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**NOTE**

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From: General Secretariat of the Council  
To: Permanent Representatives Committee

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Subject: EU-UK Agreements  
- Statements to be inserted in the minutes of the Council adopting the decision on Conclusion of the TCA

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Delegations will find:

- In Annex 1, a statement by the Council and the Commission related to Union positions in the Partnership Council and other joint bodies established under the Trade and Cooperation Agreement and other institutional issues.
- In Annex 2, a statement by the Commission and the Council on the monitoring and implementation of the Trade and Cooperation Agreement.
- In Annex 3, a statement by the Council on internal arrangements regarding the annual consultations on fisheries with the UK under the Trade and Cooperation Agreement.

- In Annex 4, a statement by the Commission on the issue of non-discrimination among EU Member States in the implementation of the Trade and Cooperation Agreement.
- In Annex 5, a statement by the Council on Inter-Institutional Relations.
- In Annex 6, a Joint Statement of the Council and the Commission on pre-conditions for the co-operation provided in Part Three [Law Enforcement and Judicial Cooperation] of the Trade and Cooperation Agreement.

In the statements in Annex 1 and in Annex 3, references to the Trade and Cooperation Agreement have been updated to reflect the final numbering of the articles as set out in ST 5198/21.

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**Statement by the Council and the Commission related to Union positions  
in the Partnership Council and other joint bodies established  
under the Trade and Cooperation Agreement and other institutional issues**

1. The Council and the Commission recall that, in accordance with Article 13(2) TEU, each institution is to act within the limits of the powers conferred on it in the Treaties and in full respect of the principles of sincere cooperation and of institutional balance notably regarding the establishment of Union positions for and their representation in the Partnership Council and other joint bodies established under the Trade and Cooperation Agreement. In implementing the Trade and Cooperation Agreement, both institutions will cooperate sincerely and closely, in particular before and after each meeting of those joint bodies to ensure the Union's representation by the Commission in continuous coordination and permanent dialogue with the Council and its preparatory bodies.
2. In order to ensure that each institution is in a position to exercise fully its respective role, the Commission will inform the Council in a timely manner before and after each meeting of the Partnership Council, the Trade Partnership Committee, a Trade Specialised Committee or of a Specialised Committee, or before and after each use of written procedure. In line with Article 2 of the Council Decision on the conclusion and the timeline provided therein, the Commission will provide the Council with all the information and documents relating to any meeting of those joint bodies, or to any acts to be adopted in written procedure, the initiation of a consultation on a dispute, or any other documents.

In particular, this would cover meeting schedules referred to in Article 7(2) and Article 8(6) and (8) of the Trade and Cooperation Agreement, draft provisional agendas of meetings, draft decisions and other draft texts relating to such meetings, or draft acts to be adopted by written procedure. The Council may request the Commission to include an item on the agenda. Where a Member State, in case of particular concern, requests that an item be added to the agenda of the Partnership Council or other joint bodies established under the Trade and Cooperation agreement, the Council and the Commission will positively consider this request.

3. The Council may request the Commission to initiate a consultation on a dispute, or to initiate the arbitration procedure. The Commission will duly inform the Council on the follow-up of this request.
4. Where there is a particular concern of one or more Member States, that or those Member States may invite the Commission to initiate a consultation on a dispute, or to initiate the arbitration procedure, or to take the necessary measures available under the Trade and Cooperation Agreement. The Commission will duly inform that or those Member States and the Council, as appropriate, of the follow-up of this invitation and will endeavour to explore all possibilities under the Agreement, including the review or termination of the Agreement or parts thereof.

**Statement by the Commission and the Council on the monitoring and implementation  
of the Trade and Cooperation Agreement**

1. In exercising its Treaty prerogatives as set out in Article 17 TEU, the Commission is fully committed to closely monitoring the application of the Trade and Cooperation Agreement with the United Kingdom so that Union citizens and businesses can fully benefit from it. The Commission will endeavour to regularly and speedily inform the Working Party on the UK and, as the case may be, other preparatory bodies of the Council of any relevant evolution in the United Kingdom's laws, in particular as regards the areas covered by the Title on level playing field for open and fair competition and sustainable development. The Working Party on the UK will be put in a position to discuss, at frequent and regular intervals and as often as necessary, the implementation of the Trade and Cooperation Agreement, including internal considerations relating to unilateral measures available under the agreement, on the basis of information provided by the Commission, including on the basis of written input, as appropriate.
2. In the implementation of the Trade and Cooperation Agreement, the Commission will assess the effects of a subsidy or the existence of a significant divergence, building upon its own existing practices and experience, without prejudice to the provisions of the agreement. By doing so, any state aid granted above the amounts mentioned in the agreement, or significant regulatory divergence that can have a material impact on trade or investment in the territories of the Parties, will lead to an internal examination of the case by the Commission in order to verify whether the criteria set by the Agreement are approached or met. The Council shall be informed as appropriate of the results of the internal examination in order to discuss the assessment and the possible way forward. This guidance is not exhaustive and is without prejudice to the European Union's autonomy to assess the existence and the effects of a subsidy or of a significant divergence.

