swift reply.	Access to Norwegian waters is not within scope of the agreement. MS will be informed by the relevant Commission services asap on the state of play of those negotiations.
49	5) Which UK technical measures will EU have to apply, and what control measures must be adhered to for EU vessels when fishing in UK waters? This is an important issue to clarify before access. We think particularly to the new requirements concerning the Celtic Sea and the mix fishery of gadoids.	The UK will be free to set its own technical measures and control measures for its waters, within the limits of Article FISH.4 of the EU-UK Trade and Cooperation Agreement, and its international obligations. Please liaise directly with DG MARE on this matter. The Commission will provide information on practical questions regarding the implementation of these provisions as soon as possible, in due time for their application. DG MARE is the lead policy DG to implement Heading V of the TCA.
50	6) We ask for an overview of the value of the compromise for each	Please refer to Annex FISH.1-3 for the negotiated quota shares.

	species – in line with the offer, dated 18 December, notably for new species included. We would also like to know what is the basis for the calculations.	For any support of your calculations on value, please direct your specific question to the lead policy DG.
51	7) What is the exact relationship between Fish Article 9 and Fish Article 14? Is it correct that Article 9 only applies when preliminary TACs are set?	Article FISH.9 provides for a compensation if the UK withdraws or reduces access, which it is entitled to do within the limits of Article FISH.8. Article FISH.14 provides for remedies if, in the view of the EU, the UK breaches the rules of this heading of the agreement. To this adds the possibility of the dispute resolution provided for in the EU-UK Trade and Cooperation Agreement. Hence, Article FISH.9 and Article FISH.14 are conceptionally different. Both provisions also apply reciprocally, also vis-à-vis the EU.
52	8) What is the relationship between Fish Article 11, Fish Article 19, the IUU regulation and NEAFC regulation in general? Do the notification periods in article 11 for example supersede the notification periods in the NEAFC and IUU regulations?	The provisions of the TCA do not supersede the regulations mentioned in your question.
53	Related to this issue, what is the pertinent list of designated ports for the landings of our vessels in U.K? Is it the list we received yesterday established in 2017 or the list that UK will notify to NEAFC?	For any further questions on designated ports please liaise directly with DG MARE.
54	9) Article 15 concerns data sharing. What exact data is foreseen shared?	Level of detail on data sharing is currently under clarification with the UK. MS will be informed as soon as possible
55	10) Concerning the level and species of non-quota species caught in UK waters, how will the Commission coordinate or set provisions for this access?	It is foreseen that the Specialised Committee on fisheries will develop multi-year strategies for the conservation and management of non-quota stocks. During the stability period, until 30 June 2026 , access to fish non quota stocks will be at a level that equates to the average

		tonnage fished by that Party in the waters of the other Party during the period 2012-2016; After the stability period, access to fish non quota stocks will be decided annually taking into account the multi-year strategies that have been developed.
56	11) For the sharing of VMS and log book datas, we have had the confirmation this morning at the extraordinary data meeting that the Commission will be able to cut the availability to UK from the 1st of January and we thank you for this operational response.	No reply needed.
57	**General – quota allocation** We had interpreted, based on the FISH Annexes in which the shares of quota are agreed for 2026 onwards, that these shares are not up for discussion after 2026. However, there are questions arising (from the industry, parliament etc.) on this interpretation. Therefore we would ask for confirmation from the Commission on this interpretation.	Please note that the quota shares are stable beyond 2026. Article FISH.9 concerns access to waters, where the regime will change in July 2026. To change the quota shares would be a violation of the agreement (in this case, Article FISH.14 and the general rules on governance and dispute resolution apply) or the termination of the heading "fisheries" (in this case, Article FISH.17 applies).
58	Thank you for your confirmation below that voisinage arrangements, such as those between Ireland and Northern Ireland, are preserved by Article FISH.19 'Relationship with other agreements'. Given these voisinage arrangements in place, and in relation to the waters covered by these arrangements, we have an additional question as to whether or not Irish vessels require UK authorisations to access Northern Ireland waters in the 0-6 mile zone and if UK vessels require EU authorisations to access Irish waters in the 0-6 mile zone.	From an EU perspective, because of the third country status of the UK (and NI), this voisinage agreement is now covered by the SMEFF Regulation (Regulation 2017/2403) and therefore NI vessels need to obtain an authorization in accordance with Article 34 of the SMEFF Regulation. The need for Irish vessels to obtain an authorisation to fish in NI waters covered by the voisinage agreement would depend on the requirements set out in UK legislation.
59	**Article 5** Regarding sub 2: it is unclear what rules should be complied with. Without clarity we cannot ensure compliance. **Additional question:** Given the last phrase in your reply, will this also include information on monitoring, control, enforcement in the	Yes. EU fishermen need to comply with the rules applicable to Union vessels active in UK waters. Under the TCA, both Parties commit to notify the other Party of new measures likely to affect the vessels of the other Party before those measures are applied, allowing sufficient time for the other Party to provide comments or seek clarification. A close cooperation with the MS will be established in this regard.

	EEZ of the UK?	Given the status of the UK as an independent coastal State, many aspects of control and enforcement within UK waters will be set out in UK legislation as well. Under the TCA both the UK and the Union share the objective of ensuring compliance with fisheries conservation and management measures, and in particular to combat illegal, unreported and unregulated fishing. The Commission is currently assessing the relevant UK legislation, should there be elements that touch upon control and enforcement, the Member States will be informed thereof
60	**Article 6** Regarding sub 8 : in-year transfers with the UK will be vital in preventing choke situations. Therefore this mechanism should be established as soon as possible. Who would participate in the Committee that decides on this mechanism? When will this new mechanism on transfers come into place, in view of the lively practice of transfers in the past? And how should we interpret the fact that " The Parties shall consider making transfers of fishing opportunities for stocks which are, or are projected to be, underfished available at market value through this mechanism." ? What will be the role of the Producer Organisations, of the Member States administration and of the Commission? How frequent can transfers take place and on whose initiative? In what way will the market value has a role? 'Not fully utilized' is supposed to be understood 'at the moment of the transfer'? **Additional question:** Could you please elaborate more on the yellow marked questions above?	The usual rules for specialized Committees in the TCA (Article INST.2(6), (7) TCA) apply, as well as Article 2(1) of Council Decisions (EU) 2020/2252 of 29 December 2020. Because of legal considerations, linked to the exclusive competence of the CFP, there is no scope for stakeholders like producer organisations to establish and to carry out quota swaps directly with the United Kingdom. Furthermore, any swaps would have to be done by the Commission, not as today by the Member States. However, this does not prevent that stakeholders at MS level are the main actors in preparing such transfers before those are formally sent to and decided by the Parties. The frequency of such transfers is a matter to be detailed and discussed with the UK and the Member States and to be further decided as part of the consultations with the United Kingdom. Referring to your question on how to understand "Not fully utilized", it is to be noted that the raison-être of quota transfers is to provide a flexible mechanism aimed at ensuring the most effective quota uptake, reflecting the real needs of the market/fisheries sector and actual fishing patterns. Also under the TCA the same considerations and planning apply.
61	**Article 8, 4(c)** In the Basic Regulation of the CFP the MS grants access to the UK in the 0-12 mile-zone. In the agreement this seems now to be limited to the 6-12 miles. Is the MS now entitled to grant access on its own accord for the 0-6 miles? Or is access not possible anymore in the 0-6 miles?	During the adjustment period and thereafter, access to the territorial waters of both the UK and the Member States is confined to the 6-12 nm zone. As from 1 January 2021, the basic Regulation no longer applies to the United Kingdom. Consequently, UK vessels can no longer access the MS 0 to 6 nm zone. Access to the coastal waters of a

	Additional question: The answer that you have provided sees on the obligations related to the 6-12 miles of the UK territory. However the question as intended was related to the MS 0-12 miles, hence the MS territory. Could you please elaborate on the specific MS situation?	third country is an exclusive external competence of the EU. The MS is not entitled to grant access on its own accord for the 0-6 miles.
62	**Article 9** What type of measures are 'compensatory measures'? **Additional question:** Is the ruling of the arbitration panel binding?	The fishing Party may suspend, in whole or in part, access to its waters and the preferential tariff treatment granted to fishery products [Prohibition and customs duties]. In accordance with Article INST.29 TCA, the decisions and rulings of the arbitration tribunal shall be binding on the Union and on the United Kingdom. They shall not create any rights or obligations with respect to natural or legal persons.
63	**Article 12** **Additional question:** In Article 12 it is mentioned that ICES will be asked for advice on management areas. According to sub 2 this advice will be reviewed and considered with a view to agreeing changes to the list of stocks in Annex FISH.1 and the shares in that annex. How does the TF foresee this process and does this mean the shares for the stocks with an asterisk are be subject to change?	The shares for the TAC are not subject to change as part of the process of aligning the management units and the assessment of the units used by ICES. Shares for the stocks with an asterisk can only be revised by consent of both Parties.
64	**Article 15** What is meant by "necessary information" regarding data sharing? Will the Commission ask for data via official request? Does it entail separate registration of catches for EU and UK waters will be required? **Additional question:** What type of information is specifically meant: Fisheries information? Monitoring/control-information? Scientific data? Etc?	It can be expected that further arrangements will be agreed in 2021 in particular with regard to authorisation and catch data. Such data sharing arrangements are likely to be in line with current data exchange arrangements in place within the EU and with third parties such as NEAFC and Norway.
65	**Article 16** **Additional question:** The Specialised Committee referred to in paragraph 2, 'may adopt measures, including recommendations and decisions'. What in such procedures will be the role of stakeholders(-consultations). And what will be the role of the Council (Working Group)? We take	The involvement of stakeholders is not addressed in the TCA. Commission services will pursue their normal policies for stakeholder involvement when implementing international agreements of the EU. The involvement of the Council in implementing international agreements will follow the usual rules foreseen in the EU

	it that all relevant decision making processes will be subject to EU-Council Working Group procedures?	Treaties, as well as the Council Decisions on signature and conclusion.
66	**Reservation No. 13 – Fishing and water, page 737.** Does sub 1 imply that the UK can require from EU-vessels fishing in the UK-waters, to comply with UK-discardban/landing obligations regulations under the Fisheries Act, that might deviate from the EU-discardban/landing obligation-specifications? This question also applies in relation to pulse-fisheries. Reference added.	With reservation 13 the UK preserves the right to take measures applicable in UK waters regulating the landing of catches by vessels flying the flag of a Member State or a third country with respect to the quotas allocated to them. It is not excluded that such measures could potentially be related to discard rules and deviate from the EU discard ban/landing obligation requirements. The landing obligation as defined in Article 15 of Regulation 1380/2013 [Common Fisheries Policy] applies to catches caught during fishing activities in Union waters or by Union fishing vessels outside Union waters without prejudice to the measures in force in the waters of third countries. In relation to the reference to rules applicable to pulse fisheries, according to Article FISH.4 [Fisheries management] of Heading V Fisheries of the TCA, the UK can take technical measures applicable to its waters unilaterally with a timely notification obligation. Such measures would need to apply in a non-discriminatory manner to both UK and Union operators. Under the UK Common Fisheries Policy and Animals (Amendment etc.) (EU exit) Regulations 2019, the UK will no longer license pulse trawling by non-UK vessels from 1 January 2021. The Marine Management Organisation has informed the English-registered pulse trawlers that their authorisations will be withdrawn on the same date.
67	**Question 1. State aid Fisheries:** Is it correct that *no* restrictions are applicable with regard to the possibilities for the UK to give subsidies to its fishing industry (with the exception of Northern-Ireland in light of article 10(2) of the Withdrawal Agreement and article 3 of JC Decision based thereupon)? Could the Commission confirm this or explain why this is incorrect? The MS authorities come to this preliminary conclusion based upon the following: The Partnership Agreement according to article LPFS 3.2, paragraph 5, explicitly excludes subsidies related to	Answer not yet provided.

	trade in fish and fish products from the application of the subsidy control arrangements laid down in chapter 3 of Title XI (level playing field). However: In Heading Five (Fish) no specific arrangements have been adopted concerning subsidies related to trade in fish and fish products. Annex 2 to the WTO Agreement on Agriculture is not applicable to subsidies related to trade in fish and fish products. **Additional question:** The answer you have provided only reflects on the IE/NI protocol (by indicating this is forwarded tot the protocol team) However, the MS would like to know the situation of the UK fishing industry in total; to our understanding there seem to be no restrictions in the TCA on the UK grants or subsidies to her fishing industry? Could you elaborate on the GB situation as provided for in the TCA?	
	What are the reasons for inclusion in the agreement of the provision (in Annex Fish.1) resulting in the reduction of the EU share in access to the Arctic cod stock form the area of Svalbard, which is not managed jointly with the UK but is under jurisdiction of Norway?	Answer not yet provided.
	Article INST.24, 8: Would the EU be in a position to suspend obligations under all sections of Part Two in case of a breach of one of the fisheries provisions, or can the obligations only be suspended in the Headings One, Two and Three of Part Two (providing that all conditions set forth in the article are fulfilled)? Could the Commission confirm that this provision differs from article FISH.14, 1(c) of the Treaty in the sense that under the latter unilateral measures can be imposed but with a more restricted scope?	Answer not yet provided. In case of a breach of a fisheries provision, provided that all conditions set forth in Article INST.24(8) are met, the EU may seek to suspend obligations under all other covered provisions, as defined in Article INST.10 [Scope] (see in particular Article INST.10(2) for the list of exclusions from "covered provisions"; see also the limitations on cross-suspension in Article INST.24(3) – e.g. a breach of a fisheries provision cannot lead to the suspension of obligations in Heading Four [Social security coordination and visas for short-term visits], the Protocol on Social Security Coordination, Part Five [Union programmes] or in respect of financial services). Article FISH.14(1)(c) of the Agreement indeed differs from Article INST.24(8) in that (i) the former deals with remedial measures taken unilaterally prior to the ruling of the arbitration panel (while the latter concerns temporary remedies following such a ruling); and (ii) the scope of suspension under Article FISH.14(1)(c) is limited to Heading One [Trade], with the exception of Title XI [Level Playing Field for open and fair

		competition and sustainable development], and, in a specific case, to Heading Three [Road Transport].
	What was the total value of the transfer by stock and what is the total value loss relative to total allocated quota for each affected Member State?	Answer not yet provided.
	Non-Quota Access – Article 8.4 (b): How will non-quota access to UK waters for EU vessels be determined? Article 8.4 (b) states that access will be granted "at a level that at least equates to the average tonnage fished by that Party in the waters of the other Party during the period 2012-2016"– who determines this and how is it determined?	Answer not yet provided.
	Non-compliance – Article 8.7: Is there a shared definition of "non-compliance" and if so what is it? In practice, is this standard unilaterally applied by the concerned Party?	Answer not yet provided.
	43. Notification periods – Article 11: Can the Commission confirm that the notification periods in Article 11(b) supersede the notification periods in the IUU regulations "prior notification between one and three hours of the validated catch certificate for the direct movement of consignments of fisheries products by sea before the estimated time of arrival at the place of entry into the Union's territory"? Are these special prior notification periods applicable to Channel Island fishing vessels only?	Answer not yet provided.
	Alignment of management areas – Article 12: Can the Commission provide further information on the intention behind this article?	Answer not yet provided.
	Specialised Committee on Fisheries – Article INST.2: Committees: how and when will the Specialised Committee on Fisheries be set up? How will this Committee be structured? How will Member States participate in the Specialised Committee?	Discussed during explanatory seminar in WPUK.
	Quota swaps/exchanges: How will quota swaps/exchanges with the UK operate? Will these be operated at Member States level or through the Commission? If swaps/exchanges will be operated through the Commission, how will this structure work?	Discussed during explanatory seminar in WPUK.

	UK Technical Measures: Can the Commission provide a guidance note for EU Member States on UK technical measures?	Answer not yet provided.
	Request for a Technical Meeting with the Commission: At the meeting of the Fisheries Group of 8 on 4.1.2020, a request for a technical meeting with Commission was raised.	Discussed during explanatory seminar in WPUK.
	What will be the composition and rules for the Specialised Committee on Fisheries (Article FISH.16)? What role can MS play in the Specialised Committee, considering that it will have quite far reaching decision making competencies?	Discussed during explanatory seminar in WPUK.
	Next to quota shares for the transition period, the ANNEXES FISH.1 and ANNEXES FISH.2A and B set out shares for "2026 onwards". Does this imply that these shares apply to the EU and the UK even beyond July 2026 even if access to waters has to be negotiated annually as from July 2026? In annex FISH 1, in the table it is mentioned "2026 onwards" alluding to the fact that as from 2026 these quota shares are permanently agreed. In Annex FISH 4 "protocol on access to waters" in Article 1 an adjustment period from 01.01.2021 to 30.06.2026 is established. Is this to be interpreted that as from 01.07.2026 yearly consultations are to take place on access issues only with the quota shares remaining stable?	Discussed during explanatory seminar in WPUK.
	Apart from the compensatory measures stated in Article FISH.9: are other compensatory measures eligible and - if yes - which are those?	Answer not yet provided.
	Considering that the EU-UK trade and cooperation agreement involves a further centralization of EU fisheries policy for major sea basins, how does the COM foresee the role of the CFP's regionalized groups? Will it be possible for Member States to have direct contacts to UK authorities for the preparation of technical measures or the establishment of marine protected areas (background information: Before Brexit, NLD and DEU were planning together with the UK to set up a common marine protected area in the Doggerbank; would contacts at technical level be possible to push forward such an initiative to ensure a level of protection in a border area)?	Answer not yet provided.
	Where do interlinkages between the Fisheries Heading of the agreement with other parts of the agreement exist?	Discussed during explanatory seminar in WPUK.

	Could the Commission please set forth the rationale behind including a quota share for cod in Svbalbard in the agreement and the FISH ANNEX (table 2E) more specifically? Cod in Svalbard is a matter related to Norway and the Paris Treaty of 1920 in which certain member states are contracting parties and not the EU as such.	Answer not yet provided.
	Questions on the fisheries heading (part 2, heading 5) • We ask for an overview of the value of the compromise for each TAC included, including per percentage of the TAC – in line with the offer, dated 18 December. We would also like to know, what is the basis for the calculations of the value of the offer? • Furthermore, we would ask for an overview of the implications of the compromise for each member state.	Answer not yet provided.
	• Could you elaborate on what happens from 1 July 2026 onwards when the adjustment period is over? This is very important to have clarity of, since this also affects the ability of fishermen to borrow money in the bank. What can be changed from 1 July 2026, and what cannot? Is it correctly understood that for all stocks in annex 1, the quota shares will only be discussed (and possibly amended) as part of the planned evaluation in 2030 (4 years after the end of the adjustment period)? Or could one party demand they are discussed before 2030? Is it correctly understood that for all stocks in Annex 2.A and B quota shares can be discussed from July 2026 and potentially amended within the relevant multilateral fora (coastal state consultations, EU/Norway/UK consultations). When and how can quota shares for the stocks in Annex 2.E and F be discussed? • Article 16, para 3 sets out that the Partnership Council can amend Annexes FISH.1, FISH.2, and FISH.3. Is this considered to include the quota-shares too, and if so, in what specific situations could such changes be foreseen/considered? Annex Fish.3 includes the Skagerrak TACs where the UK has no quota share. It should thus not be possible for the EU/UK agreement to affect these TACs.	Answer not yet provided. Partly discussed during explanatory seminar in WPUK.
	In annex 4, article 2, para 3 it says that "Article 9[Compensatory measures in case of withdrawal or reduction of access] shall apply	Answer not yet provided.

	mutatis mutandis in relation to any change under paragraph 2 of this Article in respect of the period from 1 July 2026 to 31 December 2026." Does this mean that any changes to the mutual access to waters, in the 6 months following the adjustment period, can only be sanctioned by the other party using the less strong instruments in article 9 (i.e. access to waters and fisheries products), while not ensuring any strengthened access rights during that period? How should we interpret this text?	
	We would read Article 4, para 3 to include also measures under MSFD or Natura2000, i.e. wider measures than strictly fisheries management measures?	Answer not yet provided.
	In relation to the access to waters under provisional quotas (Article 8, para 5) – how will stocks with a quota year different from the calendar year be dealt with? This concerns for example sandeel, where the fishing year starts on 1 April, and where the fishing opportunities are set in February/March ahead of that. Furthermore, are consultations on sandeel and, later in the year, North Sea sprat (where the TAC is set for July to June) and Norway pout (where the TAC is set for November-October) foreseen by the Commission between EU and UK?	Answer not yet provided.
	In what situations can vessels be excluded from access to the other parties waters (Article 8, para 7)? Is this to be based on objective criteria, e.g. concerning IUU, or others?	Answer not yet provided.
	Could you elaborate on, in what situations Article 9 and Article 14 respectively would apply? Does Article 9 only apply when preliminary TACs are set?	Answer not yet provided.
	Concerning the exchange of data in Article 15, we understand that discussions are ongoing between EU and UK concerning how and what. This also very much concerns control aspects. When do you foresee a conclusion on this?	Discussed during explanatory seminar in WPUK.
	The specialised fisheries committee (Article 16): who will formally be appointed and participate in the committee meetings? How will member states be involved? Could member state representatives be appointed to the committee? We read it as a technical preparatory, but formalised, committee, is this reading correct?	Discussed during explanatory seminar in WPUK.
	Concerning the level and species of non-quota species caught in UK waters, /when will the COM propose provisions for regulating this access?	Answer not yet provided.
	On the rules applying, when fishing in UK waters, we welcome the letter sent by the UK, and distributed by the COM. How does the	Answer not yet provided.

	COM foresee, that additional information from the UK on new rules will be distributed to member states? Is there any possibility for gathering the rules applying in UK waters, in a way that is easily manageable for both authorities and fishermen? Especially for control rules and technical measures it is important to have a solid overview	
	We expect there to be ongoing adjustment to both the list of EU vessels allowed to fish in UK waters, but also to the list of UK vessels allowed to fish in EU waters. We appreciate that the list of UK vessels is currently dated by the COM. Is there some easy way for our control authorities to see, which vessels have been added in the updates?	Answer not yet provided.
	The EU fishing opportunities for North Sea herring have so far been distributed according to the herring stairs (regulation 83/653/EEC). Will this regulation continue to apply to EU27?	Answer not yet provided.

Questions and Answers on the EU-UK Security of Information Agreement

Article 19(2) of the Agreement on Protecting and Exchanging Classified information between the EU and UK (hereinafter "SoIA") states that: *"The Agreement shall apply as from the date of application of the Trade and Cooperation or from the date the Parties have notified each other that they have completed their respective internal requirements and procedures to release classified information under this Agreement, whichever is the later."*

This notification has not been yet provided by any of the Parties and will be exchanged once the implementing arrangements between the Parties have been agreed, tentativly by February 2021.

Considering the above, and based on what is normally done in case of classified information coming from a third country, the following answers detail the handling given by EU institutions to information covered by the SoIA.

Question 1:

Based on the Agreement on Protecting and Exchanging Classified information between the EU and UK, what is the practical procedure if an EU Institution receives classified information from the UK? Will the EU Institution that receives this classified information forward it to the Member States?

Answer by the Commission:

As per Article 9 of the Agreement, the classified information released by the UK to the Union shall be processed by the relevant EU institution's registry. Once the classified information has been filed in the receiving institution, it will be registered/recorded, as required, and then forwarded to the internal recipient/s in the relevant EU institution, specified in the document recipient list. Documents are not normally forwarded to the Member States.

Question 2 :

Based on the Agreement on Protecting and Exchanging Classified information between the EU and UK, how will different EU Institutions (i.e. EEAS, COM) exchange the received classified information from the UK to the Member States? How will the internal procedure (within the EU) for exchanging this information look like in practice?

Answer by the Commission:

The EU institutions do not automatically exchange with nor forward classified information received by UK to Member States, on behalf of the UK.

In case the receiving EU institution identifies a need to forward UK classified information to Member States, it may, after having obtained the UK's consent, share the UK classified information with the Member States.

Consolidated replies to questions from Member State on the Trade and Cooperation Agreement

Level playing field

Replies sent to Member States up to 18 January 2021

Chapter 3 – subsidy control

Generic question: How can it be ensured that undertakings located in the EU under EU jurisdiction and the EU state aid law and undertakings in the UK under UK jurisdiction and the provisions of the trade agreement are treated equally state aid control wise eg. when selling goods or services in the UK and / or on the EU single market?

