



**2022/2188(INI)**

10.10.2023

# OPINION

of the Committee on Civil Liberties, Justice and Home Affairs

for the Committee on Foreign Affairs and the Committee on International Trade

on the implementation report on the EU-UK Trade and Cooperation Agreement (2022/2188(INI))

Rapporteur for opinion: Katarina Barley



## SUGGESTIONS

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

1. Recalls that the application of Part Three of the Trade and Cooperation Agreement<sup>1</sup> (TCA) on law enforcement and judicial cooperation in criminal matters is subject to the conditions of respect for democracy, the rule of law and the protection of human rights and fundamental freedoms, including as set out in the Universal Declaration of Human Rights and in the European Convention on Human Rights (ECHR), as well as to the commitment to high-level protection of personal data; recalls the importance of effective, close and mutually beneficial law enforcement and judicial cooperation between the EU and the UK in view of their geographical proximity and shared challenges;
  - 1a. Emphasises that the ECHR is a legally binding instrument in the UK and that legislative proposals should be compatible with its standards and in line with the rights and freedoms therein; underlines that Article 524 of the TCA provides that cooperation between the EU and the UK is based on the importance of giving effect to the rights and freedoms in that convention domestically; expresses its concerns over discussions in the UK on leaving the ECHR and recalls the concerns expressed by the Council of Europe Commissioner for Human Rights in this regard<sup>2</sup>; recalls the provision in the TCA on the possible termination of this part of the TCA in the event that the UK or a Member State denounces the ECHR;
2. Expresses its deep concern over current legislative processes in the UK that would put these conditions at risk, namely the Retained EU Law Bill, the Data Protection and Digital Information (No. 2) Bill (DPDI2) and the Illegal Migration Bill;
3. Recalls that Part Three of the TCA allows for extended data flows between the EU and the UK, such as the exchange of DNA data, passenger name record data and criminal record information; underlines, therefore, that it is of the utmost importance that the UK ensures that the level of protection is essentially equivalent to that afforded by the European Union in order to avoid putting EU standards and therefore EU citizens' fundamental rights at risk when sharing data with the UK; calls, therefore, on the Commission to closely scrutinise the impact that the DPDI2 has on the data protection rights of EU citizens;
4. Underlines the serious risk of the onward transfer of personal data to non-EU countries that do not provide for an adequate level of protection; recalls that a primary data recipient may only transfer personal data onwards if the recipient is also subject to rules affording an adequate level of protection; stresses, therefore, that the UK must ensure that its data transfers to non-EU countries are based on appropriate safeguards and that a

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<sup>1</sup> Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (OJ L 149, 30.4.2021, p. 10).

<sup>2</sup> <https://www.coe.int/ca/web/commissioner/-/united-kingdom-commissioner-warns-against-regression-on-human-rights-calls-for-concrete-steps-to-protect-children-s-rights-and-to-tackle-human-rights-issues-in-northern-ireland>.

level of data protection equivalent to that afforded by the European Union is guaranteed;

- 4a. Stresses that enacting the UK's DPDI2 in its current form could further jeopardise the adequacy decision granted to the UK; recalls that the Commission has pledged to closely monitor the situation and repeal the adequacy decisions if privacy is no longer 'essentially equivalent' in the UK;
- 4b. Strongly regrets the provisions in the new DPDI2 that would introduce new delegated legislative powers for the UK Government to legalise data processing for national security, law enforcement and public authorities' access to personal data held by private entities; is deeply concerned by the introduction of delegated legislative powers that provide for some fundamental aspects of data protection law to be changed by the UK Government through secondary legislation; stresses the risks that these delegated powers pose to legal certainty and the future of the UK's adequacy decision;
5. Condemns the UK's general and broad exemption from the data protection principles and data subject rights for the processing of personal data, set out in its Data Protection Act, for immigration purposes; believes that the exemption in cases in which giving effect to data subjects' rights would jeopardise effective immigration control or in the investigation or detection of activities that would undermine the maintenance of effective immigration control does not comply with the principle of legal certainty and therefore, is not sufficient to prevent arbitrary decision-making; calls on the Commission to closely monitor the evolution of the judicial review process of the DPDI2 regarding the immigration exemption;
6. Expresses its concern that the UK's proposed DPDI2 would allow for automated decision-making; stresses that this bill would deprive individuals of their right, protected in the EU under the EU General Data Protection Regulation<sup>3</sup> and internationally under the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data, not to be subject to a decision based solely on automated processing (including profiling) that has either a legal or similarly significant effect on them; calls on the Commission to closely and continuously monitor the situation;
7. Strongly regrets the provisions in the new UK Data Protection and Digital Information Bill that weaken the obligations for data controllers and processors, including the new provisions that only require a senior responsible individual to be appointed when carrying out processing, which is likely to result in a high risk to individuals; regrets, equally, the provisions removing the requirement to designate a non-UK based representative for data controllers and processors that is subject to UK data protection rules, and those eliminating the obligation to consult with the UK data protection supervisory authority prior to processing when the controller's assessment indicates that the processing is likely to result in a high risk;
- 7a. Expresses its concern over clauses in the UK's new DPDI2 that would undermine the independence of the Information Commissioner's Office (ICO) and introduce powers

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<sup>3</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p. 1).

that allow the government to interfere with the ICO exercising its functions;