3. Without prejudice to its right of initiative under the Treaties, the Commission will aim to propose the specific legislative act referred to in Article 3(1) of the Council Decision on conclusion no later than 31 March 2022.
4. The Commission recalls the importance of early detection of breaches of the agreement, as well as impacts on trade or investment between the Parties or imbalances in rights and obligations of the Parties with a view to taking, where appropriate, timely and effective action. To that end, the Commission will continue using the tools at its disposal and, to the extent possible by 31 August 2021 and as a matter of priority, adapt or strengthen them as necessary. This shall include accessible and centralised tools for the lodging of complaints, taking into account the scope of areas covered under the Trade and Cooperation Agreement. Those tools should be available in all official languages of the Union. Union citizens and businesses should be appropriately informed of those tools.
5. The Commission will endeavour to examine complaints as well as any other information at its disposal and will act as appropriate to address the difficulties raised. In so doing, the Commission will take due account of the views expressed by Member States and of the European Parliament. The Commission will pay due regard to the protection of confidential information.

**Statement by the Council on internal arrangements regarding the annual consultations  
on fisheries with the UK under the Trade and Cooperation Agreement**

1. The Council underlines the importance of the annual consultations related to fisheries referred to in Article 498, Article 499 and Article 500 of the Trade and Cooperation Agreement with the UK.
2. These consultations are to be carried out by the Commission, as the Union's representative, on the basis of the Union's positions which are to be established, before the consultations are concluded and before any written record is signed, by the Council, including in the form of one or more Council decisions adopted under Article 218(9) TFEU on a proposal by the Commission. Where appropriate, in particular prior to the adoption of such a decision, the Council, exercising its policy-making and coordinating functions under Article 16(1) TEU, may approve initial Union positions for the consultations.
3. Therefore, it is important that the Council and, the Member States' representatives, are duly involved in the preparation and conduct of these consultations, irrespective of any involvement of the Specialised Committee on Fisheries (SCF). To that effect, by analogy with the provisions set out in the Council decisions on the signing and on the conclusion of the TCA in respect of specialised committees, and in line with the arrangements put in place for the first annual consultations, the Council considers that in future consultations, the following arrangements should apply:
  - 1) The involvement of the Council at Ministerial level should be ensured at appropriate junctures as determined by the Council.

- 2) The Commission should provide in a timely manner sufficient details on all relevant aspects of the consultations.
- 3) The Union position should contain sufficient flexibility in view of the speed and progress of discussions with the UK.
- 4) The Commission services should consult the preparatory bodies of the Council in a timely manner before each round of consultations, including by presenting the way forward for the next round, and should report to it after each round of consultations. Technical meetings should be held as necessary.
- 5) In situ coordination should be ensured and Member States' representatives should be invited to participate as members of the EU delegation.
- 6) The consultations should only be concluded when the outcome is consistent with the Union's position established by the Council in accordance with the relevant Treaty provisions. Where the consultations cannot be concluded consistently with the Union's position, the Commission shall consult the Council and, where appropriate, propose the necessary measures as provided for in the Trade and Cooperation Agreement, including the termination or the review of relevant Headings of the Agreement.

These arrangements may be reviewed as necessary, including on the basis of experience gained.



**Statement by the Commission on the issue of non-discrimination among EU Member States  
in the implementation of the Trade and Cooperation Agreement**

The Commission emphasises that the principle of non-discrimination among EU citizens on the basis of their Member State of origin is fundamental for the unity of the 27. It confirms its resolve to uphold the principles of equal treatment and non-discrimination and to take into account the interest of all Union citizens in the course of the implementation of the EU-UK Trade and Cooperation agreement (TCA). When monitoring the application of the TCA, the Commission will be vigilant to any actions by the United Kingdom discriminating between the Member States or their citizens and will take any appropriate measures in that regard.