Reply: As provided in Article 3.4 [Principles], each Party shall have in place and maintain an effective system of subsidy control that ensures that the granting of a subsidy respects the principles listed therein for subsidies that have a material effect on trade or investment between the EU and the UK (paragraph 1). Subsidies granted by authorities must respect these general principles in order to be legally granted (paragraph 3). These principles stem from the core EU State aid principles, and include, for instance, the fact that subsidies need to contribute to a well-defined objective of public interest, need to be proportionate and limited to what is necessary to achieve the objective (see other principles in paragraph 1(a) to (f)). These general principles are complemented by specific principles that derive from WTO Agreements (e.g. export subsidies and subsidies contingent on domestic content, which the TCA extends to cover not only goods but also services), EU FTAs (e.g. unlimited State guarantees) and the EU State aid *acquis* (see paragraph 2 of Article 3.4 which refers to Article 3.5 [Prohibited subsidies and subsidies subject to conditions]; see also Annex ENER-2 on energy and environment and the Joint declaration on subsidy control policies) applicable to key sectors or types of aid).

The TCA also provides guarantees of robust domestic enforcement, including through the establishment and maintenance of an independent authority or body (Article 3.9). The Parties committed to ensure that the respect of the general principles by the granting authorities can be challenged by competitors and verified by courts (Article 3.10). The courts will be able to order recovery with respect to subsidies that do not respect the general and specific principles (Articles 3.10 and 3.11).

Ad 3.9: Can the Commission explain the more specific competence, role and task of the independent authority and the function of the cooperation procedure?

Reply: Although the UK is yet to launch a public consultation and to establish its subsidy control regime, the UK already agreed in the TCA to establish and maintain an independent body with an appropriate role in it subsidy control regime (Article 3.9 [Independent authority or body and cooperation]). Since the public consultation will be launched in 2021, the UK is not in a position to determine which role that authority may have in its subsidy control regime. However, the TCA establishes that there will be an authority or body in the UK, that this UK authority or body will be independent (see footnote) and that this UK authority or body will cooperate with the Commission on issues of common interest, including the application of Articles 3.1 [Definitions] to 3.7 [Transparency]. Article 3.10 [Courts and tribunals] also provides that the UK must ensure that courts and tribunals are competent with respect to the independent authority or body, in particular to (a) review subsidy decisions taken by a granting

authority or, where relevant, the independent authority or body for compliance with that Party's law implementing Article 3.4 [Principles]; and (b) review any other relevant decisions of the independent authority or body and any relevant failure to act.

Ad 3.10: As the EU / UK courts will be trusted with powers to judge in individual subsidy cases – how could it be ensured that a coherent jurisprudence will emerge / be the result?

Reply: Each Party commits to have in place and maintain an effective system of subsidy control with a view to ensuring that subsidies are not granted where they have or could have a material effect on trade or investment between the Parties. To that end, each Party commits to ensure, on the one hand, that the granting of a subsidy respects the principles set out in the agreement (Article 3.4 [Principles]), and, on the other hand, that the independent authority or body and/or the domestic courts have the necessary powers to guarantee an effective domestic enforcement of such principles (Articles 3.9 [Independent authority or body and cooperation] and 3.10 [Courts and tribunals]). The application of the principles to individual subsidies or subsidy schemes is therefore a matter primarily for granting authorities, independent authorities or bodies and/or domestic courts. The coherence will therefore be primarily ensured under the respective domestic regimes. However, the arbitration tribunal may be called upon at a request of either Party to rule on the interpretation and application of the relevant commitments of the Chapter on subsidy control, and in particular on the obligation to ensure an effective system of subsidy control (see further details in response to the last question).

In case a significant divergence in the Parties' respective subsidy control systems creates a material impact on trade or investment between the Parties, either Party may adopt rebalancing measures pursuant to Article 9.4 [Rebalancing]. This could be the case where one Party's system of subsidy control would systemically fail to prevent the adoption of trade distorting subsidies, for example through a significantly divergent interpretation of the principles.

Ad 3.12 / 3.13: the remedial procedure and dispute settlement procedure are quite complex – can it in short be explained how remedial cases and disputes will be resolved?

Reply: Under Article 3.12 [Remedial measure], the TCA allows a Party to react after 60 days to an individual subsidy or subsidy scheme that causes or creates a serious risk of significant negative effects on trade or investment between the Parties, by taking appropriate remedial measures (e.g. increase of tariffs or introduction of market access barriers). These remedial measures can be challenged under an expedited arbitration procedure of 30 days (paragraph 9) or through the urgency procedure (Article INST.19 [Urgent proceedings]) foreseen in the horizontal dispute settlement mechanism (paragraph 16).

If, under the expedited arbitration, the arbitration tribunal finds these measures to be inconsistent with the relevant provisions, the complaining Party may ask the arbitration tribunal to authorise it to suspend obligations under Agreement not exceeding the level of impairment caused by remedial measures in line with the procedure set out in paragraph 12, but provided the arbitration tribunal find the inconsistency to be significant.

If, under the urgent proceedings, the remedial measures are found to be inconsistent, the complaining Party may not seek the suspension available under the expedited proceedings.

In both cases, the challenge before the arbitral tribunal does not have suspensive effect, which means that the notifying Party may apply such remedial measures 60 days after delivery to the other Party of a first request for information. Under Article 3.12, an arbitration tribunal would be able to determine the consistency of the measures with paragraph 3 and 8. The assessment of the arbitration tribunal would be limited to whether the remedial measures were strictly necessary and proportionate in order to remedy the significant negative effect caused or to address the serious risk of such an effect. However, the arbitration tribunal could also determine the existence of a subsidy, a significant negative effect on trade or investment between the Parties or a serious risk of such effect, or whether priority was given to measures that will least disturb the functioning of this Agreement. In assessing whether a remedial measure is strictly necessary or proportionate, Article 3.12(17) provides that the arbitration tribunal shall pay due regard to the elements set out in paragraphs 5 and 6 of Article 3.12 on which a Party's assessment should be based on and relate to, as well as to paragraphs 13, 14 and 15 of Article 3.12.

Furthermore, Article 3.12(9) clearly states that an arbitration tribunal shall not assess the application by the Parties of Articles 3.4 [Principles] and 3.5 [Prohibited subsidies and subsidies subject to conditions] to an individual subsidy.

Under Article 3.13 [Dispute settlement], the TCA foresees that the horizontal dispute settlement mechanism applies to disputes between the Parties concerning the interpretation and application of the Chapter on subsidy control, and in particular the obligation to have an effective subsidy control system in place. The only exclusions from dispute settlement are Articles 3.9 [Independent authority or body and cooperation] and 3.10 [Courts and tribunals]. Failure to comply with the ruling of the arbitration tribunal may allow the complaining Party to apply sanctions, such as the suspension of commitments (leading e.g. to the increase of tariffs or introduction of other market access barriers).

In order to preserve the autonomy of the EU decision-making and of its legal order in relation to State aid, Article 3.13(2)(a) provides that an arbitration tribunal "shall have no jurisdiction regarding an individual subsidy, including whether such a subsidy has respected the principles set out in paragraph 1 of Article 3.4 [Principles], other than with regard to the conditions set out in Article 3.5(2) [Unlimited state guarantees], (3) to (5) [Rescue and restructuring], (8) to (11) [Export subsidies] and (12) [Subsidies contingent upon the use of domestic content]." This means that the dispute settlement mechanism could not be used to challenge individual subsidies granted by each Party other than in those few instances. Individual subsidies could be addressed through either domestic courts of each Party or through remedial measures.

It should be noted that both in case of remedial measures and in case of dispute settlement, the TCA foresees mechanisms to allow for the settlement of possible disputes at an early stage, through requests for information and consultations. Article 3.8 [Consultations on subsidy control] in particular provides that if a Party considers that a subsidy has or could have a negative effect on trade or investment between the Parties, it may request the necessary information from the other Party. It may also request consultations so that the Parties can discuss and try to find a mutually satisfactory solution.

Energy

1. The Trade and Cooperation Agreement paves the way for cooperation between the TSO's on e.g. offshore wind. This cooperation will according to the agreement be supervised by a new Specialised Committee on Energy. The Commission seems, however, not to take part in this Committee and the supervision of the cooperation since this will be handled by ACER and the British Counterpart in this area. Can the Commission elaborate on this and explain in more detail, how the Committee is intended to function. Who will be the representative in the Committee and how will they be chosen?

Answer by the Commission

The Specialised Committee on Energy is in charge of securing the implementation of the provisions of the Energy chapter of the Trade and Cooperation Agreement, as well as allowing high level/political discussions and information exchange between the Parties. The Commission will co-chair this Committee for the EU side. The Specialised Committee will also supervise the implementation of article ENER-20, related to cooperation between regulatory authorities.

2. The Trade and Cooperation Agreement contains an opportunity for the United Kingdom to be part of the North Seas Cooperation again. What are the relations between the new Specialised Committee on Energy and the North Seas Cooperation? Will the new Committee be another platform for discussion offshore wind?

Answer by the Commission

The Specialised Committee on Energy will aim to secure the implementation of the provisions of the Energy chapter of the Trade and Cooperation Agreement, as well as allowing high level/political discussions and information exchange between the Parties. Specifically it will overview the implementation of the general obligation for the parties under Article ENER.23 to cooperate in the development of offshore renewable energy and enable the creation of the specific forum, building on the North Seas Energy Cooperation, for technical discussions on the matters listed in points (a) to (f) of article ENER 23.2.

3. The Trade and Cooperation Agreement ensures continued market access to the British energy market which is positive. However, it does not seem to completely mirror the existing EU framework when it comes to participation in capacity markets for foreign market players. Which effect will this have for the market players who wishes to participate in the British capacity market?

Answer by the Commission

Article ENER 6.3 of the Trade and Cooperation Agreement ensures that capacity mechanisms are clearly defined, transparent and non-discriminatory. It was agreed that the each party will not be obliged to

open its capacity mechanism to capacity located in the other party's territory. Hence, the Agreement does not require the UK to open its capacity market to foreign market players.

Climate and environment

1. The Trade and Cooperation Agreement commits the United Kingdom to establish a system for carbon pricing. Is the United Kingdom positive towards linking this system to EU ETS at some point?

Answer by the Commission

The EU-UK Trade and Cooperation Agreement (TCA) provides that the Parties will give serious consideration to linking their respective carbon pricing systems in a way that preserves the integrity of these systems and provides for the possibility to increase their effectiveness (*cf.* TCA, Title XI, Chapter seven, Article 7.3 (6)).

At the time of the conclusion of the negotiations, the UK had just adopted its domestic ETS system (see, inter alia, Statutory Instrument 2020 No. 1265, The Greenhouse Gas Emissions Trading Scheme Order 2020, made 11th November 2020, https://www.legislation.gov.uk/uksi/2020/1265/made), which is in place since 1 January 2021. There were then no sufficient elements to either define or negotiate the parameters for a linking agreement. However, over the past months the UK has expressed an interest in a linking agreement under certain conditions (see UK proposal for an Energy Agreement published in March 2020).

Should the Parties wish to link their ETS systems, this would be subject to an agreement to be negotiated separately in the future.

2. How will EU make sure/monitor that the British system for carbon pricing is fair according to EU ETS – and will not benefit the British energy intensive enterprises?

Answer by the Commission

Pursuant to Article 7.3 of Title XI, Chapter seven of the TCA, the UK committed to implement a system of carbon pricing as of 1 January 2021 and to ensure that it covers at least greenhouse gas emissions from electricity generation, heat generation, industry and aviation. As mentioned above, on 1 January 2021 the UK established a domestic ETS, which is similar to the EU ETS.

The TCA contains strong binding and enforceable safeguards to ensure that the level of climate protection will be maintained. A strong principle of non-regression, including on carbon pricing, is included in Article 7.2, ensuring that the current level of climate protection in the EU and in the UK will continue to be upheld. This means that both sides agree to ensure that, at a minimum, the level of climate protection in place at the end of the transition period shall be guaranteed also in the future. Moreover, each Party also commits to seeking to increase its levels of protection over time. All these

commitments are subject to a dedicated dispute settlement procedure with the possibility to seek temporary remedies should the UK fail to put itself into compliance following a finding of a breach of a commitment by a panel of experts.

General: We are carefully monitoring the intention of the UK government to establish free ports. We would be interested to know which remedies are available under this treaty if these free ports would divert trade and investments away from our Belgian ports and/or gain subsidies or tax breaks?

Reply: The remedies will depend on the nature of the measure taken by the UK that would result in such free ports affecting trade or investment from the Union. For instance, such measures could qualify as

- a subsidy, in which case the remedies under Chapter 3 would be available before an independent body (Article 3.9), before UK courts (Article 3.10) including recovery (Article 3.10), through remedial measures for individual subsidies or subsidy schemes (Article 3.12) or for failure to comply with its commitments, under Chapter 3, notably the principles, for which the horizontal dispute settlement mechanism (with temporary remedies) applies (Article 3.13).
- a regression from the levels of labour and social, environmental or climate protection (Articles 6.2 or 7.2, 7.3) or failure to ensure domestic enforcement (Articles 6.3 or 7.5), in which case the EU may seek temporary remedies (Article 9.3(3) referring to Article INST.24) if the UK does not put itself into compliance following the finding of a breach of a commitment under Chapter 6 or 7.
- a significant divergence between the EU and the UK in the areas of subsidy control or in the levels of labour and social, environmental or climate protection (Article 9.4), in which case the EU could apply appropriate rebalancing measures to address the situation (e.g. imposing tariffs or introducing other market access barriers which are strictly necessary and proportionate to remedy the situation).

Chapter one: General provisions

Article 1.3 specifies that the dispute settlement provisions of Part VI (Dispute settlement and horizontal provisions), Title one (Dispute settlement), do not apply to this chapter (except for art 1.2.2 – precautionary principle - and the paragraph on climate change).

Does this mean that there is no dispute settlement mechanism provided for in this case? (keeping in mind that part 6 specifically details the articles to which dispute settlement does not apply – and that these articles are not referenced in article INST.10 on scope)

And if so, how are future (potential) disagreements on the level playing field to be handled?

Reply: Indeed, the provisions in Chapter one: General provisions, with the exception of Articles 1.1(3) and 1.2(2) are not subject to the horizontal (or any) dispute settlement mechanism. This explains why these articles are referenced in Art. INST.10(2)(e):

> "2. The covered provisions shall include all provisions of this Agreement and of any supplementing agreement with the exception of: […] (e) paragraphs 1, 2 and 4 of Article LPFS.1.1 [Principles and objectives] and paragraphs 1 and 3 of Article LPFS.1.2 [Right to regulate, precautionary approach and scientific and technical information] of Chapter 1 [General provisions]".

Future disagreements on the level playing field will be dealt according to the dispute settlement mechanism foreseen in the relevant part. For example, for Chapter 6 on Labour and social standards and Chapter 7 on Environment and climate a dedicated dispute settlement applies:

Article 6.4(2) and Article 7.7(2)

"2. By way of derogation from Title I [Dispute settlement] of Part Six [Dispute settlement and horizontal provisions], in the event of a dispute between the Parties regarding the application of this Chapter, the Parties shall have recourse exclusively to the procedures established under Articles 9.1 [Consultations], 9.2 [Panel of experts] and 9.3 [Panel of experts for non-regression areas] of this Title."

In the area of subsidy control, the horizontal dispute settlement applies in principle subject to a number of specific rules

Article 3.13 Dispute settlement

"1. Subject to paragraphs 2 and 3, Title I [Dispute settlement] of Part Six [Dispute settlement and horizontal provisions] applies to disputes between the Parties concerning the interpretation and application of this Chapter, except for Articles 3.9 [Independent authority or body and cooperation] and 3.10 [Courts and tribunals].

2. An arbitration tribunal shall have no jurisdiction regarding:

(a) an individual subsidy, including whether such a subsidy has respected the principles set out in paragraph 1 of Article 3.4 [Principles], other than with regard to the conditions set out in Article 3.5(2) [Unlimited state guarantees], (3) to (5) [Rescue and restructuring], (8) to (11) [Export subsidies] and (12) [Subsidies contingent upon the use of domestic content]; and

(b) whether the recovery remedy within the meaning of Article 3.11 [Recovery] has been correctly applied in any individual case.

3. Title I [Dispute settlement] of Part Six [Dispute settlement and horizontal provisions] shall apply to Article 3.12 [Remedial measures] in accordance with that Article and Article INST.34B [Special procedures for remedial measures and rebalancing]. "

As regards other instruments for trade and sustainable development, disputes will be examined by the mechanism including consultations (Article 9.1) and panel of experts issuing a binding report to the Parties, and a possibility for a review by the panel of the compliance (Article 9.2).

Paragraph 2 of Article 8.11

"2. By way of derogation from Title I [Dispute settlement] of Part Six [Dispute settlement and horizontal provisions], in the event of a dispute between the Parties regarding the application of this Chapter, the Parties shall have recourse exclusively to the procedures established under Article 9.1 [Consultations] and Article 9.2 [Panel of experts]. "

The horizontal dispute settlement mechanism does not apply to chapters on competition and taxation.

Finally, pursuant to Article INST.10(3), the Partnership Council may be seized by a Party with a view to resolving a dispute with respect to obligations arising from the provisions in Article INST.10(2).

Chapter three: Subsidy control

Article 3.2, 3: Clarifies that subsidies can be granted on a temporary basis to respond to a national or global economic emergency:

- If the EU would feel that the UK is granting subsidies in a scenario where the condition of a national or global economic emergency is not fulfilled, could it initiate the arbitration mechanism? Would it be up to the arbitration mechanism to determine whether the condition has been fulfilled or not?
- Could the UK departure from the EU itself qualify as a national economic emergency?
- How should we interpret the criterion of a national economic emergency on the EU-side (one of the two Parties). Would an economic emergency in one member state suffice or would it have to be a European-wide crisis?

Reply:

- In case the UK grants a subsidy subject the conditions of Article 3.2(3) and the EU considers than one of the conditions where not respected, the arbitration mechanism could indeed be triggered. In that scenario, it would be for the arbitration tribunal to assess the respect of the conditions in that paragraph (national or global economic emergency, and temporary, targeted, proportionate and effective nature of the subsidy). In parallel, affected competitors could ask for a review by UK courts, which can also assess the correct application of the conditions of the article.
- We do not consider that the UK's departure from the EU (which was effective on 1 February 2020) could qualify as a national economic emergency.
- As the paragraph refers to a "national" emergency, under the TCA such emergency in only one of the Member States shall be sufficient.

Article 3.4: Could the Commission confirm that this article does not entail that the UK needs to maintain an "ex ante" subsidy control regime?

Reply: It is correct that the UK is not required under the TCA to subject the granting of subsidies to a decision of an independent body.

Article. 3.7 Clarifies the transparency obligations concerning subsidies. This provision goes beyond a mutual exchange of information as the provision stipulates that this information needs to be available publicly. Therefore any third party (individual/country) would be in a position to get acquainted with this information. Is this transparency provision in line with arrangements the EU has concluded with other 3rd countries in previous agreements? Is there a risk that the EU would be at a disadvantage if countries like the US or China are privy to this information? In this regard we refer to certain sensitive discussions in the Global Forum on Steel Excess Capacity (GFSEC) within the OECD.

Reply: The information that the EU would need to make available under Article 3.7 is already contained in the State aid acts adopted by the Council or the Commission (publication in the OJEU of Regulations and Decisions) or the State aid decisions adopted by the Commission and published on its website

(Article 3.7(4)). As such, the TCA does not create any new transparency obligations on the EU side. The commitments under Article 3.7(5) apply only to the UK.

Article 3.9 Refers to the set-up of an independent authority or body with an appropriate role in its subsidy control regime. To which extent has the Commission received assurances that the UK authority would be fully compliant with the conditions set forth in the Treaty, specifically monitoring that the subsidy control system respects the principles in art. 3.4? Have the necessary legal steps been taken in the UK to make this system fully operational from the 1st of January onwards? Furthermore, how will the Commission evaluate whether the criterion "necessary guarantees of independence" is fulfilled in art. 3.9?

Reply: In the TCA, the UK has undertaken an international commitment vis-à-vis the Union in this respect. On the domestic side, the UK has issued guidelines to any authority granting a subsidy applicable as from 1 January 2021.[1] These guidelines contain a checklist for granting authorities of things they need to verify to comply with the UK's international obligations in subsidy control, notably relating to the TCA. These guidelines correctly reflect the obligations of the UK under the TCA, notably when it comes to the application of the principles. It contains a document that needs to be completed by any authority granting a subsidy that may have an effect on trade with the EU. The granting authority needs to explain in this document how the principles set in the TCA have been applied in the case of each individual subsidy.

Regarding the role of the independent authority in this process, Article 3.9 of the TCA states that the Parties shall "establish or maintain" such authority therefore recognizing that the UK still needs to establish such authority.

Article 3.10, 1(c), About courts and tribunals, mentions the imposition of remedies. Has the UK government given legal assurances that their courts would be in a position to comply with the full text of this treaty obligation?

Reply: In the TCA, the UK has undertaken an international commitment vis-à-vis the Union in this respect.

Article 3.12: What will be the internal procedure for the activation of this article on the EU-side? Will there be a contact point within the Commission where to companies can report certain information? Will the Commission itself monitor this? Will it be up to a member state to notify the Commission of the existence of a subsidy that causes a significant negative effect? Furthermore, if the Commission receives such information, how will it take a decision on the precise nature of recourse?

Reply: Council Decision (EU) 2020/2252 of 29 December 2020 empowers the Commission to activate the remedial measures of Article 3.12. Any decision to take such measures shall be taken by the Commission. Furthermore, the Commission shall 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.

[1] https://www.gov.uk/government/publications/complying-with-the-uks-international-obligations-on-subsidy-control-guidance-for-public-authorities/technical-guidance-on-the-uks-international-subsidy-control-commitments-from-1-january-2021

The Commission shall take the utmost account of the views expressed. The Commission shall also inform the European Parliament, as appropriate.

Where there is a particular concern of one or more Member States, that or those Member States may request the Commission to adopt such measures. If the Commission does not respond positively to such a request, it shall inform the Council in a timely manner of its reasons.

The Commission is in the process of developing internal procedures for activation of this procedure.

Article 3.12, 5: The EU's assessment would have to be based on facts. On what kind of information would the Commission be able to make such an assessment? Would it have to primarily look into the information provided under art. 3.7?

Reply: The EU's assessment of the existence of a serious risk of a significant negative effect will be based on any facts available or made available to it, including where these have been made available pursuant to Article 3.7, through the consultation mechanism of Article 3.8, through the request for information under Article 3.12(2) or through any other mean (e.g. Member States, market information, complaint by economic actors).

Article 3.12, 7: Notes that an illustrative list may be maintained by the Partnership Council concerning what amounts to a significant negative effect on trade or investment. Does the Commission intend to put forward a proposal in this regard?

Reply: the Commission has not taken a position on this option at this stage.

Chapter seven : Environment and climate

Article 7.1, 1: There is no reference to soil pollution/contamination. Is this aspect covered under one of the other elements?

Reply: Following the withdrawal of the proposal for a Soil Framework Directive in 2014, the EU does not have specific legislation on soil pollution or contamination that we could have referred to. However, soil pollution or contamination can be prevented by legislation covering industrial emissions, nature and biodiversity protection, chemical substances or agriculture and food production. To this extent it is covered in the areas listed under the definitions.

In addition, the scope of non-regression is clearly defined widely, based on 'laws which have the purpose of protecting the environment'. If a UK law has the purpose of protecting soil from pollution or contamination, then this is protection of the environment, and therefore it forms part of the 'level of protection' that set the standard for non-regression for the UK.

Article 7.2, 4: Could the Commission clarify which remedies are open to the UK if the EU would fail to reach the target under article 7.1, 3(a)? Could remedies be taken by the UK vis-à-vis specific member states or would this only be possible to the EU (as the Party)?

Reply: The TCA includes a robust mechanism to resolve disputes that may arise between the EU and the UK on the interpretation or application of their commitments. This includes the possibility to request the application of temporary remedies, including the suspension of obligations, if the other Party does not put itself into compliance following a finding a breach of its commitments such as Article 7.2(4) (see Articles 9.2 and 9.3).

The commitment under Article 7.1(3)(a) concerns the Union-wide overall greenhouse has emission reduction target. The temporary remedies that may be applied following a dispute under Article 9.3 would be adopted against the Union, but they could be limited to one Member State.

Article 7.3, 6: Both parties will give serious consideration to linking their respective carbon pricing systems. Could the Commission clarify why this linkage was not explicitly included in the treaty? Was the UK not interested in committing to such a linkage in the negotiations or were there other considerations?

Reply: At the time of the conclusion of the negotiations, the UK had just adopted its domestic ETS system (see, inter alia, Statutory Instrument 2020 No. 1265, The Greenhouse Gas Emissions Trading Scheme Order 2020, made 11th November 2020, https://www.legislation.gov.uk/uksi/2020/1265/made), which is in place since 1 January 2021. There were then no sufficient elements to either define or negotiate the parameters for a linking agreement. However, the UK has in the past expressed an interest in a linking agreement (see e.g. the UK proposal for an Energy Agreement of March 2020).