8. Highlights that the UK data protection supervisory authority has found multiple instances of enforcement failures and that its statistics show very low rates of hard enforcement; recalls that, in order to ensure a high level of data protection, the anticipated rules must be enforced and individuals must have access to an effective complaints procedure; is also concerned about the change introduced to the refusal to act on a complaint and the inclusion of criteria such as the resources available to the Commissioner, which will have a negative effect on the effectiveness of the complaints;
- 8a. Recalls that the UK's mass surveillance programmes do not comply with standards that are essentially equivalent to EU data protection rules; reiterates its call on the UK to take into consideration the case law of the Court of Justice of the European Union in this field.
9. Urges the UK to fulfil the data protection requirements for the processing of passenger name record data, in line with Article 552 of the TCA; regrets the long transition period of three years, which is delaying the implementation of the requirement to delete passengers' personal data after their departure from the country;
10. Underlines that Article 541 of the TCA provides for an amendment procedure in the event that EU law under the Prüm framework is amended substantially; recalls, therefore, that the UK's participation in the newly revised Prüm framework is not automatic and should be conditional on the UK maintaining its current human rights standards and ensuring an adequate data protection framework and effective legal safeguards, which are essential prerequisites for enabling police and judicial cooperation in criminal matters;
11. Recalls that the two adequacy decisions for the UK expire in 2025 and that the Commission can intervene at any point if the UK deviates from the level of data protection currently in place; recalls that to benefit from these adequacy decisions, the UK is subject to the jurisdiction of the European Court of Human Rights and it must adhere to the ECHR; points out that, with regard to the necessary revision of the adequacy decision for the transfer of personal data to the UK in two years, it is of the utmost importance that guaranteeing the rights protected under the European Convention on Human Rights be non-negotiable and that the European Parliament closely and regularly monitors any non-compliance; calls on the UK authorities to refrain from adopting any legislation that would jeopardise the adequate level of protection;
- 11a. Strongly regrets the substantial increase in the number of EU citizens who have been denied entry into the UK and subsequently returned after the end of the transition period; regrets the fact that the UK applied differentiated treatment in terms of visa fees for the citizens of a number of EU countries; is concerned that visa procedures for EU citizens are lengthy and cumbersome; calls on the UK not to discriminate against EU citizens on the basis of their nationality, both in terms of registration in the EU settlement scheme and of mobility and visa issues; stresses that such practices go against the principles of reciprocity and non-discrimination set out in the TCA and calls on the Commission to closely monitor these developments;
12. Recalls that the fundamental right to a fair trial includes, among other things, the right

to information, the right to interpretation and translation, the right to have a lawyer, the right to be presumed innocent and the right to be present at trial, as well as special safeguards for children who are suspects or accused persons in criminal proceedings and the right to legal aid, which must also be ensured in the course of judicial cooperation in criminal matters with non-EU countries;

13. Recalls that, in order to ensure effective extradition procedures, an arrest warrant must be executed as a matter of urgency and, in the event that a person does not consent to the extradition, a hearing must take place within 21 days of the arrest; recalls that, in order to safeguard the fundamental right to a fair trial, these time limits must not be exceeded; calls on the UK to respect the time limits established in the TCA to facilitate the application of mutual legal assistance between the Member States and the UK;
- 13a. Recalls that, pursuant to Article 525(1) of the TCA, law enforcement and judicial cooperation in criminal matters between the Union and the UK is based on the Parties' long-standing commitment to ensuring a high level of protection of personal data, including in relation to cooperation with Europol and Eurojust; insists that personal data exchanges with the Justice and Home Affairs Agencies should be allowed only where the EU data protection standards are guaranteed and human rights are respected.

## INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

<b>Rule 58 – Joint committee procedure</b> Date announced in plenary	15.12.2022
<b>Date adopted</b>	9.10.2023
<b>Result of final vote</b>	+: 32 –: 4 0: 2
<b>Members present for the final vote</b>	Abir Al-Sahlani, Malik Azmani, Pietro Bartolo, Theresa Bielowski, Malin Björk, Patrick Breyer, Saskia Bricmont, Jorge Buxadé Villalba, Patricia Chagnon, Lena Düpont, Lucia Ďuriš Nicholsonová, Nicolaus Fest, Sophia in 't Veld, Assita Kanko, Alice Kuhnke, Jeroen Lenaers, Juan Fernando López Aguilar, Erik Marquardt, Javier Moreno Sánchez, Maite Pagazaurtundúa, Pina Picierno, Paulo Rangel, Diana Riba i Giner, Isabel Santos, Birgit Sippel, Tineke Strik, Ramona Strugariu, Yana Toom, Milan Uhrík, Tom Vandendriessche, Javier Zarzalejos
<b>Substitutes present for the final vote</b>	Cyrus Engerer, José Gusmão, Dragoş Tudorache, Maria Walsh
<b>Substitutes under Rule 209(7) present for the final vote</b>	Petros Kokkalis, Ljudmila Novak, Thomas Rudner

## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

32	+
PPE	Lena Düpont, Jeroen Lenaers, Ljudmila Novak, Paulo Rangel, Maria Walsh, Javier Zarzalejos
Renew	Abir Al-Sahlani, Malik Azmani, Lucia Ďuriš Nicholsonová, Sophia in 't Veld, Maite Pagazaurtundúa, Ramona Strugariu, Yana Toom, Dragoș Tudorache
S&D	Pietro Bartolo, Theresa Bielowski, Cyrus Engerer, Juan Fernando López Aguilar, Javier Moreno Sánchez, Pina Picierno, Thomas Rudner, Isabel Santos, Birgit Sippel
Verts/ALE	Patrick Breyer, Saskia Bricmont, Alice Kuhnke, Erik Marquardt, Diana Riba i Giner, Tineke Strik
The Left	Malin Björk, José Gusmão, Petros Kokkalis

4	-
ID	Patricia Chagnon, Nicolaus Fest, Tom Vandendriessche
NI	Milan Uhrík

2	0
ECR	Jorge Buxadé Villalba, Assita Kanko

Key to symbols:

+ : in favour

- : against

0 : abstention