

Brexit: EU-UK Trade and Cooperation Agreement – Impacts on PIF and JHA in a Nutshell

News

Thomas Wahl

On 24 December 2020, EU and UK negotiators reached [agreement on the text of a new Trade and Cooperation Agreement \(TCA\)](#). It regulates a close relationship between the EU and UK for the period immediately after the UK finally left the EU on 1 January 2021, 00.00h, when the transition period (agreed in the Withdrawal Agreement) also ended. Since the negotiations were finalised at a very late stage before expiry of the transition period, and in light of the exceptional circumstances, the Council and the Commission agreed to apply the TCA on a provisional basis, namely for a limited period of time until 28 February 2021. This transition period has been designed to enable the EU to finalise its internal ratification procedures, especially for the European Parliament to exercise democratic scrutiny. After consent by the EP, the agreement must be formally adopted by the Council. Meanwhile, the Commission and the Council [requested an extension](#) of the transition period till 30 April 2020. The [UK agreed](#) to this proposal. Now the decision lies with the EP. The UK itself has already finalised its ratification process: the UK Parliament ratified the TCA on 30 December 2020. The bill implementing the TCA received royal assent on 31 December 2020 and became [the European Union \(Future Relationship\) Act](#).

The TCA was published in the [EU's Official Journal L 444 of 31 December 2020, pp. 14 et seq.](#) It is important to note that the numbering of articles in the TCA is provisional and subject to further amendments after final adoption of the act.

The EU conducted negotiations with the following aims:

- Ensuring respect for rights of businesses, consumers, and individuals;
- Establishing fair competition while recognizing each Party's regulatory autonomy, e.g., in the field of granting subsidies;
- Implementing the main negotiating principles set by the European Council, i.e., protection of the integrity of the Single Market, indivisibility of the four freedoms, and integrity of the EU's legal order;
- Striking a balance between the specific status of the UK as a close EU partner (as regards both economic and security issues) and the fact that a non-EU country cannot enjoy the same benefits as what EU membership offers.

Against this background, the TCA attempts to cover areas of economic partnership as comprehensively as possible and to be an agreement unprecedented in scope. However, in some areas – including law enforcement cooperation – damage control prevails over security gains. A number of areas, such as foreign policy,

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security and defence are not covered by the agreement. This means, for instance, that there will be no joint responses or coordination if it comes to the imposition of smart sanctions on third-country nationals or economic entities. As regards cooperation in the enforcement of judicial decisions, for example, which is also not covered by the TCA, international agreements apply to which both the UK and the individual EU Member State are party. The latter mainly means that the UK “falls back” on the standard of the Council of Europe.

In substance, the TCA regulates three pillars:

- Free trade arrangements in a number of areas of EU interest, in particular trade in goods and services, but also investment, digital trade, intellectual property, public procurement, energy, tax transparency, etc.;
- Arrangements for a security partnership establishing a framework for law enforcement and judicial cooperation in criminal matters;
- A horizontal framework for governance, clarifying how the TCA will be operated and controlled (including the establishment of a Joint Partnership Council and binding enforcement and dispute settlement mechanisms).

These pillars, which are regulated in Parts Two, Three, and Six of the TCA, are flanked by:

- Common and institutional provisions (Part One);
- Provisions on thematic cooperation in the fields of health and cyber security (Part Four);
- The participation of the UK in Union programmes, sound financial management, and financial provisions (Part Five);
- Final provisions (Part Seven).

The provisions on economic, societal, and security policy areas are further supplemented by several annexes, eight of which deal with law enforcement and judicial cooperation. The following three protocols with annexes round out the TCA:

- Protocol on administrative cooperation and combating fraud in the field of value added tax and on mutual assistance for the recovery of claims relating to taxes and duties;
- Protocol on mutual administrative assistance in customs matters;
- Protocol on social security coordination.

The main content and principles of EU-UK cooperation in the fields of protection of the EU’s financial interests (PIF) and justice and home affairs are outlined in the following.

Protection of Financial Interests – Customs

- The EU and the UK (hereinafter also “the Parties”) agreed on the establishment of a free trade zone with zero tariffs and zero quotas on all goods that comply with the appropriate rules of origin.
- The Parties are obliged to cooperate in preventing, detecting, and combating breaches or circumventions of customs legislation, in accordance with the chapter providing the rules of origin and the Protocol on mutual administrative assistance in customs matters. Each Party will take appropriate and comparable measures to protect its own and the other Party’s financial interests regarding the levying of duties on goods entering the customs territories of the UK or the Union (principle of equivalence – cf. Part Two, Title I, Chapter 1, Art. GOODS.19).
- The Parties agreed on a series of measures for customs cooperation in order to ensure compliance with the customs and trade facilitations; the TCA stresses that the measures will also ensure the

proper protection of security and safety of citizens and the effective fight against fraud (Part Two, Title I, Chapter 5, Arts. CUSTMS.1 and .2).