Chapter eight: Other instruments for trade and sustainable development

General: It is our understanding that temporary remedies under INST.24 (Temporary remedies) are not open to violations of Chapter Eight. Furthermore, a party cannot request the establishment of an arbitration tribunal for an issue arising under Chapter Eight. Can the Commission confirm these two points?

Reply: Indeed, temporary remedies are not available for disputes on the interpretation or application of Chapter Eight. In line with current EU policy, Chapter Eight is covered by a dedicated two-step dispute settlement with consultations (Article 9.1) and a panel of experts issuing a binding report to the Parties, and a possibility for a review by the panel of compliance (Article 9.2). An arbitration panel pursuant to Title I [Dispute settlement] of Part Six [Dispute settlement and horizontal provisions] cannot be requested for Chapters 6, 7 and 8.

Chapter nine: Horizontal and institutional provisions

Article 9.2: Regarding the panel of experts, could the Commission clarify as to how it will establish this list on the EU-side both in terms of process and timing?

Reply: the Commission will inform Member States in due course of the procedure and the timing for the establishment of the list of panelists on the EU side.

Article 9.3: It is our understanding that an arbitration tribunal (+ temporary remedies) can be established for the non-regression areas based on **article 9.3** *juncto* **article INST.15** whereas this is not the case for the provisions under Chapter Eight. Can the Commission confirm this?

Reply: Pursuant to Article 9.3, either Party may request the establishment of a 'panel of experts' for Chapters 6 or 7 (but not the establishment of an 'arbitration tribunal'). Article INST.15 applies *mutatis mutandis* to the panel of experts and unless otherwise provided in Article 9.2.

Article 9.4: It is our understanding that **article 9.4** and **article 3.12** have a different scope as the former relates to the overarching policy fields described in paragraph 1, while the latter relates to a specific subsidy. Can the Commission confirm that both remedies can be applied unilaterally by a Party if certain consultation conditionality's are fulfilled?

Reply: The rebalancing measures under Article 9.4 and the remedial measures under Article 3.12 are both measures that can be adopted unilaterally by either Party following specific consultation procedures of respectively 14 and 60 days. If the other Party challenges the rebalancing measures under the expedited arbitration procedure, these measures cannot be applied, unless the arbitration tribunal fails to deliver a ruling within 30 days from its establishment, in which case the measures can be applied 3 days after the expiry of that 30-days period (Article 9.3(c)). A challenge against a remedial measure before an arbitration tribunal does not have suspensive effect, which means the measure can be applied while the arbitration proceedings are pending (Article 3.12(9)).

Article 3.12(15) provides that "A Party shall not apply simultaneously a remedial measure under this Article and a rebalancing measure under Article 9.4 [Rebalancing] to remedy the impact on trade or investment caused directly by the same subsidy."

ANNEX ENER-2: ENERGY AND ENVIRONMENTAL SUBSIDIES

Paragraph 5: The last sentence of the paragraph makes a distinction between improving energy efficiency either by reducing energy consumption directly OR per unit of production. However no such distinction is made in the sentence above where there is no reference to less CO2-emission per unit of production. Could the Commission clarify why this is the case?

Reply:

Whereas the third and last sentence of the paragraph 5 of Annex ENER-2 refers to subsidies aiming at improving energy efficiency, the previous sentence addresses the issue of decarbonisation. These two provisions are different because they aim at tackling different issues.

The first sentence of paragraph 5 aims at ensuring that decarbonisation is overall achieved across the production chain, and not just in one of its stages, which could result in possible advert effects on remaining parts of the production chain. More concretely, decarbonisation at the level of the industry in terms of direct emission should not be annulled by an increase in indirect emissions (i.e. in the electricity sector for instance).

The second sentence of paragraph 5 aims at ensuring that decarbonisation aid is provided for direct emissions only and not for (non-verifiable) potential emission reductions at the level of suppliers, clients, transport companies, etc. This is to avoid that decarbonisation aid is used as a pretext to support local content and reshoring of activities.

As far as energy efficiency is concerned, the EU-UK Trade and Cooperation Agreement does not contain a definition of energy efficiency. EU law instead contains definitions of energy efficiency, which refer to either a decrease of energy consumption for the same output (compared to previous situation or to standard equipment) or an increase of the output for the same amount of energy. The last part of the third sentence of paragraph 5 aims at clarifying that both definitions of energy efficiency are covered (and not only the first one).

As for decarbonisation efforts referred to in the second sentence, the distinction between the reduction of energy consumption (not CO2-emmission) directly or per unit of production is neither applicable nor needed, since reference is instead made in this sentence to the overall industrial activity and direct emissions deriving therefrom.

Agreement on safe and peaceful uses of nuclear energy

The EU-UK Security of Information Agreement is a "supplemental agreement" of the trade agreement, but not of the "Agreement on the Cooperation of the Safe and Peaceful Uses of Nuclear Energy". It seems that this Agreement, which is not signed by EURATOM, does not cover the exchange of classified information between the EU, its institutions, and the UK, regarding EURATOM files (with the exceptions of Research and the contribution to ITER covered by the Trade and Cooperation Agreement and the JCPOA covered by the EEAS). Is this correct?

Answer by the Commission:

Euratom is indeed not a Party to the EU-UK Agreement on Security of Information. However, a number of EURATOM-related classified information can be exchanged under the EU-UK Agreement on Security of Information.

However, this does not apply to information classified under the dedicated Euratom system of classification, which is limited to Research matters (chapter II of the Euratom Treaty).

To note that under other Nuclear Cooperation Agreements concluded by Euratom with other third countries, the exchange of classified information is rare and in any case occurs in full respect of the rules related to the protection and the handling of the given information.

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third sentence of paragraph 5 aims at clarifying that both definitions of energy efficiency are covered (and not only the first one).

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Rebalancing in LPF para 9.4. There seem to be some confusion in para 9.4(4) and 9.4(5)

It is not clear if there is one or two different reviews. One could be initiated no sooner than after 4 years but the other earlier (see last sentence of 9.4(5)). However, if this is the case, it is unclear what is the difference between these reviews?

Para 9.4(6) seems to refer to two different reviews: review requested pursuant to para 4 OR 5. On the other hand para 9.4(5) seems to give specific the conditions of the review referred to in para 9.4: such a review shall commence…

Reply: Article 9.4(6) refers to the two different types of triggers for the review under Article 9.4(7)-(11):

- The 'ordinary' review under Article 9.4(4), which may start no sooner than 4 years after the entry into force of the TCA.
- The review 'resulting from the application of rebalancing measures' under Article 9.4(5). The latter may be the result of frequent use of rebalancing measures or a rebalancing measure that has a material impact on the trade or investment between the Parties that has been applied for a period of 12 months.

Could the Commission elaborate on the meaning of Article 3.12 Remedial measure, para 13: A Party shall not invoke the WTO Agreement or any other international agreement to preclude the other Party from taking measures pursuant to this Article, including where those measures consist in the suspension of obligations under this Agreement or under a supplementing agreement. Furthermore, is it the understanding of the Commission that commitments that limit the parties right to invoke WTO-agreements are in line with the limited praxis for this in the WTO?

Reply:

This is a provision that is customarily part of the EU FTA dispute settlement texts to ensure that countermeasures in the form of suspension of obligations under an FTA in the event of non-compliance can go beyond the EU's bindings in the WTO. That is the meaning of the provision also in this context, i.e. it ensures that where the remedial measure consists in suspension of obligations under the Agreement, such suspension is not capped by any commitments the EU or the UK have under the WTO or any other international agreement. So the limitation of invoking the WTO agreement in this case relates solely to invoking it in order to prevent a Party to suspend obligations under this Agreement on the ground that such suspension constitutes a violation of the WTO Agreement.

We would like to get a clarification of the meaning of Article 6.2: Non-regression from levels of protection, para 3 (page 200) as it didn't appear in the in the previous drafts, and more particularly the meaning of the wording labour enforcement resources in this context.

Reply:

Article 6.2(3) is drawn from Article 19.5(2) of the Comprehensive and Progressive Trans-Pacific Partnership Agreement (CPTPP) relating to the enforcement of labour laws. The reference to 'allocation of labour enforcement resources' is linked to the fact that within its right to regulate a Party may exercise reasonable discretion and to make *bona fide* decisions as to how it decides to allocate labour enforcement resources to pursue its domestic priorities, provided that this is not inconsistent with its obligations on the non-regression and domestic enforcement commitments. One example could be the decision to re-deploy labour inspectors from one type of industry to another, e.g. where there are greater risks of non-compliance by businesses or dangers for workers.

Why Article 1.1(3) of Title XI [Level playing field for open and fair competition and sustainable development] refers to "economy-wide" climate neutrality? What is the reasoning behind using this language?

Reply: The EU and the UK reaffirm their ambition of achieving economy-wide climate neutrality by 2050 in Article 1.1(3) of Title XI of the Trade and Cooperation Agreement.

This provision reflects the Union's commitment to lead in global climate action and to present a vision that can lead to achieving net-zero greenhouse gas emissions by 2050 through a socially-fair transition in a cost-efficient manner. The UK shares this ambition (see, The Ten Point Plan for a Green Industrial Revolution, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/936567/10_POINT_PLAN_BOOKLET.pdf)

Achieving climate neutrality requires deep societal and economic transformations, requiring actions by all sectors of the economy including investing in environmentally-friendly technologies, supporting industry to innovate, rolling out cleaner, cheaper and healthier forms of private and public transport, decarbonising the energy sector, ensuring buildings are more energy efficient.

The term "economy-wide" is standard language. It is used in our targets, e.g. in European Council Conclusions of 2014 establishing the -40% target and Conclusions of December 2020 for the -55% target, as well as in the EU NDC and climate legislation.

Topic & Article	Questions	Reply
Relation between Art. LPFS6.6, Art. 7.7 and Art. 8.11 to Art. INST.10 and Art. LPFS 9.1, 9.2, 9.3	- How are paragraph 2 of Article LPFS.6.4, paragraph 2 of Article LPFS.7.7, paragraph 2 of Article LPFS.8.11 of Title XI [Level Playing Field for open and fair competition and sustainable development] of Heading One of Part Two and paragraph 2 (e) of Article INST.10 of Chapter 1 [General Provisions] of Title I [Dispute Settlement] of Part Six [Dispute Settlement and Horizontal Provisions] related to each other? In particular, this question arises because the paragraphs of Title XI of Heading One of Part Two referred to above stipulate an exclusive application of the procedures established under Articles 9.1, 9.2 and/or 9.3 of the same title in the event of a dispute by way of derogation from Title I [Dispute Settlement and horizontal Provisions], whereas paragraph 2 (e) of Article INST.10 of Chapter 1 [General Provisions] of Title I [Dispute Settlement] of Part Six [Dispute Settlement and Horizontal Provisions] does not exclude those provisions from its scope.	Articles LPFS.6.4(2), LPFS.7.7(2) and LPFS.8.11(2) of Title XI [Level Playing Field for open and fair competition and sustainable development] provide for specific procedures to settle disputes regarding the conformity of a measure with the concerned chapters. Therefore, the horizontal dispute settlement mechanism foreseen in Title I of Part Five does not apply in full to those chapters. Nevertheless, certain provisions of the horizontal dispute settlement mechanism do apply by virtue of references made to them in the specific procedures applicable to the relevant LPF chapters. For instance: - Certain provisions of Title II apply *mutatis mutandis* to panel of experts procedures in accordance with Article 9.2(19); - Articles INST.24 and INST.25 on compliance (including e.g. the possibility to suspend obligations under the covered provisions in case of persisting non-compliance) also apply *mutatis mutandis* in the case of disputes concerning non-regression in the areas of labour and social standards, environment and climate change; By contrast, Article INST.10 only lists those provisions which are fully excluded from the “covered provisions” to which dispute settlement, i.e. where no provision of the horizontal dispute settlement mechanism applies. It was therefore considered more accurate not to refer to the abovementioned LPF chapters as part of the exclusions from the horizontal dispute settlement

		mechanism. This also makes it clear that procedures applicable to these LPF chapters, although partially derogatory from the horizontal mechanism, remain procedures to settle disputes arising between the Parties in a binding way.
Precautionary approach (Art.1.2)	- Could you explain why the EU chose to accept the term "precautionary approach" in the legally binding text as opposed to the "precautionary principle"? - Does the explanatory footnote 52 on p. 180 emphasise a distinction between both concepts or does it have another (legal) significance?	- The UK negotiators attached considerable importance in not using terms that they considered came directly from EU law. Despite EU explanations that 'precautionary approach' (as used in the Rio Declaration) and 'precautionary principle' were both principles of international law, the UK had a significant preference for the former. As both terms have legally the same meaning, and in this provision accompany and clarify the right to regulate and the duty of non-regression, the EU accepted 'precautionary approach' in order to ensure that the legal content of the principle was anchored in the agreement. - The footnote was added on the insistence of the EU to clarify that the wording did not undermine its understanding of the role and meaning of the precautionary principle in EU law and that the EU would interpret the two as fully equivalent.
Subsidy Control (Art. 3.13)	- According to Art. 3.13 (3) the dispute settlement applies to Article 3.12. Can you please confirm that the implementation of the dispute settlement is solely a consequence of Article 3.12 (9)?	- Article 3.13(3) provides that Title I [Dispute settlement] of Part Six [Dispute settlement and horizontal provisions] applies to Article 3.12 [Remedial measures] in

	- In this context if remedial measures are imposed by a court and the dispute settlement applies to remedial measures, how should then Article 3.13 (1) be interpreted?	accordance with that Article and Article INST.34B [Special procedures for remedial measures and rebalancing]. Article 3.12 relies on relevant provisions of Title I of Part Six in relation to the expedited procedure under Article 3.12(9) and the urgent proceedings under Article 3.12(16). - Article 3.12 does not cover remedial measures imposed by a domestic court, such as interim relief or injunctions. Such Article provides for specific measures that either Party can adopt unilaterally in the framework of their relation as Parties to the TCA, such as the suspension of certain obligations in the TCA. Interim measures adopted by domestic courts would be subject to the procedural rules and the means of redress foreseen by a domestic legal system.
Exclusion of the audio-visual sector from Chapter 3 Subsidies control (Art. 3.2. Nr. 6)	- Does this explicit exclusion of the av sector from Chapter Three Subsidies control mean, that the UK could apply a significantly higher aid intensity than under EU state aid law which would amount to a substantial competitive advantage on the production market, especially when it comes to big international co-productions?	The exclusion of the audio-visual sector from the Chapter on subsidy control means that the TCA does not affect the ability of both Parties to grant subsidies related to that sector. This exclusion is in line with point 18 of the negotiating directives.
Article 8.6, 2 (c): Trade and biological diversity, p. 209	- What is the definition of "…products derived from a sustainable use of biological resources and contributing to the conservation of biodiversity…"?	This is a provision that the EU has consistently included in all the recently concluded and on-going TSD negotiations. The Parties are to encourage trade in products broadly defined as derived from sources that are sustainably managed and production areas managed consistent with the conservation of biodiversity. Examples of such activities include supporting development (by e.g.

		participating in multi-stakeholder roundtables) of sustainability schemes, or inclusion of sustainable use criteria in public procurement policies.
Level Playing Field (Title XI)	- How does the Commission evaluate the relationship between this title (in particular its chapters 2 [competition policy], 3 [subsidy control] and 9 [horizontal and institutional provisions]) and the possible new level playing field instrument proposed by the Commission in its White Paper on levelling the playing field as regards foreign subsidies?	The Commission considers that the TCA does not prevent the EU from developing and applying a unilateral instrument aimed at protecting the internal market against distortions caused by foreign subsidies.
Cooperation in competition policy, Art. 2.4	- Does the cooperation between competition authorities envisaged in this article also include direct cooperation between the competition authority of a member state and the UK competition authority, for example if a specific case affects the UK and one member state in particular? - Would such cooperation be covered by a possible separate agreement (Art. 2.4 (4)) as well? Would there be need or room for further bilateral cooperation agreements by member states? - Does the Security of Information Agreement apply to the exchange of confidential information between competition authorities?	- Article 2.4 allows for direct cooperation between the competition authority of a Member State and the UK competition authorities. - The intended scope of a dedicated competition agreement will be determined by the negotiation directives that the Council will adopt for that purpose. Such agreement could also cover the direct cooperation between the competition authority of a Member State and the UK competition authorities. - The scope of the Security of Information Agreement covers EU classified information (EU CI) and UK classified information, and not other type of classified information. To the extent that national competition authorities do not use EU classified information but nationally classified information, they do not make use of the Security of Information Agreement for exchange information with the

		UK. To that end, the Agreement foresees the possibility to conclude bilateral arrangements, which however should not contradict the provisions of the Security of Information Agreement. The Security of Information Agreement only covers the exchanges between the EU institutions named therein and the UK. Therefore, while non-EU classified information is out of the material scope of the Agreement, (National) Competition authorities are out of its personal scope.
Art. 6 1 para 1 a (p. 200)	- We understand that the "fundamental rights of work" are the ILO core labour conventions. Is this correct? The ILO core labour conventions are explicitly mentioned in Art. 8.3 para 2 and para 3	The 1998 ILO Declaration on Fundamental Principles and Rights at Work identified the universal fundamental rights and principles at work: 1. Freedom of association and right to collective bargaining; 2. Elimination of forced or compulsory labour; 3. Abolition of child labour; 4. Elimination of discrimination in employment and occupation. The core ILO Conventions in these four areas have been ratified by all EU Member States. The levels of protection in EU legislation in these areas are also covered. Article 8.3 covers specifically the ILO fundamental Conventions; not only the current eight fundamental Conventions, but also other Conventions that may become fundamental Conventions in future.
Art. 6.1 para 2 (p. 200)	- Could the Commission please explain what exactly is included in the wording of Art. 6.1 para 2: "applicable to and in, and are common to all MS"? Could you please give examples? How	Paragraph 2 of Article 6.1 indicates that the levels of protection that cannot be weakened or reduced by the Union are those set out in the common standards applicable

	do we deal with optional clauses ("may clauses")?	across the Union. Such levels do not include, therefore, higher levels of protection that might have been implemented individually and discretionarily by individual Member States. E.g. paid annual leave entitlements vary across Member States, but there is a minimum EU standard of 4 weeks. In order to be covered by Article 6.1, the levels of protection need to be common to all Member States.
Article 1.1 (p. 179)	- With view to para 3 of Article LPF.1.2 and Chapter six of the LPF-Title on labour and social standards, does the notion of "sustainable development", respectively of "social development" also encompass labour/working conditions and labour protection, incl. occupational health and safety?	In Chapter one, Article 1.1.2, the Parties recognise that sustainable development encompasses economic development, social development and environmental protection, all three being interdependent and mutually reinforcing, and affirm their commitment to promote the development of international trade and investment in a way that contributes to the objective of sustainable development. This goes in line with the 2030 Agenda that establishes that Sustainable Development Goals "are integrated and indivisible and balance the three dimensions of sustainable development: the economic, social and environmental". Chapter 8 deals more explicitly with Sustainable Development and covers more broadly its social dimension, including through references to the Decent Work Agenda. Chapter 6 covers specific areas that explicitly include both working conditions and occupational safety and health.
Article 1.3 (p. 180)	- What kind of dispute settlement or procedure for clearing will or can be applied, if there shall be unclarity or questions regarding Art. LPF.1.1?	With the exception of paragraph 3, Article 1.1 is not subject to the horizontal (or any) dispute settlement mechanism. Future

	(will this be enforced by Article LPF.6.4 and/or sub Art. 9.1?)	disagreements on the level playing field will be dealt according to the dispute settlement mechanism foreseen in the relevant part. For example, for Chapter 6 on Labour and social standards and Chapter 7 on Environment and climate, a dedicated dispute settlement (panel of experts with remedies) as provided in Article 6.4(2) and Article 7.7(2): "2. By way of derogation from Title I [Dispute settlement] of Part Six [Dispute settlement and horizontal provisions], in the event of a dispute between the Parties regarding the application of this Chapter, the Parties shall have recourse exclusively to the procedures established under Articles 9.1 [Consultations], 9.2 [Panel of experts] and 9.3 [Panel of experts for non-regression areas] of this Title." Articles 9.1 and 9.2 also apply to paragraph 3 of Article 1.1.
Article 6.2, para 3 (p. 200)	- How will be secured, notwithstanding the (vague and hard to control/enforce) notion of bona fide, that re-allocations of labour enforcement resources do not undermine the goals set in Article 1.1 and 1.2 and 6.2. para 1, 2 and 4 as well as Article 6.3 of the LPF-Title?	Paragraph 3 of Article 6.2 allows for a certain level of discretion in the allocation of labour enforcement resources. However, in the exercise of this discretion the Parties cannot breach obligations of the Chapter. What matters therefore, is whether the Parties comply with the obligations under the Chapter, and the mere fact that there was a reallocation of labour enforcement resources does not necessarily represent a breach of commitments.
Interaction Article 6.4 (p. 201) and 9.4	- How does COM assess the interaction of Art. 6.4. and 9.4.?	Article 6.4 and Article 9.4 have different objectives and address different situations. Article 6.4 provide for the possibility to bring a dispute before a Panel of Experts in case of a violation of the provisions of that

		Chapter, for instance if one Party were to regress from its levels of protection in a manner affecting trade or investment between the Parties. In case of non-compliance with the decision of the Panel of Experts, the claiming Party could seek to impose sanctions. On the other hand, Article 9.4 does not necessarily require a violation of the Agreement, but a significant divergence between the Parties' levels of protection in the area of labour and social, which leads to material impacts on trade or investment between the Parties. In such cases, due to the changes of the circumstances that formed the basis for the conclusion of the TCA, a Party is entitled to adopt rebalancing measures to address such situation. This is a mechanism to allow for future-proofing of the non-regression commitments over time.
Art. 9.4 (p. 214/215)	- What are examples of specific compensatory measures in accordance with Art. 9.4 para 2, in particular in the event of a violation of sustainability aspects such as labor, social and environmental standards?	As indicated under question 12, Article 9.4 provides for measures that either Party can adopt if a significant divergence between the Parties in the areas of labour and social, environmental or climate protection, or subsidy control arises over time and material impacts on trade or investment between the Parties arise as a consequence of such divergence. It follows that the trigger to adopt rebalancing measures is not a violation of sustainability or non-regression aspects but rather a significant divergence in one of the areas indicated above that leads to material impacts on trade or investments between the Parties. The rebalancing measures to be adopted would have the objective to address the material impacts on trade and rebalance the economic

		disadvantage arising from a significant divergence. Such measures shall be restricted with respect to their scope and duration to what is strictly necessary and proportionate in order to remedy the situation and priority shall be given to such measures as will least disturb the functioning of this Agreement. These measures could be the suspension of certain obligations under the Agreement but could also go beyond WTO commitments and e.g. entail the adoption of tariffs higher than MFN tariffs. On the other hand, a violation of a commitment on sustainability aspects will be subject to the relevant dispute settlement mechanism. For example, for violations of provisions under Chapter 6 on Labour and social standards and Chapter 7 on Environment and climate, Articles 9.1 [Consultations], 9.2 [Panel of experts] and 9.3 [Panel of experts for non-regression areas] apply, whereas for violations of provisions under Chapter 8 on Other instruments for trade and sustainable development, Articles 9.1 [Consultations] and 9.2 [Panel of experts] apply.
Art. 9.2 (p. 212)	- Why is there no deadline for setting up the group of experts according to Art. 9.2 para 1 to 4 in the event that consultations according to Art. 9.1 have not been successful? Both in the preceding consultation procedure according to Art. 9.1 and in the subsequent expert procedure according to Art. 9.2 para 5 there are strictly defined deadlines. Can't the process be delayed by delaying the establishment of the arbitration panel?	Following the unsuccessful conclusion of consultations, it is for the complaining Party to request the establishment of a panel, provided it wishes to pursue the resolution of the dispute through the panel of experts procedure. In that case, the establishment of a panel of experts takes place in accordance with Article INST.15 [Establishment of an arbitration tribunal], which applies *mutatis mutandis* pursuant to Article

		9.2(19) and lays down concrete timelines for the establishment of the panel of experts as well as means to establish such panel in the event that the respondent Party does not cooperate, i.e. the possibility to select a member of the panel by lot (see Article INST.15(3) and (4).

Could you explain in detail the internal EU procedures for applying Unilateral remedial measures related to LPF?