**Council statement on Inter-Institutional Relations**

The Council has taken note of the Commission's statement made during the plenary session of the European Parliament ahead of its vote on the consent to the EU-UK Trade and Cooperation Agreement.

The Council recalls that the Treaties define specific roles for each EU institution. While the European Parliament and the Council jointly exercise legislative and budgetary functions, their respective roles as regards international agreements are very different and have to be respected. The Treaties do not put them on an equal footing. As regards international agreements, in particular, the Treaties confer on the Council a policy-making role, whereas the European Parliament is immediately and fully informed at all stages of the procedure in Article 218 TFEU. The European Parliament is also consulted or gives its consent before the Council decides to conclude the agreements (other than those relating exclusively to the CFSP). This is reflected in the Council Decision on the conclusion of the Trade and Cooperation Agreement and the Council has also given the appropriate assurances to the European Parliament in this respect.

Those powers may not be modified or supplemented by the EU institutions themselves either unilaterally or by agreement between them.

Moreover, as the Commission acknowledged at the time, the declaration of 16 April 2019 was made in the very specific context of the Withdrawal Agreement and stated that the practical arrangements in relation to certain possible decisions by the Joint Committees – especially due to the effect they could have on the European Parliament's prerogatives as budgetary authority - "have to be seen in the context of the exceptional nature of an agreement based on Article 50 TEU and do not constitute a precedent for any other agreements", as is the case of those concluded in accordance with Article 218 TFEU, such as the EU-UK Trade and Cooperation Agreement.

The recent statement of the Commission fails to respect the institutional balance set by the Treaties. On one hand, the statement places the European Parliament on an equal footing with the Council in situations when this is not foreseen under the Treaties; on the other hand, it gives the European Parliament alone a role to shape draft recommendations and proposals for decisions concerning the termination of the agreement, or updates or amendments thereto.

The Council therefore expects that the Commission, as guardian of the application of the Treaties, will ensure that in the implementation of the Trade and Cooperation Agreement, the institutional balance set by the Treaties in relation to international agreements is at all times fully respected. The Council will continue to closely follow the Commission's actions in this respect and stands ready to act as appropriate to ensure the full respect of the prerogatives conferred upon it by the Treaties.

**Joint Statement of the Council and the Commission on pre-conditions  
for the co-operation provided in Part Three [Law Enforcement and Judicial Cooperation]  
of the Trade and Cooperation Agreement**

THE COUNCIL AND THE COMMISSION,

Whereas the cooperation provided for in Part Three [Law enforcement and judicial cooperation in criminal matters] of the Agreement is based on the Parties' and Member States' long-standing respect for democracy, the rule of law and the protection of fundamental rights and freedoms of individuals, including as set out in the Universal Declaration of Human Rights and in the European Convention on Human Rights, and on the importance of giving effect to the rights and freedoms in that Convention domestically;

Whereas the cooperation provided for in Part Three [Law enforcement and judicial cooperation in criminal matters] of the Agreement is based on the Parties' long-standing commitment to ensuring a high level of protection of personal data,

HAVE AGREED AS FOLLOWS:

1. In the event that the United Kingdom denounces the European Convention on Human Rights or Protocols 1, 6 and 13 thereto, the Union will terminate Part Three [Law enforcement and judicial cooperation in criminal matters] of the Agreement in accordance with Article 692(2) thereof.
2. In the event that the United Kingdom no longer gives effect to the European Convention on Human Rights domestically, notably in such a way as to no longer allow the Convention to be effectively relied upon by individuals before its domestic courts, the Union will suspend Part Three [Law enforcement and judicial cooperation in criminal matters] of the Agreement, in accordance with Article 693 thereof.

In the event that an adequacy decision taken by the Commission with respect to the United Kingdom in accordance with Article 45 of Regulation (EU) 2016/679 or in accordance with Article 36 of Directive (EU)2016/680 ceases to apply, notably if it is repealed or suspended by the Commission or invalidated by a final court decision, the Commission will, within one month, present a report to the Council on the consequences for the application of the Agreement. In light of the reasons that led the adequacy decision to cease to apply, that report will also address the way forward, assessing potential solutions within the rules established in EU data protection law regarding data transfer. Within two months of submission of that report, the Union will, where necessary, suspend Part Three [Law enforcement and judicial cooperation in criminal matters] of this Agreement in whole or in part, in accordance with Article 693 thereof.

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