Reply: The procedure for the adoption of unilateral measures to level playing field, in particular remedial measures under Article 3.12 of the TCA and of rebalancing measures and countermeasures under Article 9.4 of the TCA, are described in Article 3 of Council Decision 2020/2252 of 29 December 2020 on the signing, on behalf of the Union, and on provisional application of the Trade and Cooperation Agreement.

Until a specific legislative act regulating the adoption of such measures enters into force in the Union, any decision by the Union to take such measures shall be taken by the Commission, in accordance with the conditions set out in the corresponding provisions of the Trade and Cooperation Agreement. Paragraphs 2 to 5 outline the internal EU procedures:

"2. The Commission shall fully inform the Council in a timely manner of its intention to adopt measures referred to in paragraph 1 [which covers remedial, rebalancing and countermeasures] with a view to allowing a meaningful exchange of views in the Council. The Commission shall take the utmost account of the views expressed. The Commission shall also inform the European Parliament, as appropriate.

3. Where there is a particular concern of one or more Member States, that or those Member States may request the Commission to adopt measures referred to in paragraph 1. If the Commission does not respond positively to such a request, it shall inform the Council in a timely manner of its reasons.

4. The Commission may also adopt measures reinstating the rights and obligations under the Trade and Cooperation Agreement as they existed prior to the adoption of measures referred to in paragraph 1. Paragraphs 2 and 3 shall apply mutatis mutandis.

5. Before a specific legislative act regulating the adoption of the measures referred to in paragraph 1 is adopted, the Council shall conduct a review of the arrangements set out in this Article."

GOVERNANCE/UNILATERAL MEASURES

Remedial measures – the notion of "significant negative effect on trade or investment between the Parties" seems to be vague. We understand *the Partnership Council may maintain an illustrative list of what would amount to a significant negative effect on trade or investment between the Parties*. Similar lack of clarity applies to rebalancing measures and the term "level of significant divergences between the parties". Can the Commission explain how the significant negative effect on trade and investment as well as the level of significant divergences could be measured in practice? When it comes to the review of the agreement initiated due to rebalancing measures taken frequently by either or both of the Parties the term "frequently" seems to be not precise enough. How and by whom this time notion will be interpreted?

Reply currently been drafted.

Chapter two: Competition Policy

1) **Article 2.3(2)** states that each party shall maintain an operationally independent authority competent for the effective enforcement of its competition law. What are the differences between this Article and Article 3.9?

Reply: In both instances, the commitment is to maintain (for competition policy, because the UK already has the Competition and Markets Authority) and to establish or maintain (for subsidy control, because the UK did not yet have one) an independent authority or body. The focus being on the operational independence rather than the fact that the authority should institutionally be independent. However, there is no obligation to entrust responsibilities for the enforcement of competition law and role in subsidy control to the same or to different authorities or bodies.

2) **Article 2.5** establishes that Chapter two shall not be subject to dispute settlement under Title I of Part Six. How then could the EU react if the UK were to breach its obligations regarding the maintenance of a competition authority (set out in Article 2.3(2))?

Reply: Article 2.5 is consistent with EU FTAs (most recently the EU-Japan EPA) in which the Chapter on competition policy is not subject to dispute settlement. One of the reasons is to preserve the autonomy of decision-making with respect to decisions by competition authorities and courts in relation to the enforcement of competition law.

Chapter three: Subsidy control

3) **Article 3.2.(1)** exempts subsidies granted in the context of natural disasters or other exceptional non-economic occurrences. Would this include COVID? If so, how long can it be used as justification for subsidies?

Reply: This exemption inspired by Article 107(2)(b) TFEU could include subsidies granted in the context of a pandemic such as COVID-19 to the extent that such subsidies are granted and limited to the compensation of the damages caused by the natural disaster or other exceptional non-economic occurrence. It should be noted that State aid approved in the EU under the Temporary Framework were not adopted on the basis of Article 107(2)(b) TFEU even if some COVID-19 related state aid was adopted on the basis of this Article. There is no strict time limit to the use of this exception, as long as it is limited to compensating the damage caused.

4) **Article 3.12(3)** states that, no earlier than 60 days from the date of delivery of the request for information and consultations, the requesting Party may unilaterally take remedial measures. However, Article 3.12(4) establishes that the requesting Party must notify the other of the remedial measures it intends to take "no earlier than 45 days" from the date of delivery of the request, and that it may not take them earlier than 15 days from the date of delivery of the notification of the measures to the requested party. As this notification may take more than one day to be delivered (which would put the time frame for remedial measures at 61 days or more), does Article 3.12(4) *in fine* not effectively derogate the timescale set out in Article 3.12(3)?

Reply: The notification of the measures to the requested party could be delivered on the same day, for instance if it takes place by electronic means or in person through the EU Delegation in the UK.

Chapter five: Taxation

5) **Article 5.3.** sets out that shall not be subject to dispute settlement under Title I of Part Six (as opposed to, for instance, Articles 6.4., 7.7. and 8.11, which provide for specific dispute settlement frameworks for labour, social and environment standards and for TSD). How then will the commitments undertaken by the parties in the taxation chapter be enforced?

Reply: The commitments on tax good governance under Article 5.1 are political in nature and do not lend themselves to enforcement through the dispute settlement mechanisms available for other parts of Title XI on LPF. The commitments on taxation standards relate to the benchmark for tax transparency and anti-tax avoidance, which is enshrined in the rules agreed in the OECD at the end of the transition period. The UK are free to amend any of these rules but crucially they cannot lower the standard below that which is set by the OECD in each area. Non-regression is not subject to dispute settlement but one should consider that at the international level, dispute settlement is not a frequent feature in taxation, as this is topic that touches upon national sovereignty.

In addition, the compliance with these standards is also subject to international review. For instance, the UK is subject to peer review processes within the OECD (Global Forum/ Inclusive Framework) in relation to the 4 BEPS minimum standards, which cover an important part of the non-regression topics. Finally, the Union has at its disposal the listing process for non-cooperative tax jurisdictions.

Chapter six: Labour and social standards

6) **Article 6.2:** provides information about "Non-Regression from levels of protection" in Article 6.2 and the compromise to increase labour and social levels of protection. Article 6.3 about "Enforcement" states that each Party shall have in place and maintain a system for effective domestic enforcement but does not mention any type of cooperation between the Parties as, for instance, foreseen in Article 7.6 for the environmental and climate protection. Is there any intention to promote the exchange of information about the enforcement of labour and social levels of protection on a bilateral and regular basis? For instance, at the committee level?

Reply: Under Article 8.4(8), the Parties commit to work together on trade-related aspects of labour policies and measures. Such cooperation may cover inter alia the impact of labour law and standards on trade and investment, or the impact of trade and investment law on labour; dialogue and information-sharing on the labour provisions in the context of their respective trade agreements, and the implementation thereof; and any other form of cooperation deemed appropriate.

Moreover, under Article 9.1, a Party may request consultations with the other Party regarding any matter arising under Chapter 6 [Labour and social standards], which includes enforcement of the labour and social standards levels of protection, with a view to reaching a mutually satisfactory resolution of the matter.

Chapter nine: Horizontal and institutional provisions

7) **Article 9.4(5)** *in fine* states that "this review may commence earlier than four years after the entry into force of this Agreement". Is this the correct wording? Article 9.4(4) states "no sooner than four years".

Reply: Yes, this is the correct wording. The last sentence of Article 9.4(5) clarifies that the review resulting from the situations described in that paragraph may start earlier than 4 years after the entry into force of the TCA (i.e. frequent use of rebalancing measures or a measure that has a material impact on the trade or investment between the Parties has been applied for a period of 12 months), whereas the 'ordinary' review foreseen in Article 9.4(4) may start no sooner than 4 years after the entry into force of the TCA. Article 9.4(7) provides, however, any such review may start no sooner than 4 years after the previous review or, if applicable, the entry into force of the amending agreement. This is meant to avoid too short intervals between reviews of the TCA.

8) What is the difference between the review requested under 9.4(4) and the one requested under 9.4(5)?

Reply: see reply to Question 8 above distinguishing the ordinary review under Article 9.4(4) and the review resulting from the taking of rebalancing measures under Article 9.4(5).

9) **Article 9.4.(7)** sets out that a further review may not be requested by the same party for at least four years from the conclusion of the previous review or, if applicable, from the entry into force of any amending agreement.

   (i) Does the latter date take precedence over the former? For instance, if a review is concluded in 2030 but the corresponding amendment agreement (due to delays in approval or ratification) only enters into force in 2032, does it mean that a subsequent review may only be requested in 2036 (as opposed to 2034)?

   (ii) If paragraph 7 refers specifically to the party that has requested the review, does that mean that the other party may request a new review earlier than four years after the previous one (or the amending agreement)?

   (iii) And do the 5-years terms set out in Article FINPROV.3 in any way intermingle with these?

Reply:

(i) The idea is that there should be a 4-year span since the last review if, e.g. the Partnership Council decided that no action was required, no Party has requested a renegotiation or no amending agreement has entered into force, or if an amending agreement has entered into force following the previous review. While this is not explicitly provided, under the example in the question, the subsequent review could only be requested in 2036 if the amending agreement entered into force in 2032.

(ii) This is not specified, but derives implicitly from the second sentence of Article 9.4(7).

(iii) There is no direct link between the review under Article 9.4 and the 5-years terms of Article FINPROV.3. The two review mechanisms differ in terms of:

- Purpose: operation of Heading One to ensure an appropriate balance between the commitments made by the Parties in the TCA on a more durable basis *vs* implementation of the TCA or any supplementing agreement and any matters related thereto;
- Scope: Heading One [Trade] and any other Heading the Parties agree to add to the review *vs* the entire TCA;

Consequences: if a Party seeks an amendment, best endeavor to negotiate and conclude an amending agreement *vs* no commitment, or even reference to, the need to engage in renegotiations and conclude an amending agreement.

Environment and climate:

- The parties agree that they "shall not weaken or reduce, in a manner affecting trade or investment between the Parties, its environmental levels of protection or its climate level of protection below the levels that are in place at the end of the transition period (art. 7.2 sub 2)". However, trade and investment are not only affected by environmental/climate levels of protection, but also by standards and measures that increase compliance costs, that create an unequal playing field. Take for example, required "practical" norms for business and operational processes that (in)directly lead to better environmental protection. Are these more "practical" measures also included in the minimal levels of protection, or is it up to the parties themselves to define how the levels of protection are to be implemented?

Reply: The environmental levels of protection are those provided overall in a Party's law which have the purpose of protecting the environment. To the extent that standards and measures are included in a Party's law, they are part of the level of protection from which that Party shall not regress. That being said, not every norm applied by businesses and operational processes will derive from a Party's law (in the case of the EU from directives or regulations). In that respect, the TCA affirms the right of each Party to set its policies and priorities in the areas covered by this Chapter, to determine the environmental levels of protection and climate level of protection it deems appropriate and to adopt or modify its law and policies, but this must be in a manner consistent with each Party's international commitments, including those under Chapter 6 of the TCA.

- Levels of protection (not dangerous, adequate, safe) are difficult and time intensive to define if they are not established in certain measurements of values. Consequently, it is more complicated for one of the parties (and subsequently the panel of experts) to assess whether the non-regression principal is upheld. (Compensating) Unilateral actions can only be taken after this has been established and only on the basis of an advice of the panel of experts or an Arbitration Tribunal (article 7.7 & chapter 9). Would it be useful, as to prevent long discussions, to define levels of protection as much as possible in additional agreements (annexes) or publications ?

Reply: the non-regression commitment is based on the level of protection achieved in the EU and in the UK at the end of the transition period. It will be for each of the Parties to argue and provide evidence to the panel of experts that the level of protection as existing at the end of the transition period was lowered or weakened by the other Party.

- Parties are not allowed to weaken or reduce levels of environmental/climate protection in a manner that affects trade and investment. Does this also hold if a reduction of these levels of protection equally and positively affects trade and investment for both parties?

Reply: the non-regression commitment covers situations where a Party weakens or reduces its levels of environmental/climate protection "in a manner affecting trade or investment between the Parties". Article 7.2 does not qualify the affectation of trade or investment as "negative" or "positive", but that provision needs to be read in the context of the general objectives of the

commitments on level playing field and on non-regression in particular, which are to ensure open and fair competition, and hence to prevent unfair competitive advantages to one Party.

To take a concrete example, the reduction of the level of protection in Party A could result in increased exports from Party A into Party B, thereby affecting trade or investment between the Parties. Such reduction in Party A, could arguably also decrease exports from Party A into Party B, but in this case Party B may have less of an interest in bringing a dispute before a panel of experts, whereas Party A would not have an interest in bringing a case as it is the Party that has reduced its level of protection despite a commitment not to do so in a manner affecting trade or investment between the Parties.

- Diverging levels of protection may not only negatively impact trade and investment, but also the quality of the environment and/or public health. Lower levels of environmental protection in one country, such as those for fine dust, industrial emissions, CO2 norms or the environmental safety and quality of export products, can have transnational consequences. Does the trade and cooperation agreement offer a possibility to address diverging levels of protection with cross-border effects that do not directly affect trade and investment?

Reply: Paragraph 4 of Article 1.1 clearly indicates that the objective of the title on level playing field is not to harmonise the standards of the Parties. It follows that only regulatory changes that weaken or reduce the levels of protection and affect trade or investment between the Parties are captured by the non-regression commitment. Similarly, only significant regulatory divergences over time that materially impact trade or investment between the Parties justify the adoption of rebalancing measures. While the TCA provides that only those measures that affect trade or investment are covered, the Agreement does not require for those measure to *directly* affect trade or investment. It follows that it will be for each Party to argue and provide evidence that the cross-border effects of those measures *directly or indirectly* affect trade or investment between the Parties. It should also be noted that the protection of the environment, in the broader context of sustainable development, but not necessarily linked to trade or investment between the Parties, is addressed in chapter 8 of the same Title XI (see in particular Article 8.4 on Multilateral environmental agreements).

- Does the trade & cooperation agreement foresee an arrangement to initiate negotiations when one of the parties further tightens its (environmental) standards, as to ensure equality in the levels of protection enforced by both parties?

Reply: In Article 9.4 [Rebalancing], the Parties acknowledge that significant divergences in the area of environmental protection can be capable of impacting trade or investment between the Parties in a manner that changes the circumstances that have formed the basis for the conclusion of the Agreement. For this reason, that Article foresees two mechanisms where a Party considers that such a tightening of environmental standards affects the levels of protection:

(i) the possibility to adopt rebalancing measures if this results in a significant divergence which materially impacts trade or investment between them. In that case, the application of the rebalancing measures will be preceded by a period of consultations during which Parties will seek to find a mutually acceptable solution (Article 9.4(3)(a); or

(ii) the possibility for either Party to request a review of the entire Trade part (Heading one) of the TCA. In that case, the review may lead to a renegotiation of the agreement in which each Party may put forward requests related to the parts of the agreement being reviewed, which will always include the provisions on the level playing field as they are an integral part of Heading one.

In both scenarios, the rebalancing mechanisms may incentivise the other Party to create a more level playing field in respect of those environmental standards.

- For the registration of chemicals and the authorisation of substances of very high concern or pesticides and biocides there do not seem to be specific agreements in the trade & cooperation agreement, for example arrangements concerning mutual recognition. This means registration is needed in both the EU and the UK. Is this the case and have the additional costs stemming from this been estimated?

Reply: The UK has left the EU's Internal Market and its regulatory frameworks, including for REACH, pesticides and biocides. The UK has decided to set up its own national registration and authorisation systems in these areas. It is therefore entirely a matter for the UK to decide whether and to what extent to require re-registration of substances previously registered in the EU, whilst remaining within the obligation of non-regression under the level playing field.

In addition, co-operation is foreseen on chemicals in the annex under technical barriers to trade, and this could include some sharing of non-confidential information.

- How does the EU-UK Agreement affect international agreements between (some) European Member States and the United Kingdom on climate and environmental issues now that the UK is no longer a Member State? (For instance the international Green Deal North Sea Resources Roundabout.) Should the possible impact of EU-UK Agreement on these agreements between Member States of which the UK is also a member be addressed in the relevant separate agreements and should the possible implications be assessed by the Commission first?

Reply: Chapter 8 of the EU-UK foresees co-operation between the EU and the UK on multilateral environmental agreements (MEAs) in general. Some MEAs such as CITES are also mentioned specifically, but without further detail on exact arrangements. Therefore, the main impact of the TCA on these agreements should be positive and should facilitate ongoing co-operation in the new context. For energy agreements in particular, some specific co-operation is foreseen in the title on energy of the TCA.

Maritime transport services and level playing field

- The UK does not have to follow EU guidelines on state aid (for instance: state aid guidelines maritime transport). However, the Agreement states that there has to be a Level Playing Field for open and fair competition between Parties and that trade should occur following sustainable development principles (economic, social, environmental). If trade is distorted as a result of more favourable maritime state aid policy or conditions

by UK, will state aid policy also be evaluated along the lines of sustainability principles (e.g. subsidising fossil fuels)?

Reply: As far as we understand the question, it relates to the UK's future subsidies policy for the maritime transport sector. In granting subsidies in the maritime sector, as in any other sectors cover by the subsidy control chapter, the UK will have to respect the principles set out in Article 3.4. These principles notably provide that subsidies should be granted in pursuit of a public policy objective (which could include sustainability) and should be proportionate and limited to achieving that objective. The positive effects of a subsidy in achieving a public policy objective must also outweigh the negative effects of the subsidy (e.g. where the subsidy does not contribute to reaching goals on sustainability).

- The Level Playing Field provisions of the Agreement contain mechanisms to address (potential) distortions. First, either the EU or the UK has to request explanation in writing. When would the European Commission proceed to this request for information? What procedures do EU member states' administrations and stakeholders have to follow to raise potential Level Playing Field concerns with the Commission?

Reply: The Commission is still in the process of determining the process (and the actors involved in that process) for monitoring and implementing the consultations and other mechanisms that can be triggered under the subsidy control chapter of the TCA.

- Will all LPF-cases be dealt with by the "Trade Specialised Committee on Level Playing Field" or will consultations take place within the Partnership Council (following art. 9.4 Rebalancing)? Will the Trade Specialised Committee contain a sub-division per sector (e.g. maritime transport)?

Reply: The Agreement does not prevent the Parties from consulting each other and discussing issues in the Partnership Council, before having consultations in specialised committees or the Trade Partnership Committee. However, in practice, the Parties are likely to discuss issues in specialised bodies and escalate them to the higher level before resorting to other tools ensuring compliance. When consultations for specific issues are explicitly foreseen to take place within a specific body, as is the case in Article 9.4 [Rebalancing], the Parties will hold the consultations within that body.

The Trade Specialised Committee on Level Playing Field does not include a sub-division per sector, but it can discuss all sectorial subject covered by Title XI on LPF, such as subsidies in the maritime transport.

- Wat kind of "evidence" (Title XI, "reliable evidence", art. 3.12 / art. 9.4) is needed before appropriate remedial or rebalancing measures may be taken?

Reply: Articles 3.12 and 9.4 do not establish the kind of evidence that would be required to be considered reliable. It will be for the arbitration tribunal called upon to assess remedial or rebalancing measures to determine what it considers to be reliable in a given case.

- Level Playing Field provisions as regards subsidies are only applicable if the total amount granted exceeds a certain number of Special Drawing Rights. Is there a mechanism to potentially address distortions resulting from subsidies where the total amount is below the Special Drawing Rights?

Reply: As in the EU state aid system where a *de minimis* rule of EUR 200,00 applies by beneficiary for a three years period in order to determine whether state aid is having an effect on trade between Member States, the TCA considers that subsidies below SDR 325,000 (approximately EUR 385,000) to an economic actor over three years are considered unlikely to have an effect on trade and investment between the EU and the UK, and therefore should not be subject to the subsidy provisions under the Agreement.

Subsidies/state aid

1. There is no ex ante assessment of UK state aid and only a transparency obligation six months after the aid has been granted at the latest. If we understand correctly there are some general principles on state aid agreed upon as well as sector specific principles with regard to air travel and air freight, energy, financial services and rescue- and restructuring aid and aid for services of general economic interest. As no ex ante assessment is foreseen, how will these principles be applied and used and even enforced?

Reply: As provided in Article 3.4 [Principles], each Party shall have in place and maintain an effective system of subsidy control that ensures that the granting of a subsidy respects the principles listed therein (paragraph 1). Subsidies granted by authorities must respect these general principles in order to be legally granted (paragraph 3). These principles stem from the core EU State aid principles, and include, for instance, the fact that subsidies need to contribute to a well-defined objective of public interest, need to be proportionate and limited to what is necessary to achieve the objective (see other principles in paragraph 1(a) to (f)).

These general principles are complemented by specific principles (paragraph 2 which refers to Article 3.5 [Prohibited subsidies and subsidies subject to conditions]; see also Annex ENER-2 and the Joint declaration on subsidy control policies) applicable to key sectors or types of aid.

In terms of transparency (Article 3.7), both Parties will make public relevant information on all subsidies granted within 6 months from the granting of the subsidy (paragraph 1) and within 1 year for tax measures (paragraph 2). The information includes the purpose, recipients, date of granting, duration and amount of the subsidy. The time limitation to challenge the granted subsidy will start running only as of the day of the publication of such relevant information.

The Commission fulfills this obligation with the publication of its decisions. Such decisions are also not published immediately after the aid has been granted, to allow for confidential information to be redacted.

With regard to the UK, interested operators could additionally seek from UK granting authorities further information that allows them to assess the application of the principles and to challenge the granting of the subsidy before UK courts or tribunals (paragraphs 4 and 5).

In terms of domestic enforcement, the UK agreed to establish and maintain an independent body with an appropriate role in it subsidy control regime (Article 3.9 [Independent authority or body and cooperation]), something it does not currently have (see reply to question 2 for further details).

Moreover, under Article 3.10 [Courts and tribunals], the UK must ensure that its courts or tribunals are competent to review subsidy decisions taken by a granting authority or, where relevant, the independent body for compliance with the UK's law implementing the principles, or to impose remedies that are effective, including suspension, prohibition or requirement of action by the granting authority, the award of damages. Courts will also be able to order recovery of subsidy from its beneficiary (see also Article 3.11 [Recovery]).

2. What is the role of the independent state aid authority to be established in the UK, as an ex ante assessment of aid provided by UK authorities is not foreseen? What role or powers would such an authority have? E.g. would it enforce the transparency obligations, would be it be able to prohibit ex post the state aid provided and impose the recovery of the aid provided, would the authority apply the principles? In line with these questions: would the UK judiciary fulfill these roles?

Reply: Although the UK is yet to launch a public consultation and to establish its subsidy control regime, the UK already agreed in the TCA to establish and maintain an independent body with an appropriate role in it subsidy control regime (Article 3.9 [Independent authority or body and cooperation]). Since the public consultation will be launched in 2021, the UK is not in a position to determine which role that authority may have in its subsidy control regime. However, the TCA already establishes that there will be an authority or body in the UK, that this UK authority or body will be independent (see footnote) and that this UK authority or body will cooperate with the Commission on issues of common interest, including the application of Articles 3.1 [Definitions] to 3.7 [Transparency]. Article 3.10 [Courts and tribunals] also provides that the UK must ensure that courts and tribunals are competent with respect to the independent authority or body, in particular to (a) review subsidy decisions taken by a granting authority or, where relevant, the independent authority or body for compliance with that Party's law implementing Article 3.4 [Principles]; and (b) review any other relevant decisions of the independent authority or body and any relevant failure to act.

As explained in reply to question 1 above, the UK must ensure that its courts and tribunals have the powers foreseen in Article 3.10 [Courts and tribunals], which includes declaring subsidies unlawful and imposing effective remedies, including suspension, prohibition or requirement of action, award damages. Courts will also be able to order recovery of subsidy from its beneficiary (see also Article 3.11 [Recovery]).

3. With regard to subsidies/state aid two mechanisms seem to have been developed to allow for "unilateral measures":
   (a) the first mechanism deals with "distortive subsidies" which – regardless whether the subsidies concerned are in compliance with the agreement" – due to their scale have significant negative effects on the level playing field. In that case either the UK or the EU is allowed to apply tariffs or even suspend parts of the economic chapters of the Agreement: however this requires a procedure before the arbitration panel which will assess the need and proportionality of such a measure.
   - This mechanism doesn't seem to include a real unilateral power as it seems to require prior assessment by the arbitration panel. Could the Commission clarify?

Reply: Article 3.12 [Remedial measures] of the Chapter on subsidy control foresees a specific unilateral mechanism that allows a Party to react after 60 days to an individual subsidy or subsidy scheme that causes or creates a serious risk of significant negative effect on trade or investment between the Parties and to apply remedial measures.

Contrary to Article 9.4 [Rebalancing] (see further detail below), Article 3.12 [Remedial measures] does not foresee the possibility for the other Party to request a prior assessment by an arbitration tribunal.

However, these remedial measures, once applied, can be challenged under an expedited arbitration procedure of 30 days (paragraph 9) or through the urgency procedure (Article INST.19 [Urgent proceedings]) foreseen in the horizontal dispute settlement mechanism (paragraph 16). Neither challenge has a suspensive effect, which means that the remedial measures remain in force even if they are challenged by the other Party before an arbitration tribunal.

- Furthermore: how is the assessment made regarding "significant effect" on the level playing field. Is it similar to the approach followed under the trade defence instruments such as anti-subsidy tariffs whereby damage to the economy must be shown? If so, how would this ensure a level playing field as within the internal market state aid as such is generally seen as distorting competition and affecting trade between MS?

Reply: The assessment of significant negative effect on trade or investment between the Parties will be made by each Party when it decides to apply remedial measures. The other Party may then challenge the remedial measures and only at that stage will the arbitration tribunal review the effect in order to decide on the consistency with the strict necessity and proportionality requirements. Moreover, paragraph 8 of that Article provides that the Partnership Council may maintain an illustrative list of what would amount to a significant negative effect on trade or investment between the Parties within the meaning of paragraphs 1 and 3. This does not affect the right of the Parties to take remedial measures even without such a list being in place or in circumstance not foreseen by such an illustrative list.

The approach followed under remedial measures does not replicate the approach under existing trade defence instruments. It does not require a lengthy and detailed investigation, but only sets out a number of elements on which a Party's assessment (i) of the existence of a serious risk of a significant negative effect (paragraph 5) or (ii) of the existence of a subsidy or significant negative effect (paragraph 6) should be based on and relate to.

As regards the distortive nature of a subsidy, a subsidy is defined as a measure that "has, or could have, an effect on trade or investment between the Parties" (Article 3.1(b)(iv)). Moreover, the principles apply to any subsidy that "has or could have a material effect on trade or investment between the Parties" and these principles determine the legality of subsidies (Article 3.4).

Finally, the possibility to apply remedial measures is only one possibility to challenge subsidies that have or could have an effect on trade or investment between the Parties. The granting of such subsidies can be challenged under the Parties' respective domestic regimes, notably before courts and tribunals, by interested parties for their compliance with the principles (Article 3.10 and Article 3.7(4) and (5) allowing those interested parties from requesting further information from the granting authority or independent body). Furthermore, the other Party may intervene in such proceedings brought by interested parties before domestic courts (Article 3.10(2)).

- Finally, would the arbitration panel assess also the state aid measure against the principles or only the necessity and proportionality of the counter measure?

Reply: Under Article 3.12 [Remedial measures], an arbitration tribunal would be able to determine the consistency of the measures with paragraph 3 and 8. The assessment of the arbitration tribunal would be limited to whether the remedial measures were strictly necessary and proportionate in order to remedy the significant negative effect caused or to address the serious risk of such an effect. However, the arbitration tribunal could also determine the existence of a subsidy, a significant negative effect on trade or investment between the Parties or a serious risk of such effect, or whether priority was given to measures that will least disturb the functioning of this Agreement. In assessing whether a remedial measure is strictly necessary or proportionate, Article 3.12(17) provides that the arbitration tribunal shall pay due regard to the elements set out in paragraphs 5 and 6 on which a Party's assessment should be based on and relate to, as well as to paragraphs 13, 14 and 15 of Article 3.12.

Furthermore, Article 3.12(9) clearly states that an arbitration tribunal shall not assess the application by the Parties of Articles 3.4 [Principles] and 3.5 [Prohibited subsidies and subsidies subject to conditions] to an individual subsidy. Moreover, Article 3.13(2)(a) [Dispute settlement] provides that an arbitration tribunal "shall have no jurisdiction regarding an individual subsidy, including whether such a subsidy has respected the principles set out in paragraph 1 of Article 3.4 [Principles], other than with regard to the conditions set out in Article 3.5(2) [Unlimited state guarantees], (3) to (5) [Rescue and restructuring], (8) to (11) [Export subsidies] and (12) [Subsidies contingent upon the use of domestic content]."

Countermeasures to offset remedial measures are not available under Article 3.12. They are available in the case of rebalancing measures, but only if a Party applies rebalancing measures before the arbitration tribunal has delivered its final ruling under the expedited procedure (Article 9.4(3)(c) [Rebalancing]).

(b) The mechanism in case of "non-equivalence": if there is a "significant divergence resulting from the subsidy control system" either the UK or the EU could adopt rebalancing measures which are necessary and proportional such as the introduction of tariffs or the suspension of a chapter of the agreement.

- Is it correct that rebalancing measures do not require prior assessment by an arbitration panel?

Reply: Article 9.4 [Rebalancing measures] foresees the possibility for the notified Party to request the establishment of an arbitration tribunal before the application of the rebalancing measures by the notifying Party. However, the prior assessment by an arbitration tribunal of the rebalancing measures is not a requirement.

If a Party notifies rebalancing measures to the other Party, the latter may challenge those measures under the expedited arbitration procedure of Article 9.4(3)(c) within 5 days from the conclusion of the consultations (which are deemed concluded 14 days from the date of delivery of the notification of the rebalancing measures to the other Party under Article 9.4(3)(a)). Under those circumstances, the notifying Party may apply those rebalancing measures only if the arbitration tribunal has not delivered its final ruling within 30 days from its establishment. In that case, it may apply the rebalancing measures 3 days after the expiry of that 30 day period (Article 9.4(3)(c)).

If the notified Party does not challenge the rebalancing measures under the expedited procedure of Article 9.4(3)(c), it may still challenge the rebalancing measures under the horizontal dispute settlement mechanism. In that case the urgency procedure of Article INST.19 [Urgent proceedings] will apply

(Article 9.4(3)(h)), but this challenge will not have suspensive effect on the application of the rebalancing measures by the notifying Party.

- What is the standard used for assessing significant divergence, especially in those sectors whereby no sectoral principles have been included in the agreement (e.g. steel, manufacturing, agriculture etc.)?

Reply: the TCA does not set a standard for assessing significant divergence in the systems of subsidy control, but leaves it to the discretion of each Party that adopts a rebalancing measure, subject to the possible review by the arbitration tribunal for compliance with the conditions set out in Article 9.4(2). Furthermore, it refers to changes in the circumstances that have formed the basis for the conclusion of this Agreement, which covers the general and specific principles (Articles 3.4, 3.5, Annex ENER-2, Joint declaration on subsidy control policies), as well as the other tools to ensure respect of these principles, such as transparency (Article 3.7), the independent authority or body (Article 3.9), or the role of domestic courts and tribunals (Article 3.10), including recovery (Article 3.11). Furthermore, a significant divergence may also result from the application of the other provisions on subsidy control, such as definitions (Article 3.1), scope and exceptions (Article 3.2), services of public economic interest (Article 3.3) or use of aid (Article 3.6).

For those sectors for which there are no specific sectoral principles, the general and specific principles apply to the extent these sectors are covered by the Agreement. For instance, for the steel or manufacturing sectors, the general principles (Article 3.4) and other relevant principles, such as unlimited state guarantees, export subsidies, local content requirements, or rescue and restructuring (Article 3.5), apply. As regards agriculture, the Chapter on subsidy control does not apply to subsidies that are subject to the provisions of Part IV or Annex 2 of the Agreement on Agriculture (Article 3.2(5)).

- Does the standard of significant divergence require a track record over time and in volume of divergence or could it also apply in some major individual state aid cases?

Reply: the TCA does not set a standard for assessing significant divergence in the systems of subsidy control, nor does it require a specific track record over time or in volume of divergence. For a Party to apply rebalancing measures, the significant divergence must have a material impact on trade or investment between the Parties. The TCA foresees remedial measures as a tool to react in case of major individual subsidies cases, while rebalancing measures are primarily conceived for systemic divergences. However, it cannot be ruled out that an individual subsidy case could fulfill the conditions set out in Article 9.4 [Rebalancing].

It should be noted that a Party may not apply simultaneously a remedial measure under Article 3.12 [Remedial measures] and a rebalancing measure under Article 9.4 [Rebalancing] to remedy the impact on trade or investment caused directly by the same subsidy (see Article 3.12(15)).

4. Can the Commission confirm that the level playing field arrangements with regard to state aid have no priority over nor preclude the application of the instruments the EU is developing following the White Paper of Foreign Subsidies?

Reply: The TCA does not address the possible application of the instruments the EU is considering in the context of the White Paper on Foreign Subsidies. The TCA therefore does not contain any provision jeopardising the application of a possible new unilateral instrument to address foreign subsidies that may have a distortive effect on the internal market. The Commission intends making a legislative proposal on the topic in the first half of 2021.

Maritime Transport

In title XI article 3.1 (2) it is mentioned that, generally speaking, tax measures are not considered as specific, unless for instance economic actors are treated more advantageously by the measures as compared to other economic actors in a comparable position within the normal taxation regime. Question: are vessels flying the flag of another Party (EU Member States or UK) considered as "in a comparable position" (art. 3.1 (2a ii)). Is it possible within "a normal taxation regime" to differentiate on the basis of ship registration?

Reply: As for any tax measure, the definition of the normal taxation regime and of the economic operators subjected to it should be assessed on a case-by-case basis, as is the case in the EU when it comes to tonnage or other maritime taxes. In any event, as for any subsidy, the general assessment principles laid down in Article 3.4 [Principles] must be respected in order to avoid that any national tonnage tax leads to a situation where the level playing field between vessels is undermined.

3. **State aid Fisheries:**
   Is it correct that *no* restrictions are applicable with regard to the possibilities for the UK to give subsidies to its fishing industry (with the exception of Northern-Ireland in light of article 10(2) of the Withdrawal Agreement and article 3 of JC Decision based thereupon)? Could the Commission confirm this or explain why this is incorrect? We come to this preliminary conclusion based upon the following: The Partnership Agreement according to article LPFS 3.2, paragraph 5, explicitly excludes subsidies related to trade in fish and fish products from the application of the subsidy control arrangements laid down in chapter 3 of Title XI (level playing field). However: In Heading Five (Fish) no specific arrangements have been adopted concerning subsidies related to trade in fish and fish products. Annex 2 to the WTO Agreement on Agriculture is not applicable to subsidies related to trade in fish and fish products.

   Additional question: The answer you have provided only reflects on the IE/NI protocol (by indicating this is forwarded to the protocol team) However, we would like to know the situation of the entire UK fishing industry; in our understanding there seem to be no restrictions in the TCA on the UK grants or subsidies to her fishing industry? Could you elaborate on the GB situation as provided for in the TCA?

Reply: Although it holds true that fisheries subsidies are exempted from the scope of the TCA under paragraph 5 of Article 3.2, it cannot be argued that no restrictions are applicable with regard to the possibilities for the UK to give subsidies to its fishing industry. Similarly to agriculture subsidies, which indeed are circumscribed by the Agreement on Agriculture at the WTO, fisheries subsidies are carved out from the chapter on subsidy control of the TCA on the ground that the current set-up at the WTO is considered adequate. The Commission also expects to have a proper consultation mechanism when the WTO negotiations on fisheries bear fruits.

Level playing field

- Part II, Title XI, Chapter 3, Article 3.3 (concerning subsidies) contains thresholds (Special Drawing Rights) which seems to differ from EU state aid regulation. How do these thresholds relate to EU state aid regulations and guidelines? Does the apparent deviation in thresholds lead to a more flexible regime for British authorities and companies regarding subsidies? What does the CION consider will be the possible impact on EU state aid regulations, if any?

Reply: The thresholds in Article 3.3 have been set for the purposes of the agreement with the UK. They are based on - but not identical to - those applicable in the EU, not least because they are expressed in a different, neutral currency. As it develops its subsidy control policy, the UK could set thresholds at the level existing in the EU. The Partnership Council could also amend those thresholds.

In particular, the 15 million special drawing rights threshold for transparency of compensations granted in the context of a service of public economic interest ensures that the said thresholds do not enter into conflict with the EU state aid thresholds provided in *Commission Decision of 20 December on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest.*

The *de minimis* threshold for services of public economic interest provided in the Agreement ensures consistency with the current *de minimis* threshold for SGEIs laid down in *Commission Regulation on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest* while ensuring room for future policy development in this area.

Reference article(s)	Question	Answer
Chapter 1 GOODS		
General (safeguards)	We request Commission's interpretation of art Inst.36 (safeguard measures). Does it allow to withdraw tariff preferences in case of "serious economic, societal or environmental difficulties of a sectorial or regional nature"? If it does then this safeguard clause is much more flexible and easier to apply than any safeguard in existing FTA between EU and a third country. It is also more flexible than the WTO safeguards because for its application it is not necessary to prove that the difficulties are caused by import (its volume, increase, prices). Isn't the Commission concerned by a possibility that UK might use those provisions to restrict the duty-free access to its market for agricultural products from the EU?	Article INST.36 does indeed allow withdrawing tariff preferences in case of serious difficulties, as specified therein, even where these difficulties do not result from the operation or from the violation of the Agreement. This safeguard mechanism is precedented, featuring in the EU's agreement with the EEA/EFTA countries (Articles 112-114 of the EEA Agreement) and in the Protocol on IE/NI (Article 16). Safeguard measures need to be limited to what is strictly necessary in order to remedy the situation. Article INST.36 also foresees the possibility to adopt proportionate rebalancing measures if a safeguard measure taken by the other Party creates an imbalance between the rights and obligations under the Agreement, hence mitigating the risk of spurious use. This provision was considered appropriate to safeguard EU operators in the unlikely event of serious difficulties caused by for instance agricultural swaps, such as those raised by Poland and other Member States in a non-paper shared with the Commission. It should also be noted that this provision has hardly been used in the many years of application of the EU's agreement with the EEA. Safeguard measures are subject to dispute settlement.
GOODS.2	As there are no specific references to articles, the meaning of Article GOODS.2 Scope: "Except as otherwise provided, this Chapter applies to trade in goods of a Party." is unclear. What exceptions, if any, are there to the general prohibition of customs duties in the Agreement?	There are no exceptions in the Agreement to the general prohibition of customs duties. Article GOODS.2 stipulates that this chapter generally applies to *all* goods of a Party (e.g. Article GOODS.9 'Remanufactured goods'), but in some instances the provisions only apply to originating goods (e.g. Article GOODS.5 'Prohibition of customs duties'). The scope of 'goods of a Party' is wider than the scope of 'goods originating in a Party'.

GOODS.5	It has been suggested to us that after an import goes into free circulation it can subsequently be "returned" tariff-free to Canada under CETA and that the EU-UK TCA is more restrictive than CETA in this respect; could this be correct? Also, do any of our other FTAs/EPAs contain different conditions for the flow of goods, tariff-free, including returns, than exists under the TCA?"	The conditions relating to the prohibition of customs duties (GOODS.5) in the EU-UK TCA follow the standard EU approach of giving preference to 'goods originating in the other Party'. There is indeed a difference in the equivalent provision in CETA, which was the outcome of that specific negotiation and did not reflect the standard approach.
GOODS.10	Article GOODS.10: Import and export restrictions, states – *"1. A Party shall not adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, except in accordance with Article XI of GATT 1994 ……"* Article GOODS.9: Remanufactured goods states – …. *2". Article GOODS.10 [Import and export restrictions] applies to import and export prohibitions or restrictions on remanufactured goods. If a Party adopts or maintains import and export prohibitions or restrictions on used goods, it shall not apply those measures to remanufactured goods. ……* "Can a member state apply restrictions (as far as technical specifications and age of first registration of the vehicle) to used vehicles (cars etc) registered in and originating from UK and exported to the MS after 1/1/2021?"	The Commission services are of the view that insofar as the restrictions are based on criteria such as technical specifications or age of the vehicle (i.e. environmentally-driven), they are not incompatible with the Agreement.
GOODS.10 & 13	Which goods will require import licenses in accordance with Articles 10 to 13 of Chapter 1 of Title I of Part Two of the EU-UK Agreement?	No goods are foreseen to require import licenses.
GOODS.10, 13 & 14	Do these Articles provoke any specific consequences or restrictions for the application of **Regulations (EC) No.116/2009 (Export of Cultural Goods)** and **(EU) 2019/880 (Import of Cultural Goods)** in respect of the exchange of cultural goods with the UK?	Import/export procedures for cultural goods do apply in full vis-à-vis the UK in the same way as they apply to imports from / exports to any other third country. Those procedures are also not affected by the cooperation provisions on cultural property in Article GOODS.21.

	Currently we assume that the aforementioned Regulations apply to the UK as to any other Third Country and are to be complied with right away as they refer to pre-existing (thus known) law.	
GOODS.13	Referring to art. Goods.13, is the UK going to use import licences in import of agricultural products from the EU?	No goods are foreseen to require import licenses.
GOODS.19(5)	Article GOODS.19(5) sets out that, after a Party has decided temporarily to suspend the preferential treatment granted to a product, it may decide, if the conditions that gave rise to the suspension persist, to renew the suspension. How is the renewal carried out? Is a new notification to the Trade Partnership Committee and/or new consultations (as provided for in paragraphs 3 and 4) necessary?	The steps of GOODS.19 'escalate' towards a suspension: 1. Making a finding based on objective, compelling and verifiable information [para. 2a] 2. The other Party repeatedly and unjustifiably failing to comply with para. 1 [para. 2b] 3. Notification of TPC and further consultation with other Party for three months [para. 3] 4. Suspension in case of no agreement [para. 4] 5. Revision or extension of suspension [para. 5] Therefore, if after the suspension (step 4) the issue persists, steps 1-3 would not need to be taken again. Instead, the extension would be a repetition of step 4, i.e. including the notification of the temporary suspension with the (renewed) period intended, again max. 6 months. Please note that GOODS.19 does not provide for a maximum number of extensions of the suspension. Hence, in short: new notification, but no new consultation (except the "periodic consultations within the TPC", as per the last sentence of para. 5).
GOODS.21	Article GOODS.21 – Cultural property. Provision 4 foresees identifying a contact point communicating with the other Party with respect to questions arising under this Article. How these contact points will be nominated and where they will be situated?	The EU contact point for the purposes of Article GOODS.21(4) will be situated in the European Commission's department responsible for Directive 2014/60/EU on the return of cultural objects unlawfully removed from the territory of a Member State (currently, DG GROW). The EU contact point will liaise as appropriate and necessary with the competent authorities of the Member States on relevant matters arising under this Article.
GOODS.21	Given the close alignment of the provision to the aims and scope of **Directive 2014/60/EU (Return of Cultural Goods)** and taking into account the former's rather rudimentary character in terms	The Commission services share the view that existing mechanisms and procedures that have been set up in the EU Internal Market pursuant Directive 2014/60/EU could be used, as appropriate, to support the

	of condition and procedure: Does COM promote the idea that MS (continue to) apply the conditions and procedures as implemented in their respective national laws in accordance with Directive 2014/60/EU when dealing with return issues with the UK, thus achieving a streamlined approach among the MS? Is there any information yet on how the UK plans to implement the provisions, i.e. if UK plans to hold on to the conditions and procedures established in their domestic law under Directive 2014/60/EU? In this context: Will UK be granted continued access to and participate in the cultural goods module of the Internal Market Information-System (Reg. (EU) No. 1024/2012)?	implementation of Article GOODS.21 on the EU side. During the negotiations, the UK indicated it had no plans to change its current domestic law in the field of cultural property. We therefore expect that any request for cooperation and assistance received from the EU will be dealt with through the existing UK domestic mechanisms and procedures. The UK will not be granted access to the cultural goods module of the Internal Market Information System (IMI). Any necessary communications will take place bilaterally through the designated contact points of the Parties.
Chapter 2 ORIG		
ORIG.6	The cases of application affected by this rule (in relation to agricultural products) remain unclear in our opinion. The sugar sector does not seem to be affected by this after reviewing the product-specific regulations in Annex ORIG-2. COM is kindly requested to i. explain the background for this regulation and ii. to specify the relevant cases of application for agricultural products.	i. Article ORIG.6 follows the standard EU approach on tolerances. It applies to for example 17.01 where the rule is CTH (you can import up to 15% by weight of non-originating raw sugar when refining white sugar). You cannot apply additional tolerance when there is another percentage threshold in the rule, such as in the sugar restriction for confectionary or biscuits. ii. It is relevant for all agricultural rules where there is no percentage threshold for a particular material but an absolute restriction, e.g. requiring that a material is wholly obtained or that it undergoes a change of tariff classification.
ORIG.15	Is our understanding correct, that Art. ORIG.15 also applies to returned products from GB? If GB and the EU privilege an unchanged return transport from a third country, this must apply a fortiori to an unchanged return transport from GB / EU (argumentum a maiore ad minus). Is it correct that such an approach would be covered both by Art. 203 UCC and Sec. 33(5) UK Taxation (Cross-border Trade) Act 2018? Do you share this view?	Article ORIG.15 applies to third countries. Products with EU origin that enter the UK and are then returned to the EU for further processing are not subject to an interruption in the meaning of Article ORIG.3 paragraph 3 and therefore retain their EU origin. However, outside the scope of the EU-UK TCA, Article 203 of the UCC may be of application if the required conditions are respected.
ORIG.18	Whether non-preferential and preferential tariff quotas will be	For the application of the origin quota derogations in preferential trade

	used and what origin documents will be required for the application of non-preferential and preferential tariff quotas (Article 16 of Chapter 1 of Title I of Part Two of Title I of Part Two of the EU-UK Agreement) Chapter 2 of Title I of Part One of the EU-UK Agreement Article 18)?	between the EU and the UK, the document to be used is the statement on origin with an indication that the rule of origin under the origin quota derogation is used (see Annex ORIG-2A).
ORIG.18	The text of the agreement is rather vague regarding the application of the REX-system for EU exporters. We assume the REX system is valid due to an indirect reference to the Union Custom Code in a footnote of Annex ORIG 4. Would it be possible to add a clarification to the text of the agreement, preferably in Article ORIG.19, that the REX system can and should be used by the EU exporters?	The footnote of Annex ORIG-4 is not the only reference to be considered. The definition of "exporter" in Article 2 refers to a person, located in a Party, who, in accordance with the requirements laid down in the laws and regulations of that Party, exports or produces the originating product and makes out a statement on origin. In application of Article 68 of the UCCIA, it is therefore clear that on the EU side exporters need to be registered in REX to make out valid statements on origin.
ORIG.18 ANNEX ORIG-3	*"4. In order for an exporter to complete the statement on origin referred to in point (a) of Article ORIG.18(2) [Claim for preferential tariff treatment] for a product referred to in paragraph 2 of this Article, the exporter shall obtain from its supplier a supplier's declaration as provided for in Annex ORIG-3 [Supplier's declaration] or an equivalent document that contains the same information describing the non-originating materials concerned in sufficient detail to enable them to be identified"* QUESTION: what is the equivalent document in this context?	One can either use the attached template for supplier declaration or any other document containing the same information, describing the product in sufficient detail (in another format).
ORIG.18a	*"2. By way of derogation from paragraph 1 of this Article, if the importer did not make a claim for preferential tariff treatment at the time of importation, the importing Party shall grant preferential tariff treatment and repay or remit any excess customs duty paid provided that:* *(a) the claim for preferential tariff treatment is made no later than three years after the date of importation, or such longer time period as specified in the laws and regulations of the importing Party;"* QUESTION: retrospective claim for preferences must be done within these 3 years?	Yes, the time foreseen in the EU-UK TCA for retrospective claim and the time established in the UCC for repayment or remission of duties match: three years.

ORIG.18a & ORIG.26	Could the Commission clarify the time periods in relation to documentation for rules of origin in EU-UK trade. We understand that for a retrospective claim for preference after import, the EU-UK deal provides for a period of 3 years to make the claim. Additionally, there is a period until end of 2021 for provision of suppliers declaration, if claiming for preference based on importer´s knowledge. Could the Commission confirm whether this understanding is correct?	The possibility provided in the EU-UK TCA to claim preference retrospectively applies to the cases when the importer has not claimed preferential treatment at the time of import. He has in that case up to three years after importation to claim the preference retrospectively. The period provided under EU internal legislation (COMMISSION IMPLEMENTING REGULATION (EU) 2020/2254 of 29 December 2020) provides for a transitory period for EU exporters to make out statements on origin because of supplier's declarations that he may not have in his possession at that moment provided that those statements will be in his possessions 1.1.2022. In those cases, as the statement is made out, the importer in the UK may claim the preference at the moment of import (no need for retrospective claim). Finally, the importer may claim the preference based on his knowledge. In these cases, the importer does not need a statement on origin.
ORIG.18(2)(b)	Article ORIG.18(2)(b) establishes that a claim for preferential tariff treatment may be based on the importer's knowledge. Article ORIG.22(1)(b) then sets out the record-keeping requirements for importers who use the "importer's knowledge" prerogative, and Article ORIG.24 provides for the relevant verification. However, it ascribes the verification to the customs authority of the importing Party. Will there be any higher control of this authority (namely, at the EU-level)? We ask because, while a successful origin claim is naturally in the interest of the exporter, importing countries (and their consumers) may also benefit from a tariff-free import, and therefore have an incentive to vouch for an otherwise unjustified origin claim.	For clarification purposes, Article 22 (1) does not provide for record keeping requirements for importers using the 'importer's knowledge" only but for all importers (i.e. also importers using the statement on origin). Now, in the context of a claim based on the knowledge of the importers the verification can only be carried out by the importing customs addressing to the importer. There cannot be administrative cooperation addressed to the customs authorities of export as there was no exporter making out a statement on origin and there is therefore no exporter that may be verified. In such cases, if the importing customs are not satisfied with the information provided by the importer, the preference can be denied.
ORIG.19	*"3. A statement on origin shall be valid for 12 months from the date it was made out or for such longer period as provided by the Party of import up to a maximum of 24 months.* *4. A statement on origin may apply to: (a) a single shipment of one or more products imported into a Party; or (b) multiple shipments of identical products imported into a Party within the*	The validity will be of 12 months, unless a Party decides to provide for a longer period (up to 24 months). The UK has decided to provide for such a longer period for imports in the UK of EU originating goods. Yes, it is possible in the EU to accept statements for multiple shipments.

	period specified in the statement on origin, which shall not exceed 12 months." QUESTIONS: The Parties to the agreement can choose the validity of the statement? Why are there 2 validity periods? Is it possibile in the EU to accept statements for multiple shipments?	
ORIG.20	*"The customs authority of the importing Party shall not reject a claim for preferential tariff treatment due to minor errors or discrepancies in the statement on origin, or for the sole reason that an invoice was issued in a third country."* QUESTIONS: It is allowed third party invoicing? It is allowed that the statement is made on a paper not issued by the exporter?	This provision does not refer to third party invoicing (i.e. the statement on origin made out on an invoice issued in a third country), which is not regulated by the Agreement.
ORIG.21	*"1. For the purposes of a claim for preferential tariff treatment that is made under point (b) of Article ORIG.18(2) [Claim for preferential tariff treatment], the importer's knowledge that a product is originating in the exporting Party shall be based on information demonstrating that the product is originating and satisfies the requirements provided for in this Chapter."* QUESTIONS: Is there an exhaustive list of information that can be checked? In case of refusal for preferences on importer's knowledge, can the importer afterwards submit to the customs office a statement on origin?	The information that the importer must provide to customs is contained in Article ORIG 24 i.e information pertaining to the fulfilment of origin criteria, which is: (i) where the origin criterion is "wholly obtained", the applicable category (such as harvesting, mining, fishing) and the place of production; (ii) where the origin criterion is based on change in tariff classification, a list of all the non-originating materials, including their tariff classification (in 2, 4 or 6-digit format, depending on the origin criterion); (iii) where the origin criterion is based on a value method, the value of the final product as well as the value of all the non-originating materials used in the production of that product; (iv) where the origin criterion is based on weight, the weight of the final product as well as the weight of the relevant non-originating materials used in the final product; (v) where the origin criterion is based on a specific production process, a description of that specific process. If the importer has claimed preference based on his knowledge, he cannot afterwards, i.e. during or after verification to submit a statement in case he is not able to demonstrate that the product was originating.

ORIG.23	In the case of preferential treatment for goods (Article 23 of Chapter 2 of Title I of Part Two of the EU-UK Agreement) sending by private persons to private persons in small consignments up to a value of EUR 500 and goods forming part of a traveller's personal luggage up to EUR 1 200, both import duties and, consequently, VAT exemptions are applicable in accordance with Regulation No. 11-27 of 1186/2009 and Article 41?	In relation to private-to-private persons small consignments and goods forming part of a traveller's personal luggage, Article ORIG.23 provides for an exemption of the proof of origin, i.e. the product must be originating, but the importer does not need a statement on origin in order to benefit from the preferential treatment and thus avoid paying the customs duties. All provisions apply within their scope. – The zero duty of the EU-UK TCA can only be applied to UK origin products. So, in the example that you mention, the goods worth EUR 200 with UK origin could be imported at zero rate in the Union customs territory if there are no doubts on the origin. – If the goods are contained in the passenger's luggage, the VAT exemption applicable in a MS will determine the amount of goods that can be admitted free of import duties, pursuant to Art 41 of Reg 1186/2009. Strictly speaking, the goods of UK origin are not admitted free of import duties but under a preference so they should not be counted in determining when the national threshold has been reached (i.e. if the national threshold is EUR 430, that amount of 3rd country goods could be admitted free of import duties in the MS without "counting" the EUR 200 UK goods).
ORIG.23	Article ORIG.23 Small consignments: According to Article ORIG.23 2 c) the UK is to communicate the limits set under domestic law to the EU ("for the United Kingdom, products whose total value exceeds the limits set under the domestic law of the United Kingdom. The United Kingdom will communicate these limits to the Union.) Has the UK communicated this information to the EU? If not, do you know when the UK will do so?	The UK website states GBP 1 000 as the value limit, but we are in contact with the UK to have confirmation that this value applies to consignments from private person to private person, traveller's luggage and also other small consignments. We expect official communication from the UK on this as provided in the TCA.
ORIG.23(1)(a) & (b)	Shall the application of conditions set out in Article ORIG.23(1)(a)and(b) regarding application of preferential tariff treatment (customs duty of 0%) to goods sent in small packages by one natural person to another with the total value not	The application of Article ORIG.23 of the TCA (i.e. the exemption to provide a proof of origin for low value consignments and still consider the product as originating and therefore benefit from preferences) applies independently of the application of EU internal legislation for

	exceeding EUR 500 and goods forming part of a traveller's personal luggage with the total value not exceeding EUR 1 200, be concurrent with application of conditions for applying exemption from import duties in accordance with Articles 25-27, Article 41 of the Regulation No 1186/2009? For example, how should tax exemptions and preferential treatment be applied if personal luggage contains products purchased in the UK with a value of EUR 1000 and inspection of the goods reveals that the information provided on the packaging indicates that part of the goods worth EUR 200 are of UK origin, while the rest of the products worth EUR 800 have originated in other third countries (CN, CH, TH).	exemption of customs duties. All provisions apply within their scope. – The zero duty of the EU-UK TCA can only be applied to UK origin products. So, in the example that you mention, the goods worth EUR 200 with UK origin could be imported at zero rate in the Union customs territory if there are no doubts on the origin. – For the rest of the goods, worth EUR 800, if they are in the same consignment as the UK goods, no duty exemption can apply, as Art 25-27 of Regulation No 1186/2009 apply only if the maximum value of the consignment is EUR 45. – If the goods are contained in the passenger's luggage, the VAT exemption applicable in a MS will determine the amount of goods that can be admitted free of import duties, pursuant to Art 41 of Reg 1186/2009. Strictly speaking, the goods of UK origin are not admitted free of import duties but under a preference so they should not be counted in determining when the national threshold has been reached (i.e. if the national threshold is EUR 430, that amount of 3rd country goods could be admitted free of import duties in the MS without "counting" the EUR 200 UK goods).
ORIG.23(1)(c)	Should Article ORIG.23(1)(c) of the Agreement be interpreted as meaning that waiver to produce documentary evidence of the origin of goods for the preferential treatment of other low value consignments is applicable to goods brought in the EU from the UK? If so, what consignments are intended to be covered by such waiver?	No, this is applicable for goods imported in the UK from the EU. In letter c) the UK was considering not only goods included in personal luggage and those sent from private person to private person but also other low value consignments which could be imported by way of trade.
ORIG.26	During the 25th meeting of the Customs Expert Group – Origin on 18 November 2020, the Commission presented a Draft Commission Implementing Regulation on the making out of statements on origin for export under preferences to the United Kingdom during a transitory period. In the online Questions & Answers regarding the EU-UK Trade and Cooperation Agreement the following statement about rules of origin is made: "In	The Commission services can confirm that the statement corresponds to the abovementioned Implementing Regulation, which was adopted as COMMISSION IMPLEMENTING REGULATION (EU) 2020/2254 of 29 December 2020 [OJ 446 /2020]. This act provides for a transitory period during which there is the possibility for the exporter in the EU to make out a statement on origin on the basis of suppliers' declarations that the exporter may only have in its possession

	addition, the operators will benefit from additional flexibility in collecting documentary evidence to prove origin during the first year, to allow them to benefit from the preferences despite the little time available between conclusion and application of the Agreement." Could the Commission perhaps confirm whether this statement refers to the abovementioned Implementing Regulation? Would it be possible for the Commission to elaborate on the status of this Draft Implementing Regulation and, in particular, when it will be adopted?	afterwards. This transitory period finishes at the end of 2021. After that date, the exporter must have in its possession all the suppliers' declarations it used to make out the statements. Otherwise, it should inform the importer accordingly. Furthermore, as a corresponding flexibility, under administrative cooperation a longer time period is foreseen for providing information in case of procedures launched in the first three months of application of the Agreement (12 months instead of 10 months, see article ORIG.26).
Annex ORIG-1, Note 4(d)	Can the Commission comment on the fact that the definition of distillation on page 418 (Annex Orig-1, Note 4 (d) differs to that provided for in Regulation 110/2008 and 787/2019 on Spirit drinks?	The definition of "distillation" in the EU-UK agreement is only applicable to the rule for heading 27.10 (Petroleum oils) and does not apply to spirits.
Annex ORIG-2 (PSRs)	Can COM further expand on the reasoning behind the product specific rules for electric vehicles and batteries? Full cumulation together with generous limits on non-originating materials for both electric vehicles and batteries during especially the first transition period offers significant (and welcome?) flexibilities for the operators.	The rules of origin of the Agreement also deliver on the EU's key priority to foster a competitive value chain for battery technology in the EU, by requiring local production of the battery and key materials for electrified vehicles exported from 2027 onwards. Electrified vehicles and their batteries constitute a key technology for achieving our commitments under the Paris Climate Accord. Yet, the rules recognise the difficulties in sourcing sufficient originating batteries in the short term by providing more flexible rules for the first 6 years of application of the agreement. This allows significant imports temporarily as automakers, battery manufacturers and chemical companies invest aggressively to expand the production capacity in the EU.
Annex ORIG-2	Questions on the content of the product specific rules of origin,	The Commission has published all the rules in the online tool ROSA

(PSRs)	especially for electric accumulators and electrified vehicles (HS 85.07): Does the Commission plan to publish further information material to enable easier access for businesses to RoO, especially those for electric accumulators and electrified vehicles? If not, would the Commission be willing to consider it?	with explanations of all types of PSRs. We are working on more detailed explanations for the rules for batteries and we are open to engage with MS and Stakeholders who need further guidance and information of the functioning of the rules.
Annex ORIG-2B	The review mechanism for batteries (HS 8507) is a welcome addition and something that SE have proposed. Do COM foresee using the mechanism in light of current production capacity on the market?	The review mechanism can be triggered by either Party 4 years after the entry into force and would take into account the information and projections available at that time to make an assessment.
Annex ORIG-2B	Annex ORIG 2B contains the product-specific rules of origin for "ELECTRIC ACCUMULATORS AND ELECTRIFIED VEHICLES", valid until Dec 31 2026. Could the commission explain how the review clause will influence those rules and the RoO in place after Dec 31 2026?	The rules in place from 2027 are listed in Annex ORIG-2. These have been mutually agreed by the EU and the UK. While they are not foreseen to be changed at this time, the review mechanism offers a procedure for changing the rules based on mutual agreement between the Parties in case it is necessary in light of newly available information.
Annex ORIG-4	ANNEX ORIG-4: TEXT OF THE STATEMENT ON ORIGIN: according to footnote 2 a UK exporter will be assigned a reference number in accordance with the laws and regulations applicable within the UK. Where the exporter has not been assigned a number, this field may be left blank. We are wondering whether the UK has communicated information on what number they will use in the UK, and if this reference number (once assigned) should always be entered into the field in the statement? No exceptions, for instance value threshold? In other words, in which cases can EU-MS allow preferential treatment based on a statement of origin that doesn't contain an exporter reference number from the UK? Can an EU MS grant preferential treatment on the basis of a declaration of origin, ANNEX ORIG-4: TEXT OF THE STATEMENT ON ORIGIN, without an Exporter Reference No from the UK? If that is possible, what are the conditions?	In principle UK exporters will use their GB EORI numbers. No variations are foreseen in relation to value limits. Therefore, a registration number should appear in statements on origin made out by UK exporters UK exporters. We are in contact with the UK to obtain confirmation of these technical aspects.
Annex ORIG-4	Does the Commission already know what will be the structure of	The UK did not inform yet the EU about any change to the structure of

	the EORI number for UK exporters wanting to use the declaration of origin? Is the intension to create a new structure or will it be the same as before 31/12/2020.	its EORI number, to be used as well as Exporter Reference Number by UK exporters for the purpose of preferential exports to the EU under the TCA. The Commission is not liable to provide information on third countries policies. As a first step before verifying with the UK authorities, you might wish to consult the following webpages of the UK government: - 'The Trade and Cooperation agreement (TCA): detailed guidance on the rules of origin': https://www.gov.uk/government/publications/rules-of-origin-for-goods-moving-between-the-uk-and-eu (in particular its point 2.3.2); and - 'Get an EORI Number': https://www.gov.uk/eori - The validity of an EORI number beginning with GB (issued by the UK) can be checked through that page or directly here: https://www.gov.uk/check-eori-number
Annex ORIG-4	Does the Commission know what value limit the UK plans to set for issuing the declaration of origin? Do they intend to set a value limit or will the exporter´s number be obligatory for all imports irrespective of the value?	The EU-UK Trade and Cooperation Agreement (TCA) provides for each Party to assign reference numbers to its respective exporters under the TCA 'in accordance with its laws and regulations'. The Commission is not liable to provide information on third countries policies. Insofar as UK exporters are concerned, as a first step before verifying with the UK authorities, you might wish to consult the following webpages of the UK government: https://www.gov.uk/guidance/claiming-preferential-rates-of-duty-between-the-uk-and-eu-from-1-january-2021 In principle UK exporters will use their GB EORI numbers. No variations are foreseen in relation to value limits. Therefore, a registration number should appear in statements on origin made out by UK exporters UK exporters. We are in contact with the UK to have confirmation on this technical aspects
Annex ORIG-4	Will the EU allow granting the preferential origin based on a long-term declaration of origin (for multiple consignments)? For example, the EU-Canada agreement (CETA) provides for this	Article ORIG.19(4) of the TCA stipulates that 'A statement on origin may apply to: (a) a single shipment of one or more products imported into a Party; or

	possibility but the EU does not use it.	(b) multiple shipments of identical products imported into a Party within the period specified in the statement on origin, which shall not exceed 12 months'. Contrary to the EU-Canada CETA, that provision does not leave a Party the discretion to apply point (b). Therefore, as in the case of the EU-Japan EPA, EU importers and UK importers may use statements on origin for multiple shipments to claim preferential tariff treatment under the TCA.
Annex ORIG-4	Will a signature be required in the declaration of origin? We assume the answer is "no" but we would like to make sure.	A signature is indeed not required in statements on origin made out for the purposes of the EU-UK TCA, as shown in the text of the statement on origin, in Annex ORIG-4 of the TCA.
Chapter 3 SPS		
SPS.7(4)	Could the Commission clarify the intention behind SPS 7.4, as this text was not present in either the EU or UK legal texts previously circulated. Could the Commission outline the justification process or what grounds might constitute justification for the introduction of new SPS controls?	SPS 7.4. in the agreed text replaced part of Article SPS.6.3 in the EU text proposal published in March with regard to the justification of required the import of certain products to be authorised following an assessment. The Parties have committed not to extend the requirement for such authorisations to allow imports to further products unless justified. In such case the principle in SPS.5.3(d) for SPS measures being are proportionate to the risks identified and not more trade restrictive than necessary to achieve the importing Party's appropriate level of protection shall apply.
SPS.7(11)	Can the Commission clarify the meaning/intent of Article SPS.7.11?	The Parties in SPS.7.11 have agreed not to require to send their officials to perform pre-clearance inspections of consignments in the territory of the exporting Party in order to allow imports. This is a burdensome practice applied by certain third countries mainly in the plant health area.
SPS.13	Article SPS.13: Emergency measures provides for information sharing between the EU and UK. We would welcome further details on how more precisely such information should be shared, and the involvement of Member States in this regard.	The Commission will ensure exchange of information with the UK for the implementation of this provision. The usual practices, channels of communication and coordination with Member States of exchanges with third countries will be followed.
	We would also like to have a confirmation that the Competent Authorities of our MS regarding food of non-animal origin, will continue to control all imported from the UK consignments of	We confirm that all imports from Great Britain to the EU shall be subject to sanitary and phytosanitary conditions and checks that apply to products from any third country.

	such products on a risk-based approach and in the same manner as the controls that are carried out up to now for consignments imported from other Third Countries.	
	According to the information on the UKG website gov.uk regarding importing and marketing EU plant reproductive material in the UK, the UK will apply normal international trading rules to these materials from the EU: • seed, vegetable seed and other propagating material • fruit propagating and planting material • ornamental species • forest reproductive material What is it meant with "normal international trading rules"?	According to information publicly made available by the UK (link) imports into GB of high priority plants (list) from the EU as from 1 January 2021 must have: • a phytosanitary certificate • a pre-notification submitted by the importer in England, Scotland or Wales documentary and identity checks a physical inspection at places of destination.
	What are the requirements for plants and plant products which are sold through distance contracts for personal use (online shopping, postal service,...)?	For movements from GB to the EU, the requirements that apply for such imports from third countries apply. We expect similar practice to be followed by the UK for imports into GB, but in line with their staged approach for the introduction of certification requirements and import checks.
	Are further meetings on **export veterinary certificates planned?** Do you have more information on the specific border checkpoints through which the goods will be transported and where checks will take place from July?	The Commission has been in contact with the UK and raised issues identified by Member States and business organizations with regard to the health certificates for export from the EU to GB, most of which have been resolved. The Commission is available to pursue the resolution of any further issues Member States and business organizations would bring to the Commission's attention. At this moment in time, the Commission does not have information about the UK's specific border checkpoints through which the goods will be imported/transported into the UK and where checks will take place from July 2021.
	SPS Chapter: The principle of equivalence, including a specific article and an annex on equivalence and an equivalence assessment procedure, is missing in the agreement. How does the EU intend to deal with the issue of recognition of equivalence in the future relation with UK – bearing in mind that the principle of recognition of equivalence is included in the WTO SPS	In the SPS Chapter of the TCA, the EU and the UK have reaffirmed their rights and obligations under the WTO SPS Agreement, which includes the possibility: a) for each Party to independently set their SPS import requirements and controls, and b) to recognise equivalence.

	agreement?	
	Are the following products still intended to be subject to import bans in bilateral UE-UK trade (from 01.04.2021 on the UK side) despite the entry into force of the agreement? • chilled minced meat (red meat) • chilled meat preparations (for example, sausages) • minced meat (poultry) • poultry and ratite or game bird mechanically separated meat • raw milk from TB herds • ungraded eggs • composite products containing dairy products made from unpasteurised milk (for example, a ready meal topped with unpasteurised cheese) Do the above mentioned import bans also cover organic products?	The TCA has no effect on products that are prohibited to be imported from third countries outside the EU SPS area and consignments from Great Britain are subject to such third country requirements/prohibitions.
Chapter 4 TBT		
(general)	How satisfied is the Commission with the outcome in TBT issues, for example, related to international standards and standard setting bodies and sectoral annexes (automotive, pharmaceuticals, chemicals, wine and organic products)?	Overall assessment of the outcome of negotiations was given in the presentation to the CWPUK.
(general)	Do we understand it correctly that the TCA provisions concerning automatic recognition of technical standards do not foresee further negotiations with the UK to eliminate technical Barriers to Trade, for example concerning organic production or other equivalence agreements?	There is no automatic recognition of technical standards between the EU and the UK. Organic products is the only area where equivalence was agreed, subject to a review clause by end 2023. However, the Parties have agreed a clear definition of international standards that identifies the relevant international standard-setting bodies. This will ensure that both sides' technical regulations, conformity assessment procedures and related product standards will be based on the same international references and will therefore be compatible to the extent possible.

(general)	Regarding conformity assessment procedures, is further joint work planned? Is it known how long the UK procedures will take and will cost, how this will affect the costs and competitiveness of exporters?	In the field of conformity assessment, the Parties agreed to maintain simplified access to each other's markets through, in particular, the continued use of self-certification of conformity by the manufacturer ("supplier's declaration of conformity") where this is currently applied in both the EU and the UK (see Article TBT.6(5)). This covers a very large share of bilateral trade. Pursuant to Article TBT.6(6), the Parties will publish and maintain a list of the product areas in which self-certification applies, together with the references to the applicable technical regulations. No further specific joint work is planned. In general, in areas subject to third-party conformity assessment, the UK has indicated no plan to diverge from current procedures in the near future as regards Great Britain. In Northern Ireland, EU rules on goods will continue to apply as they apply in and to Member States pursuant to the Protocol on Ireland / Northern Ireland of the Withdrawal Agreement. In most areas, products complying with EU rules will continue to be accepted on the Great Britain's market until end-2021, in some sectors even longer. For details on the applicable rules in the UK (GB) from 1 January 2021, please refer to the information available at: https://www.gov.uk/transition.
(general)	**Product security** 1. The agreement mentions alignment with international standards (Title I: Trade in Goods, Chapter 4: Technical Barriers to Trade, Art. 5: Standards) and in this regard refers to a number of international standardization bodies (IEC, ISO etc.). *Does this mean that goods imported from the UK do not have to comply with the special requirements set out in the relevant European standards (CEN/CENELEC)? And what effect does this have on the declarations of conformity? Should importers take additional steps to prove that their goods comply with the relevant product safety legislation?* 2. *Is it correct that goods imported from the UK do not*	1-2. No, goods imported from the UK into the EU will need to comply with all applicable EU or Member State requirements, including language requirements for user manuals or safety instructions, like imports from any other third country, and will be subject to the related regulatory compliance obligations, checks and controls. 3. No, permanent, non-detachable marking or labelling can be required where this is necessary in view of legitimate objectives. Please see Article TBT.8(2)(f): "unless its considers that legitimate objectives may be undermined, [a Party] shall endeavour to accept the use of non-permanent or detachable labels, or marking or labelling in the accompanying documentation, rather than requiring labels or marking to be physically attached to the product" (emphasis added).

	necessarily need to have user manuals or safety instructions in the individual EU languages (including Danish)? This would be a significant advantage to the UK compared to other third countries. 3. *Is it correct that the agreement does not allow for permanent marking/labelling of products?* This would also entail a significant advantage to goods imported from the UK and potentially make the task of market surveillance more difficult.	
(general)	As regards harmonized sectors, does the agreement affect the recognition of certificates, test results, declarations of performance etc.? What about non-harmonized sectors, can we expect similar agreement to the one with Turkey in the future?	The UK's decision to leave the Internal Market and its governance system means that free movement of goods based on common rules (harmonised sectors) or the principle of mutual recognition (non-harmonised sectors) has ended. The general rule is therefore that market access requires compliance with the requirements of the importing Party and regulatory checks apply. For further guidance, please refer to the relevant readiness stakeholder notices issued by the Commission, available at: https://ec.europa.eu/info/relations-united-kingdom/overview/consequences-public-administrations-businesses-and-citizens-eu_en. There are only two limited exceptions in the Agreement, namely in Annex TBT-2 (medicinal products – recognition of results of Good Manufacturing Practice inspections carried out by the authorities of the other Party in manufacturing facilities located in the territory of the issuing authority) and Annex TBT-4 (organics – recognition of equivalence of the current EU and UK organic legislation and control system, with a review clause by end-2023). In the field of motor vehicles, Annex TBT-1 does not provide for any additional mutual recognition going beyond the status quo under the existing international UNECE agreements.
(general)	The agreement provides specific arrangements for certain heavily regulated goods – in example chemicals and medicinal products. Although we are pleased with their inclusion in the sectorial list,	The choice of sectors reflects EU's precedents with other third countries (which usually include specific arrangements in those sectors) and their significance in terms of EU-UK bilateral trade.

	we would be keen to understand why there are only 5 sector-specific arrangements and how this choice can be justified.	
CITES	To what extent do standards adopted by the EU also apply to exports from Northern Ireland to the rest of Great Britain in the CITES context? *Background: This applies (for example) to technical or scientific standards that are developed by the EU-bodies (for example the so-called Scientific Review Group, which scientifically treats species protection issues within the EU with EU-wide impact)*.	The following two regulations are in the P&R list covered by an international obligation: - Council Regulation (EC) No 1100/2007 of 18 September 2007 establishing measures for the recovery of the stock of European eel as part of the Union's implementation of the CITES Convention; - Regulation 338/97 on the protection of species of wild fauna and flora by regulating trade: Article 5(1), (2), (3), (5), (6), in conjunction with Annex A; Article 5 (4), (5) and (6), in conjunction with Annexes B and C - CITES Convention on International Trade in Endangered Species of Wild Fauna and Flora. Therefore, these regulations will apply to movements NI-GB.
TBT.5	Does the agreement support GBR standards body BSI remaining member of the European standardization bodies CEN, Cenelec and ETSI after their transition period?	Article TBT.5 provides for the possibility of cooperation between standardisation bodies established within territory of the Parties. The Parties should encourage such cooperation. Article TBT.5 is very similar to the cooperation provisions to be found in EU's FTAs with other third countries, for instance in the Economic Partnership Agreement with Japan. The issue of BSI's future participation in CEN-CENELEC needs to be addressed in accordance with the internal rules of the two European organisations and a specific process is indeed ongoing in this regard. Such process should of course take into account the outcome of the negotiations and the reality of the UK as a third country that no longer participates in the EU Internal Market. ETSI has direct membership of national administrations of the 48 countries participating in the European Conference of Postal and Telecommunications Administrations (CEPT). As Contracting Party to the CEPT, the UK therefore remains a member of ETSI. However, when ETSI develops harmonised standards in support of EU legislation on a request from the European Commission, already as of the withdrawal date the UK's votes no longer count. According to ETSI's own rules, the acceptance of the request and the adoption of the standard depend on

		the vote cast by representatives of the national administrations of EU Member States and EFTA countries only.
TBT.5	So far EU product regulations have been adopted by GBR. However, future participation in new developments or revisions of product regulations will not be the case for GBR furthermore nor will their adoption be mandatory. Is there any evidence that GBR would still intend to reference to European harmonized standards in future national technical regulation?	All European harmonised standards that give a presumption of conformity to EU law have become 'designated standards' under UK law and their references have been published on GOV.UK. Please see the UK Guidance on Designated Standards for more details.
TBT.6	Can the Commission confirm that reference to a BS EN on a Declaration of Performance or CE Marking would be non-compliant with the relevant EU Regs?	We understand your question as referring to the Declaration of Performance of construction products. The Construction Products Regulation, like any other EU piece of legislation referring to European harmonised standards, refers to the original European harmonised standards and not to their national transpositions by CEN–CENELEC members. National transpositions must in any case be identical in content to the original version, although they often differ in the date, as it may take in some cases up to one year for national standardisation bodies to publish the national versions of harmonised standards, including due to reasons of translation. What matters for purposes of compliance is therefore that the title of the harmonised standard mentioned in the EU Declaration of Performance for construction products (or the EU Declaration of Conformity in other sectors), whether it refers to the original European harmonised standard or to one of its national versions as adopted by one of CEN-CENELEC members, is identical to the title of the harmonised standard the references of which were published by the Commission in the Official Journal of the European Union.
TBT.6	**Medical Devices** Can you confirm that: 1. The United Kingdom will be considered as a Third Country and therefore manufacturers which have their registers place of business in UK should appoint an authorized representative within the EU in order to be able to place their products within	The understanding is correct.

	the European Community. 2. Certificates issued by a Notified Body established in the United Kingdom shall be reissued by another approved Notified Body.	
TBT.6 (5) & (6)	Article TBT.6 (5) & (6) sets that both Parties shall accept a supplier's declaration of conformity (self-declaration) as proof of compliance with its technical regulations for those product areas where it does so on the date of entry into force of the Agreement (so-called low-risk products) and each Party shall publish and maintain a list of those product areas. Where can we find the referred lists, as they are not part of the agreement? If not published yet, what is the expected deadline? Can those lists be reviewed over time? With or without previews consultations with the other Party?	Article 6(6) does not set any deadline for establishing these lists but the aim is start the relevant work soon. No consultation with the other Party is necessary. Article 6(6) requires each Party to publish such list for information purposes, together with the references. On the EU side, once ready, the list will be made available on the pages of the Europa website concerning the EU-UK Trade and Cooperation Agreement. Article 6(6) requires each Party to "maintain" the list, which implies keeping it up-to-date.
TBT.6 (3f)	Article TBT 6 Paragraph 3(f) – does the provision with regard to subcontracting by conformity assessment bodies include inspections of transportable pressure equipment?	Article TBT.6(3)(f) should be interpreted as referring to conformity assessment as a market access requirement, in line with Article 5 of the WTO TBT Agreement, and not also covering inspections or other checks on products already in use. Transportable pressure equipment (TPE) is very high-risk equipment. TPE in use in the EU is subject to periodic inspections, intermediate inspections and exceptional checks by a Notified Body in accordance with the Annexes to Directive 2008/68/EC on the inland transport of dangerous goods and Chapters 3 and 4 of Directive 2010/35/EU on transportable pressure equipment. Directive 2010/35/EU as it currently stands does not contain provisions permitting the subcontracting of Notified Bodies' tasks in relation to inspections and checks on TPE already in use.
TBT.6 (3g)	Article TBT 6 paragraph 3(g) – will the list of bodies be published on the NANDO website?	For the EU, NANDO is considered to fulfil the requirement "to publish on a single website" a list of the conformity assessment bodies as set out in Article 6(3)(g).
TBT.8(2)	Article TBT 8.2: Spirits geographical indications require prior approval of labels including for product sent in bulk movement to	Yes, GI labelling requirements constitute a legitimate objective for the purposes of Article TBT 8.2.

	another country. The "mandatory technical requirements" include specific labelling approval requirements. Do the labelling requirements for GIs constitute a legitimate objective for the purposes of Article TBT 8.2?	
TBT.8 (e) & IP.57	Article TBT 8 (e) & Art IP.57: Article TBT 8 (e) provides that "*it shall accept that labelling, including supplementary labelling or corrections to labelling, take place in customs warehouses or other designated areas in the country of import as an alternative to labelling in the country of origin, unless such labelling is required to be carried out by approved persons for reasons of public health or safety;".* Notwithstanding the provisions of Art IP.57, can technical regulations for geographical indications be recognised as such standards not requiring international standard equivalent? This would be important because Art TBT 6 provide for conformity assessments.	The purpose of Article TBT 8 is to set general principles in the field of marking and labelling, in view of facilitating trade and avoiding that marking and labelling requirements create unnecessary barriers to trade. These general principles, however, are not meant to derogate from GI specific labelling requirements. The GI specific rules, included in the product specifications, do not have an equivalent international standard.
TBT.9	Are there any modalities around information-sharing for market surveillance that MS should be aware of, or are MoUs between market surveillance authorities acceptable? The Commission FAQs on the TCA refer to the following: "The Parties also agreed a comprehensive framework for cooperation on market surveillance and product safety that will underpin the robust enforcement of product safety rules and the high levels of protection of consumers and other users both Parties are committed to." It would be helpful to have more information around what this framework entails.	Article TBT.9 establishes a framework for cooperation on market surveillance and non-food product safety and compliance. This framework will be implemented in particular through the arrangements for information exchange referred to in Article 9(4) and (5), which will take the form of Annex TBT-XX and Annex TBT-ZZ, respectively. The Commission will negotiate those arrangements on behalf of the Union (see also the previous answer for more details on the procedure).
TBT.9 (4)	Article TBT.9 (4) states that as soon as possible, and 'preferably within six months' of the FTA entering into force, an arrangement for the regular exchange of 'selected information' between the market surveillance RAPEX database, and the British equivalent should be established. We would welcome further clarification on what is meant by the term 'selected information'. We would also welcome further information on how, when and by whom such decisions will be made and whether it is envisaged that NCAs will	The Commission will negotiate the content of the arrangement referred to in Article TBT.9(4) on behalf of the Union and keep the Member States informed through the Council's Working Party on the United Kingdom. The details of the procedure for approving the draft Annexes on the EU side before their adoption by the Partnership Council will be set out in the Council Decision on the conclusion of the Trade and Cooperation Agreement. The arrangement will identify the product categories to which the

	have an input into this process. We would ask, finally, whether there are plans for any interim measures to facilitate access to RAPEX pending the introduction of a longer-term arrangement.	exchange of information will apply and the type of information that may be exchanged, including e.g. information about the product concerned, economic operators, non-compliances found, a summary of test report and risk assessment, any voluntary or compulsory measures under consideration or already taken, etc. (see for instance the similar arrangement recently concluded with Canada: https://ec.europa.eu/info/sites/info/files/sgned_agreement_en_0.pdf) . No interim measures are envisaged pending the introduction of the arrangement in the form of Annex TBT-XX.
TBT.9(4)and (5)	When and how will Annexes TBT-XX and TBT-ZZ be prepared?	As regards Annex TBT-XX, Article TBT.9(4) provides that it should be prepared as soon as possible and preferably within six months of entry into force of this Agreement. As regards Annex TBT-ZZ, Article TBT.9(5) does not set any specific timeline. The Commission will negotiate the content of both Annexes on behalf of the Union and keep the Member States informed through the Council's Working Party on the United Kingdom. The details of the procedure for approving the draft Annexes on the EU side before their adoption by the Partnership Council will be set out in the Council Decision on the conclusion of the Trade and Cooperation Agreement.
Annex TBT-1	Could the Commission elaborate on why HS-code 90 is not covered by the TBT part of the agreement for motor vehicles?	Article 2 (Product scope) of Annex TBT-1 refers to "*all categories of motor vehicles, equipment and parts thereof […] falling under, **inter alia**, Chapters 40, 84, 85, 87 and 94 of the HS 2017*" (emphasis added). The qualifier "inter alia" ensures that relevant products falling under any other HS Chapter than those explicitly listed, such as Chapter 90, are included in the product scope as well.
Annex TBT-1	Article 2: refers only to motor vehicles. Why their trailers are not included?	The intention is to cover all products within the scope of the UNECE 1958 and 1998 Agreements, hence including trailers. Article 2 defines the scope as "all categories of motor vehicles , equipment and parts thereof, as defined in Paragraph 1.1 of UNECE Consolidated Resolution on the Construction of Vehicles (R.E.3)" (Footnote 96: ECE/TRANS/WP.29/78/Rev.6 of 11 July 2017).

		The reference to "Paragraph 1.1" should actually be to the whole "Paragraph 1" of the UNECE Consolidated Resolution on the Construction of Vehicles. While Paragraph 1 contains the definitions of all categories of vehicles, Paragraph 1.1 only gives the definition of "Power-driven vehicles". We will propose to the UK to implement this correction in the context of the upcoming legal scrubbing involving all language versions.
Annex TBT-1	Placing on UK market of vehicles with EU Type Approval, Article 6: Is it possible to place vehicles with a valid EU type approval on the UK market under Annex TBT-1 Article 6 Section 1 of the Trade and Cooperation agreement? If no, do any specific additional procedural requirements apply (e.g. type approval authority is to issue an additional U-IWVTA)?	Article 6(1) of Annex TBT-1 does not provide for the placing of EU type approved vehicles on the UK market. The objective of this article is the mutual recognition and acceptance of products which are covered by valid UN type-approvals. Moreover, U-IWVTA does not provide the equivalence to EU whole vehicle type-approvals (while on substance this could be said for EU type approvals when compared to U-IWVTA, since EU type-approvals are more stringent and broader in scope). To be factual, UK type-approval requirements therefore apply in full. Since technical requirements covered by the U-IWVTA are not comparable to EU whole vehicle type-approvals (and, currently, not to UK type-approvals either), additional tests, verification and markings would be required in any case by the UK authorities in case manufacturers wished to place vehicles with a valid U-IWVTA on the UK market.
Annex TBT-1	Issuance and acceptance of UN Universal International Whole Vehicle Type Approval (Annex TBT-1, Article 6): What procedural requirements apply to the EU type approval authorities with regard to the issuance of UN Universal International Whole Vehicle Type Approval (U-IWVTA)? And how can it be ensured that the acceptance of UK U-IWVTA by the member states does not undermine the harmonized technical standards for the vehicles in the EU?	Only those vehicles with valid EU type approvals can be placed on the EU market. Vehicles with a valid U-IWVTA, which are considered as partial whole vehicle type approvals, will need to undergo additional tests and verifications, consistent with the requirements applicable to the EU type-approval.
Annex TBT-2	«On 22 December 2020, the Commission published Commission notice C(2020)9264 on the Application of the Union's pharmaceutical acquis in markets historically dependent on	It is correct that the Annex does not provide for a batch testing waiver. Annex TBT-2 to the agreement is very different from the Commission notice published on 22 December. The latter goes further in terms of

	medicines supply from or through Great Britain after the end of the transition period. This document was published prior to the agreement reached on 24 December. The agreement itself provides for an Annex to allow for the mutual recognition of the GMP documents (e.g. GMP certificates and inspection reports) by both Parties to the Agreement, considering that the UK applies at the end of the transition period the EU GMP rules. In case of regulatory changes, each Party may decide to no longer recognize inspections or accept official GMP documents issued by the other Party. We understand that this Annex is does not provide for a batch testing waiver in sense of Article 51(2). The Annex also foresees the possibility to conduct inspection as a matter of exceptions. The question is how the agreement itself differentiates the items provided in the document published on 22 December. »	substance, but is limited in time, has many strings attached, and is only relevant for certain Member States.
Annex TBT-2	Which products are covered by biological and immunological products for human use in Annex TBT-2, Appendix C? Do biological and immunological products cover blood products, plasma for fractionation, tissues, cells (especially stem cells and bone marrow) and active biological ingredients for human use and excipients? If so, shouldn't this be clarified in Annex TBT-2, Appendix C in this proceeding or in a later extension of the agreement? The clarification could especially be necessary because the investigational medicinal products are mentioned separately in Annex TBT-2, Appendix C and can be also classified as biological products.	Annex TBT-2 applies to all medicinal products for human use and veterinary use covered by Directive 2001/83/EC and Directive 2001/82. The Annex therefore includes blood based medicines and active biological ingredients, except excipients. It does not cover the GMP inspections in the blood and tissue establishments for plasma for fractionation, bone marrow and stem cells, the legal basis for which is in the EU legislation on blood tissue and cells.
Annex TBT-3 - Chemicals	The provision on chemicals legislation in the agreement - e.g. in the Annex on Chemicals – does not provide detailed information on future cooperation between the ECHA and the UK agencies administering EU- and UK REACH.	No further steps are foreseen. The UK no longer participates in ECHA's activities since the withdrawal date (1.2.2020), when it became a third country. As of 1 January 2021, with the end of the transition period, the UK has left the EU Internal

	Will there be further steps foreseen that will establish processes/ mechanisms for sharing non-confidential and potentially also confidential data between the two parties to reduce costs and bureaucracy of double registrations in the EU and UK for EU and UK companies?	Market and has therefore been disconnected from all REACH-related databases managed by ECHA pursuant to Article 8 of the Withdrawal Agreement. The UK (Great Britain) has decided to set up its own REACH system. Full regulatory autonomy and the ability to diverge from EU rules are key objectives for the UK. The EU will cooperate with the UK in the field of chemicals in the same way as it does with other third countries and Annex TBT-3 reflects this new reality. Such cooperation will take place between the Parties' responsible authorities (European Commission and UK Government) and will involve ECHA and the corresponding UK regulatory agency as necessary. The Annex provides for the possibility to exchange non-confidential information in the framework of the voluntary cooperation framework provided for in Article 7 (cf. in particular paragraph 2). No exchange of confidential data relating to registrations or any other matter is envisaged under the Annex.
Annex TBT-4		
Annex TBT-4	Organic farming: aligning UK legislation on organic farming with envisage 2023 EU review EU organic producers will start applying the rules set out in Regulation (EU) 2018/848 from 2022 onward, while UK producers will not be obliged to do so. Can we anticipate that new legislation will also be respected in the UK? Taking into account this fact current recognition of EU organic equivalence could be revoked only after EU review of organic framework at the end of 2023. In the meantime new EU organic legislation will be in place already for 2 years (2022 and 2023). Is it clear that for this period 2022/2023 UK is considered to be also implementing new organic rules? This is very important from the point of view of the competitiveness of the EU sector. Furthermore it needs to be clarified whether, in accordance with	Annex TBT-4 provides for the recognition of equivalence of the existing EU and UK legislative frameworks for organic products (currently, both based on Regulation (EC) 834/2007). In view of the important changes brought about by Regulation (EU) 2018/848, Article 3(3) of Annex TBT-4 provides for a reassessment of equivalence by 31 December 2023. This period is considered adequate to allow the UK to pass new legislation as necessary and for the reassessment of equivalence, including any required on-site visits, to take place. It is to be noted that the deadline for reassessing equivalence set out in Annex TBT-4 is considerably shorter than the deadline provided for in Article 48 of Regulation (EU) 2018/848, pursuant to which the recognition of equivalence of third countries under Regulation (EC) 834/2007 will expire on 31 December 2026.

	paragraphs 4, 5 and 6 of Article 3 of Annex, which provide for changes to the legislation set out in the new agreement and procedures for review and confirmation or abolition of organic equivalence, the EU will have to review new legislation will apply in the UK, and determine equivalence?	If, as a result of the reassessment, equivalence is confirmed by end-2023, any subsequent changes to the Parties' legislation will have to be assessed in accordance with Article 3(4) to (6).
Annex TBT-4	Art. 3.1 and 3.2: We understand that equivalence recognition requires inclusion of the UK into Annex III of Regulation 1235/2008 (and possibly also further legislative steps on the UK side). In the meantime, EU Control Bodies remain recognized in the UK and vice versa under Annex IV of that regulation. Is that correct? Is there already an approximate timeline for putting complete equivalence recognition in place? - Art. 3.3: As we already know that EU legislation will change on 1 January 2022, two years of reassessment of equivalence (beginning of 2022 until end of 2023) seem quite long. Does the COM know if the UK intends to adopt the same organic rules as layed down in Regulation (EU) 2018/848? - Art. 4.2: Before the trade agreement was reached, the UK had informed that a Certificate of Inspection (COI) would only be requested for goods imported from the EU starting from 1 July 2021. Is that still valid?	1. The mutual equivalence recognition on organics between UK and EU is set out in Annex TBT-4 of the EU-UK Trade and Cooperation Agreement (TCA), which applies provisionally as of the 1st January 2021. In this context, the Commission has already taken the necessary practical steps to allow for its implementation by notifying the EU control bodies to UK authorities and updating the relevant IT systems (OFIS and TRACES). Moreover, in the coming weeks the Commission will launch the necessary amendments of Regulation 1235/2008, to remove the recognition of UK Control Bodies under Annex IV and include the UK competent authorities and bodies in Annex III to that Regulation. 2. Annex TBT-4 provides for the recognition of equivalence of the existing EU and UK legislative frameworks for organic products (currently, both based on Regulation (EC) 834/2007). In view of the important changes brought about by Regulation (EU) 2018/848, Article 3(3) of Annex TBT-4 provides for a genuine reassessment of equivalence by 31 December 2023. This period is considered adequate to allow the UK to pass new legislation as necessary and for the reassessment of equivalence, including any required on-site visits, to take place. It is to be noted that the deadline for reassessing equivalence set out in Article 3(3) is considerably shorter than the deadline provided for in Article 48 of Regulation (EU) 2018/848, pursuant to which the recognition of equivalence of third countries under Regulation (EC) 834/2007 will expire on 31 December 2026. 3. UK has confirmed the adoption of the amendments allowing for the waiver of the Certificate of Inspection for EU organic products until 1 July 2021: please see at The Agricultural Products, Food and Drink

		(Amendment) (EU Exit) Regulations 2020 (legislation.gov.uk)
Annex TBT-5		
Annex TBT-5	Wine trade in conjunction with the provisions set out in Part II: Trade, Transport, Fish and other Agreements (first section): Trade – Title I: Trade in goods, Chapter I: National Treatment and market access of goods (including instruments of trade defence) and Chapter II: Rules of Origin, please provide us with further clarifications on: 1. The Certificate for imported wine (set out in Appendix C of Annex TBT-5) should it be drawn up for each shipment or for each invoice issued by the exporter? 2. Are there any specific rules/guidelines for issuing the Certificate in electronic format? Where can such required layout be downloaded from? 3. Point 2, art. 3 in Annex TBT-5 stipulates that the Certificate may be in the form of an electronic document. When does the use of such Certificate enter into force? Is it from 01.01.2021 or at a later date? 4. Regarding the filling in the Certificate, does point 4 stipulate that an indication to the national competent authority is sufficient or is it mandatory for the authority to sign off the document? 5. If products exported from a MS (pertaining to a single invoice and a single import Certificate) have as an intermediate destination a logistical base of the importer in Northern Europe (i.e. Belgium), where they are unloaded to be sent out to the UK in several stages, are they allowed to use, for each shipment, a copy of the import certificate of the large consignment? Or some other document is required?	1. The certificate for imported wine set out in appendix C of Annex TBT-5 has to be drawn up for the consignment of wine to which it relates. 2. There are no specific guidelines for issuing the certificate in electronic form. 3. The electronic version of the Appendix C certificate is legally admissible as from 1.1.2021. 4. Box 4 requires indication/listing of the competent authority at the place of dispatch in the EU; box 11 shall list the competent authority that inspects and supervises the producer that produced the wine subject of the consignment. 5. Pursuant to Article 3 of Annex TBT-5, the UK shall not require more than the certificate provided for in Appendix C (per each consignment shipped to the UK or to the EU). However, the economic operator concerned should confirm directly with the UK authorities whether a single certificate is acceptable in the circumstances you describe, as well as, in case the various shipments would be considered to constitute a single consignment, the acceptability of copies of the certificates to accompany each shipment following the first one.
Annex TBT-5	A question about the indication of the sugar content in sparkling wines (relevant to the exporters of EU sparkling wines to UK): We would like to enquire whether the exporters of sparkling	Sugar content labelling requirements are labelling issues regulated under Article 4 of ANNEX-TBT-5 – Trade in wine. In particular, Article 4 provides that “unless otherwise specified in this

	wines from EU to UK will still be allowed to use the terms »brut nature«, »extra brut« and »brut« for the indication of low quantities of residual sugars on their labels. Additional explanation: What we understand from the SCHEDULE 8 Commission Delegated Regulation (EU) 2019/33: new provisions is that there will be only 4 groups of terms allowed to denote the quantity of residual sugar in the following categories of grape vine products: sparkling wine, aerated sparkling wine, quality sparkling wine or quality aromatic sparkling wine As we can understand from the available draft legislation is that the terms "brut nature«, »extra brut« »brut« are no longer listed in the proposed Annex 3 – Part A – List of terms referred to in Article 47(1) in SCHEDULE 8 Commission Delegated Regulation (EU) 2019/33: new provisions, whereas in the current Commission (EU) Delegated Regulation (EU) 2019/33 there are 7 group of terms listed to be used for the same categories of grape vine products (i.e. including "brut nature«, »extra brut« »brut«). Draft legislation: https://www.legislation.gov.uk/uksi/2020/1637/schedule/8/made ANNEX 3 Indication of the sugar content PART A List of terms referred to in Article 47(1), to be used for sparkling wine, aerated sparkling wine, quality sparkling wine or quality aromatic sparkling wine Terms, Conditions of use extra dry, If its sugar content is between 12 and 17 grams per litre. dry, If its sugar content is between 17 and 32 grams per litre. medium dry, If its sugar content is between 32 and 50 grams per litre. mild, sweet, If its sugar content is greater than 50 grams per litre.	Article, labelling of wine imported and marketed under this Agreement shall be conducted in compliance with the laws and regulations that apply in the territory of the importing Party". Article 5, however, provides for a transition period in view of exhaustion of stocks, which allows wine "produced, described and labelled in accordance with the internal laws and regulations of a Party " by 1 January 2021 to continue to be labelled and placed on the market [of the other Party] for a period of two years (i.e. until end-2022) by wholesalers or producers. Retailers benefit from such transitional measures as well,, until their stocks are exhausted. The Commission will clarify with the UK whether sugar indication content is a mandatory labelling requirement under the new UK legislation.

Annex TBT-5 Art. 1	For the purposes of this Annex, "wine produced in" means fresh grapes, grape must and grape must in fermentation that have been turned into wine or added to wine in the territory of the exporting Party. The labelling and presentation of the wine (and wine-products such as grape must, semi-sparkling wine, sparkling wine and liqueur wines) marketed in the Union or for export shall contain „an indication of provenance" due to Art. 119 (1) d) of Reg. (EU) 1308/2013 (CMO) and Art. 45 of Reg. (EU) 2019/33. The aforementioned provision is very different from the provision set out in Art. 45 of Reg. (EU) 2019/33. For example - for wine and wine-products the words 'wine of (…)', 'produced in (…)', shall be used supplemented by the name of the Member State or third country where the **grapes are harvested** and turned into wine, - for wines made in a third country from grapes harvested in another third country the words 'wine obtained in (…) from grapes harvested in (…)' shall be used to indicate the provenance, - in the case of wine resulting from a blending of wines originating in a number of third countries the words 'blend from (…)' shall be used to indicate the provenance. **Q1: If the wine was produced in the United Kingdom from fresh grapes not harvested in the United Kingdom**, or grape must or grape must in fermentation not produced in the United Kingdom, how shall the indication of the provenance be made? **Q2: If the wine was produced in the United Kingdom from a blend** from different third counties, how shall the indication of provenance be made?	Q1 Pursuant to Article 4.1 of Annex TBT-5, wines imported into the EU under this Annex will have to comply with the applicable EU labelling rules. This means that, for example, for wines produced in the UK from grapes not harvested in the UK, the label should indicate the provenance of the wine according to Article 45(1)(e) of Regulation (EU) 2019/33, i.e. "*wine obtained in UK from grapes harvested in [the name of the country where the grapes are harvested]*. Q2 In this case, the indication of provenance should be presented in line with Article 45(1)(d) of Regulation (EU) 2019/33, i.e. "*blend from [the names of the third countries in which the blended wines originate]*" or the same information expressed in equivalent terms. However, please note that wine resulting from blending of wines originating in third countries is not covered by Annex TBT-5 and cannot be imported under the simplified certification provided in Appendix C of the Annex. Such wine can be imported from UK into the EU following the general rules applicable to wine imports from third countries, as laid down in Commission Delegated Regulation (EU) 2018/273.
Annex TBT-5 (Art. 45 (3) of COMMISSION DELEGATED REGULATION	As regards the United Kingdom and the provisions laid down in points (a) and (c) of paragraph 1 and in points (a) and (c) of paragraph 2 of Art. 45 (1) and (1) of Reg. 2019/33, the name United Kingdom may be replaced by the name of the relevant individual country forming part of the United Kingdom in which	The exception provided in Article 45(3) of Regulation (EU) 2019/33 is not applicable anymore since the end of the transition period and will be deleted from that Regulation at the next amending opportunity.

(EU) 2019/33)	grapes used to make the grapevine product are harvested. Does Art. 45 (3) of COMMISSION DELEGATED REGULATION (EU) 2019/33 still apply or can the name of the relevant individual country forming part of the United Kingdom be used if any fresh grapes, grape must and grape must in fermentation have been turned into wine in that relevant individual country forming part of the United Kingdom?	
Annex TBT-5 Definition of wine Point B3 of Part II of Annex VIII of Reg. 1308/2013 (CMO)	In the Union grape juice and concentrated grape juice shall not be made into wine or added to wine. They shall not undergo alcoholic fermentation in the territory of the Union. However these restriction did not apply to products intended for the production in the United Kingdom, of products falling within CN code 2206 00 for which the United Kingdom may allowed the use of a composite name, including the sales designation 'wine'. - Which provision is to be applied for the import of such products made in the United Kingdom? Shall a customs declaration be made?	The exception provided for in Point B.3 of Part II of Annex VIII of Regulation (EU) No 1308/2013 is not applicable anymore to UK products since the end of the transition period and point B.3 will be amended in this sense at the next amending opportunity. Therefore, if UK products falling under CN 22.06 are imported into the EU they cannot use the sale designation "wine". Those products will be subject to customs clearance.
Chapter 5 CUSTMS		
CUSTMS.2, 2(g) juncto Annex CUSTMS-1 article 2	It is our understanding that current holders of AEO-status in the EU will benefit from the mutual recognition from the 1st of January onwards without any additional formalities. Can the Commission confirm this view?	Yes indeed this is correct.
CUSTMS.5(1)	Article CUSTMS.5, 1: The treaty refers to the fact that each party shall work towards simplification of its requirement and formalities, including for SMEs. In paragraph 2 some measures are listed. Is the Commission thinking about additional measures, specifically with regards to SMEs, that are not listed there?	The simplifications foreseen are those provided for in the UCC, as per the mandate received by the Commission to limit provisions on customs facilitation to what the UCC provides.
CUSTMS.16	Regarding Art CUSTMS.16. Temporary admission. Does the article include events/exhibitions with tickets in general? (e)- what does mean "cultural purposes"? How does this work in practice? The same question applies regarding transportation.	Article CUSTMS.16 includes a list which reproduces Annexes B.1 et seq. of the Istanbul Convention, where both the EU and the UK are contracting parties. Regarding exhibitions, letter (a) is an illustrative list as underlined by the words "similar events". In Article 1 of Annex B.5 of the Istanbul Convention there is a general definition of what the

		term 'goods imported for educational, scientific or cultural purposes' mean, which includes under the scope of goods imported for cultural purposes any goods imported in connection with cultural activities. This definition is reproduced in Article CUSTMS.16. Therefore, whether goods are imported for cultural purposes should be assessed on a case-by-case basis. However, Article CUSTMS.16 definitely includes under its scope goods brought for events/exhibitions in general. In practice, goods brought from the UK to the EU (or vice-versa) have to be declared for temporary admission. This can be normally done in two different ways: either by lodging a customs declaration or by presenting an ATA Carnet, as established in the Istanbul Convention. We would welcome additional explanations regarding the question on "transportation". The concept and mechanism of temporary admission are standard, part of all FTAs concluded by the EU. In the EU, the general UCC rules on temporary admission also apply.
CUSTMS.18(4)	Article CUSTMS 18, 4: The Parties agree to encourage cooperation between customs authorities on bilateral sea-crossing routes concerning RoRo traffic. Would the Commission be able to explain more in detail how it intends to follow-up on this? How will the knowledge of the measures and processes be promoted?	This provision comes at the request of the United Kingdom and was discussed abundantly with the most concerned Member States, including Belgium, to avoid making it too prescriptive. We would therefore expect the UK to maybe follow up on this provision in the context of the implementation of the Agreement, and will keep Member States informed of this point The promotion of knowledge refers to usual publication means and other possible linked communication campaigns like the ones launched by the Commission in September 2020.
CUSTMS.21	The new Protocol on VAT fraud/ mutual assistance for the recovery of tax claims ensures that there is a basis for administrative cooperation, including exchange of information, aimed at preventing VAT fraud. However, there are no similar arrangements for excise fraud (apart from recovery assistance). We'd be interested in the Commission rationale for this approach, given that the tax risk on excisable products is inherently high and EU legislation on both VAT and excise duty have the same legal	The VAT Protocol offers a wide scope for cooperation regarding recovery of claims, including for the first time excise and customs duties (the only existing precedent for such a Protocol, with Norway, was limited to VAT both for cooperation and recovery assistance). Even if recovery assistance is only an a posteriori tool to fight against cross-border fraud, this is still a very positive outcome in an area of interest for the EU. Furthermore, the mandate given by the European Council does not mention cooperation for the fight against fraud beyond

	base in the Treaties (Article 113 TFEU).	customs (which is dealt with both in articles GOODS.19 and 20 and the Protocol on mutual administrative assistance) and VAT. Whilst the TCA does not include administrative cooperation for excise duties beyond mutual assistance for recovery we would like to remind the Irish Colleagues that the Ireland/Northern Protocol means that Regulation (EU) 389/2012 and its implementing regulations are fully applicable to trade between Ireland and Northern and via Northern Ireland. This means that cross-border movements of excise goods and the full range of administrative cooperation tools provided for in Regulation (EU) 389/2012 continue to be available.
CUSTMS.21	TCA contains only Protocol on mutual assistance to combat customs fraud and Protocol on administrative cooperation on Value Added Tax (VAT) and provisions concerning the recovery of claims relating to indirect taxes and duties. There are no provisions concerning an administrative cooperation on excise. As a result what should be the basis for the administrative cooperation and exchange of information in the field of excise duties as of 1 January 2021?	The VAT Protocol offers a wide scope for cooperation regarding recovery of claims, including for the first time excise and customs duties (the only existing precedent for such a Protocol, with Norway, was limited to VAT both for cooperation and recovery assistance). Even if recovery assistance is only an a posteriori tool to fight against cross-border fraud, this is still a very positive outcome in an area of interest for the EU. Furthermore, the mandate given by the European Council does not mention cooperation for the fight against fraud beyond customs (which is dealt with both in articles GOODS.19 and 20 and the Protocol on mutual administrative assistance) and VAT. The MAA Protocol's scope refers to Customs legislation. It does not aim to cover excise legislation (fully- in all its detail). However, excise legislation contains numerous relevant references to customs law. In particular, the categories of goods subject to excise duties are established in accordance with their respective HS codes. This means that the exchange of customs information (for the correct application of customs legislation) may often also be relevant for excise purposes. And an adjustment (eg- on the classification or on the characteristics of the goods: value, volume, etc) following an MAA action (be it information received or a control in the other country), may have consequences not only in the Customs duty but also in the excise bill of the trader. Therefore, while strictly speaking, the scope of MAA is customs legislation, not excise legislation, its implementation may

		often result in the need for adjustments in the excise declarations/obligations of the economic operators.
VAT in NI	It is imperative to find a credible tool of verifying a place of residence of UK nationals or residents for the purposes of VAT refunds. The issue is about distinction of those travellers residing in Northern Ireland who are not entitled to such a refund from those residing in the remaining part of the UK. Passports or residence cards do not contain a full address. Moreover, there is a question regarding lack of reciprocity on VAT refunds from the UK side towards the EU travellers. A guidance on this issue is a for sellers, travellers and Customs services is highly appreciated.	Article 147(1) defines the conditions for the VAT exemption to be accorded to a travellers. It is a general principle, supported by Jurisprudence of the ECJ that exemptions have to be interpreted in a restrictive manner. Hence, as such, the traveller has to prove that all conditions for profiting from the exemption are fulfilled. The first condition listed in Article 147(1) is that the traveller is not established in the Community. How this can be achieved and what supporting documents a traveller can be used to that purpose is further clarified in Article 147(2). This implies that the UK traveller will have to prove that he does not live in Northern Ireland by a passport, identity card or any other document recognised as an identity document by the customs administration.

Questions and replies on

Euratom-UK Agreement on safe and peaceful uses of nuclear energy

1. **The EU-UK Security of Information Agreement is a "supplemental agreement" of the trade agreement, but not of the "Agreement on the Cooperation of the Safe and Peaceful Uses of Nuclear Energy". It seems that this Agreement, which is not signed by EURATOM, does not cover the exchange of classified information between the EU, its institutions, and the UK, regarding EURATOM files (with the exceptions of Research and the contribution to ITER covered by the Trade and Cooperation Agreement and the JCPOA covered by the EEAS). Is this correct?**

Euratom is indeed not a Party to the EU-UK Agreement on Security of Information. However, a number of EURATOM-related classified information can be exchanged under the EU-UK Agreement on Security of Information.

However, this does not apply to information classified under the dedicated Euratom system of classification, which is limited to Research matters (chapter II of the Euratom Treaty).

To note that under other Nuclear Cooperation Agreements concluded by Euratom with other third countries, the exchange of classified information is rare and in any case occurs in full respect of the rules related to the protection and the handling of the given information.

2. **At what time could we expect the Administrative arrangements in Article 15 to be established? Will there be a need for any preliminary guidance on Member States' implementation in the interim period? Will there be any obligations for MS' authorities in respect of administrative measures vis-à-vis the UK or will those be solely obligations of the Commission, including a system for control of technologies (and items) that requires prior written consent before transfers according to the Agreement.**

The Administrative Arrangements are to be negotiated in early 2021. They will not introduce any new obligations on Member States but will provide implementation details on how the parties cooperate and implement the Nuclear Cooperation Agreement (NCA). In parallel, the Commission will work on specific guidelines for operators and MS authorities.

Please note that it remains the responsibility of each Member State to apply the NSG Guidelines ("Guidelines for nuclear transfers", cf. Art. 9(7))

The Commission will implement a tracking system for technologies, equipment and non-nuclear material subject to the Agreement within the EU, excluding technology to and from the MS specified in the notification pursuant to Art.5(4) ("opt out" for technology trasnfers). To allow the Commission to implement this system, operators and/or MS authorities should notify to the Commission any retransfer (including within the EU) of such technologies, equipment and non-nuclear material. They should also notify the Commission in advance when the UK prior consent is required, either because such items are retransferred to a third country or because a technology is retransferred to an "opt out" MS [as per Art.5(4)].

Operators and/or MS authorities should also notify the Commission in advance of any export of technology, equipment and non-nuclear material to the UK so that the Commission can inform the UK authorities that such items are subject to the NCA.

As for nuclear material, there will be no specific tracking in place. No new "obligation code" will be created to identify material under the Euratom-UK NCA in the notifications made to the Commission under Regulation Euratom n°302/2005. The Commission will not be able to identify nuclear material subject to the NCA unless it is notified by an operator or by the authorities of a Member State. This particularly applies to Art. 9(10) where the UK prior consent is required.

3. **Due to the recent amendments in Art 2 in Council decision (c.f. document ST 14366) to the effect that the Agreement will be applied on a provisional basis as from 1 January 2021, pending the completion of the procedures necessary for its entry into force, is there a need for an addendum with the equivalent to FINPROV 11 as in the EU-UK Trade and Cooperation Agreement clarifying the terms for provisional application of the Agreement? When can we expect the Agreement to enter into force?**

The Nuclear Cooperation Agreement is provisionally applied in its entirety from 1 January pending its entry into force following the official translation of the agreement into all EU official languages and their legal scrubbing. This should also happen in early 2021. As for the timeline and conditions provided for provisional application and its termination, they have been detailed in an Exchange of Letters between Euratom and the UK, available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22020A1231%2805%29&qid=1609847552539

4. **Has the United Kingdom-IAEA Safeguards Agreement entered into force and, if so, at what date? This information should be included in the Agreement, including INFCIRC reference, if available.**

A Safeguards Agreement between the United Kingdom and the IAEA was negotiated and signed in 2018. It is expected to enter into force immediately after the end of the transition period (i.e. as of the 1 January 2021) via a bilateral exchange of letters between the UK and the IAEA. To date, the Commission has not yet received a formal confirmation of the entry into force of the Agreement.

5. **Application of Art 9(12) is unclear to us as regards its reference to Art 9(9). Art 9(12) states that "Where the United Kingdom or a Member State of the Community transfers technology subject to this Agreement to a Member State that falls under the exception provided for in Article 5(4) [Items subject to this Agreement], paragraphs 7 and 9 of this Article apply." Art 9(9) states in its second sentence that its provision is without prejudice to Art 5(4). Our initial interpretation would therefore be that, even if specifically referred to in Art 9(12), Art 9(9) should not be applied to a MS that falls under the exception provided for in Art 5(4). Is that in accordance with the intended application? If not, please explain how it should be interpreted and applied.**

Art. 9(9) applies to all MS for what concerns non-nuclear material and equipment. However, MS falling under the exception provided for in Article 5(4) ("opt-out MS") will not apply this article on technology.

Based on Art.9(12), prior consent required under Art. 9(9) is also required whenever a technology subject to the NCA is retransferred to an opt-out MS.

In practice, opt-out MS are to be treated as "third countries" for what concerns technology, which implies the following:

- the UK prior consent is required before a technology subject to the NCA is retransferred from a MS to an "opt-out" MS.
- the prior consent of the Community is required before a technology subject to the NCA is retransferred from the UK to an "opt-out" MS.

6. **We would appreciate confirmation whether prior written consent by UK is not needed as long as items and technology are transferred between MS. This follows from Art 9(9) a contrario, but the wording of Art 9(12) seems to divert from that principle (although our initial interpretation in Question 3 is that Art 9(9) would not be applied when a MS has used the exception in Art 5(4)).**

No prior consent from the UK is required for any transfers of nuclear material, non-nuclear material or equipment between MS.

Prior consent from the UK is required for transfers of technology to an opt-out MS. No prior consent is required for transfers of technology between all other (opt-in) MS.

7. **For the sake of clarity we suggest that reference in Art 2 c) is made to the current version of NSG Guidelines: INFCIRC/254/Rev.14/Part 1**

The current wording of this Article is the result of detailed text based negotiations with the UK and will not be, at this stage, further amended. As it stands, the text states that any future revision will apply only as implemented by the Parties (i.e. not necessarily immediately) and unless the Parties agree otherwise after consultations in the Joint Committee.

All EU/Euratom Member States and the UK are parties to the Nuclear Suppliers Group where the decisions are taken by unanimity. This means that any further revision of the NSG Guidelines will have been already agreed in advance by all our Member States and the UK in that fora. Nevertheless, it was agreed with the UK to introduce the two existing conditions on the application of any revision of the NSG Guidelines, namely the limitations linked to the actual implementation (which could be delayed) and those linked to a different joint decision by the parties in this regard.

8. **Which factors will guide the Commission and the UK when drawing up their lists of trusted countries according to Art 9(11)? Will MS be involved in the process?**

The Nuclear Cooperation Agreements previously negotiated by Euratom and now in force have produced a number of precedents where lists of authorised countries for transfers of nuclear material and/or equipment have been established (see for instance the Euratom-US Agreement). Under the more recent Euratom-Kazakhstan agreement, a generic prior consent is given by both parties for retransfers of nuclear material to countries whose governments are members of the Nuclear Suppliers Group (NSG). A similar approach might be taken for the Euratom-UK Agreement, except for more sensitive items such as weapon-usable material.

Beyond the existence of precedents, factors that influence a decision to have/ not have a country on the lists include the existence of an NCA with the country in question, the country's commitments towards the IAEA, its track-record with regard to proliferation risks and the nature of retransferred items.

The exact content of the lists will depend on the outcome of the upcoming negotiations with the UK on the administrative arrangements

The Commission intends to consult Member States when drawing up a list of trusted countries for retransfers of technologies under the Euratom-UK NCA.

MEMBER STATE'S QUESTIONS ON TEXT OF TRADE AND COOPERATION AGREEMENT

GOOD REGULATORY PRACTICE (GRP) AND REGULATORY COOPERATION

REFERENCE TO AGREEMENT	QUESTION	UKTF REPLY
PART TWO: TRADE, TRANSPORT, FISHERIES AND OTHER ARRANGEMENTS ***HEADING ONE: TRADE***		
Title X – Good Regulatory Practice and Regulatory Cooperation	Article GRP.1: General principles, para 1 which states " Each Party shall be free to determine its approach to good regulatory practices under this Agreement in a manner consistent with its own legal framework, practice, procedures and fundamental principles [49] underlying its regulatory system." [49]: For the EU the fundamental principles include also the precautionary principle. Will the UK apply also that principle?	Article GRP.1 refers to the fundamental principles each Party follows under its own legal system. Hence, the purpose is not to establish a common list of such principles. The emphasis is rather on each Party's right to regulate, which cannot be undermined through common GRP disciplines or regulatory cooperation. In this context, the EU considered important to specifically refer in a footnote to the preacautionary principle, to flag that this is a key guiding principle of the EU's rule-making process. The UK did not consider it necessary to make a similar specific reference in Title X. However, in Title XI: Level Playing Field, the Parties agreed the following definition of «precautionary approach»: «The Parties acknowledge that, in accordance with the precautionary approach,

REFERENCE TO AGREEMENT	QUESTION	UKTF REPLY
		where there are reasonable grounds for concern that there are potential threats of serious or irreversible damage to the environment or human health, the lack of full scientific certainty shall not be used as a reason for preventing a Party from adopting appropriate measures to prevent such damage» (Article 1.2 of Chapter One of Title XI). That provision is accompanied by the a footnote clarifying that, «for greater certainty, in relation to the implementation of this Agreement in the territory of the Union, the precautionary approach refers to the precautionary principle».

Article	Question	COM response
TITLE II: VISAS FOR SHORT-TERM VISITS		
Article VSTV.1: Visas for short-term visits Visa-free travel; new visa route for internships and work placements for EU-students	Is it correct that visa free travel for short-term visits applies not only for tourist purposes but also for the purposes of study, education and research? Is anything foreseen in the field of culture, especially for artists and culture professionals who often work internationally and promote cultural exchange? When will there be clear information provided for EU-students and EU-apprentices coming to the UK for paid, unpaid or funded work placements, internships or voluntary work? Can at least those internships funded by Erasmus+ (till 2023) still be done on a visa free route or on a visa route with exemption to the minimum salary regulations? Will there be a separate visa route made available for nationally funded educational internships and work placements in the future e. g. as part of the Government Authorised Exchange Scheme?	Note: the question has 5 sections. We understand that elements of each section refer to the arrangements applicable in the UK for EU visitors. As this depends on UK legislation, the Commission cannot address these questions in an authoritative manner. (a) Article VSTV.1 refers to arrangements for visa-free travel for short term visits under the Parties' domestic law. The article does not intend to harmonise substantive visa rules For the EU, this is the Schengen aquis on short-stay visas. The EU rules take account of the length of the stay (90 days in a 180-day period) and do not in principle differentiate as to the purpose of the trip (tourism, studies, business etc), without prejudice to the possibility of MS to request a visa if the purpose of the trip is the exercise of a paid activity (Article 6(3) of Regulation 2018/1806). The UK rules applicable to short term visitors allow in general short stays of up to 6 months for tourism and business. But as UK rules differentiate on the purpose of the visit, there may be specialised rules (routes) depending on the purpose, i.e. short term studies, creative occupations, religious or sporting activities etc. More information is available on the UK government website: https://www.gov.uk/browse/visas-immigration and it is always advisable that EU citizens check with the relevant UK consular authorities. (b) The TCA contains no specific rules

		for visits for cultural or artistic purposes. The UK refused to negotiate on an EU proposal for a joint declaration on the interpretation of the notion of "paid activity", which would have had the effect of excluding such occupations from the paid activity exception. Consequently, parties apply their domestic rules. EU MS which apply the paid activity exception under Article 6(3) of Regulation 2018/1806 may subject artistic or cultural activities to the requirement for a visa. Please note that Member States may require a work permit under their national law– even for stays shorter than 90 days and even if they do not require a visa in application of the paid activity exception. The UK appears to require a Temporary Worker – Sporting and Creative Visa for stays longer than 3 months (more information is available on the UK government website https://www.gov.uk/browse/visas-immigration). It is strongly advised that individuals check with the relevant consular authorities. (c) The UK already provides information on the relevant rules (routes) on its government website: https://www.gov.uk/browse/visas-immigration It is always advisable that EU citizens check with the relevant UK consular authorities. (d) For internships performed in the UK, information may be found on the government website: https://www.gov.uk/browse/visas-immigration It is always advisable that EU citizens

		check with the relevant UK consular authorities. For internships performed in the EU, if the stay is shorter than 90 days in any 180-day period the Schengen rules apply and no visa is required (subject to the possibility of the Member State applying the paid activity exception to require a visa). If the stay is longer than 90 days Member States may require a visa in accordance with the provisions of the Student and Researchers Directive (EU) 2016/801. It is always advisable that UK nationals check with the relevant EU consular authorities. (e) It appears that such a route exists. More information on the UK government website: https://www.gov.uk/government-authorised-exchange
Visa free travel	The EU UK TCA provides for the possibility of continued connectivity between, through and within the territories of the parties regarding the transport of goods. However, as a consequence of the UK becoming a third country, the passport of the UK driver transporting goods from the UK to the EU will be stamped at the EU border, which is a trigger for the start of the 90 days within 180 days legal short stay period in the Schengen area. Therefore, some drivers will, in the course of 2021, no longer be allowed to pass the EU border which in part nullifies the provisions agreed on transport services. How does the CION see this? Likewise, does the CION have any information regarding the passport stamping and overstay policy of the UK, since this might entail a problem for EU drivers who are in a similar situation	The Schengen requirements to stamp passports and the maximum duration of stay in the Schengen area are obligatory rules, which apply to all third country nationals, and as such are among the rules that are not considered to nullify the substance of the rights under the agreement. According to the understanding of the Commission, while the UK does not stamp passports, it too calculates the maximum duration of the stay of individual travelers in line with the immigration rules that apply to them. Consequences of overstay are a matter of UK law. The effect of the rules on the maximum permitted stay of drivers in the territory of the other party, means that individuals need to be vigilant that they comply with the appropriate rules before setting out on a journey. We note that these obligations are linked to the nationality of the driver, not of the operators, and it goes without saying

		that EU nationals working for UK operators will not have their passports stamped when crossing the EU border.