- A protocol stipulates the legal framework for cooperation between the Parties' customs authorities, so that correct application of customs legislation is ensured. Cooperation will particularly include preventing, investigating, and combating operations in breach of that legislation.
- This protocol is a comprehensive, self-standing agreement that can be directly applied. It regulates not only the rules and procedure for information exchange following requests but also spontaneous and automatic information exchanges.

Protection of Financial Interests – EU Programmes

- Part Five of the TCA lays down the conditions that will enable the UK to participate in Union programmes, activities and services thereunder. The Union programmes in which the UK may participate will be specifically listed in protocols.
- Chapter 2 of Title Five provides several provisions on financial management. Art. UNPRO.4.2 regulates the cooperation between UK authorities and the European Commission/OLAF as well as the powers of OLAF to investigate irregularities, fraud, and other criminal offences affecting the EU's financial interests in the UK.
- The European Commission and OLAF are authorised to carry out administrative investigations, including on-the-spot checks and inspections, in the territory of the UK. OLAF's powers include:
 - Carrying out on-the-spot checks and inspections on the premises of any natural person residing in or legal entity established in the UK and receiving Union funding under a funding agreement or a contract, as well as on the premises of any third party involved in the implementation of such Union funding residing or established in the UK;
 - Accessing all relevant information and documentation (in electronic or paper versions, or both), which are required for the proper conduct of on-the-spot checks and inspections (in particular, OLAF agents may copy relevant documents);
 - Requesting assistance from UK authorities to carry out the necessary measures if the person/entity under investigation resists.
- The European Commission may impose administrative measures and penalties on legal or natural persons participating in the implementation of a programme or activity in accordance with Union legislation.
- Cooperation between OLAF and the UK authorities mainly includes:
 - Obligation for UK authorities to inform about facts or suspicion of irregularities, fraud, or any illegal activity affecting the EU's financial interests "within a reasonable period";
 - Close collaboration in the preparation and conduct of on-the-spot checks and inspections;
 - Obligation for OLAF to inform the competent UK authorities of the results of on-the-spot checks and inspections;
 - Regular exchange of information on implementation of the anti-fraud measures;
 - Designation of a contact point in the UK responsible for effective cooperation and information exchange with OLAF.
- Art. UNPRO.4.4 ensures that Commission decisions imposing a pecuniary obligation on legal or natural persons are enforceable in the UK. The competent UK authority is to recognize such decisions and issue an enforcement order without any formality other than verification of the authenticity of the decision. The same applies to judgments/orders rendered by the CJEU in application of an arbitration clause.

VAT Fraud – Administrative Cooperation

- The TCA includes a protocol that establishes the framework for administrative cooperation in VAT-related matters. Like the Protocol on administrative cooperation in customs matters, it is a self-standing, directly applicable agreement. It pursues the aim of enabling EU Member State and UK authorities to assist each other in order to ensure compliance with VAT legislation, protect VAT revenue, and recover claims relating to taxes and duties.
- Rules and procedures govern, *inter alia*:
 - The exchange of information that may help effect a correct VAT assessment, monitor the correct application of VAT, and combat VAT fraud;
 - The recovery of claims relating to VAT, customs, and excise duties (levied by or on behalf of a State or on behalf of the Union);
 - Administrative penalties, fines, fees, and surcharges relating to said claims.

Data protection

- In general, both the EU and the UK affirm their “longstanding” commitment towards ensuring a high level of protection of personal data in the realm of law enforcement and judicial cooperation in criminal matters.
- The TCA sets out a range of data protection principles that the Parties’ respective data protection regimes must ensure, e.g.:
 - The principles of lawful and fair data processing and of data minimisation, purpose limitation, accuracy, and storage limitation;
 - The guarantee of data subjects’ enforceable rights regarding access, rectification, and erasure;
 - The data subjects’ rights to effective administrative and judicial redress in the event of violation of data protection safeguards;
 - Onward transfers to third countries only under the condition that the level of protection is not undermined;
 - Supervision of compliance with data protection safeguards and the enforcement of data protection safeguards by independent authorities (Part Three, Title I, Art. LAW.GEN.4).
- Cooperation between the UK and the EU on data protection issues is loosely agreed in Art. COMPROV.10 (Part Six, Title II).
- In principle, the Party transferring personal data shall respect its rules on international transfers of personal data.
- For a transition period, the UK will not be considered a third country, so that smooth transmission of personal data can continue, provided that the UK upholds its current data protection standard incorporating EU legislation (cf. Part Seven, Art.FINPROV.10A – bridging clause). During this transition period, the Commission is called on to adopt adequacy decisions as required by the Law Enforcement Data Protection Directive 2016/680 and the General Data Protection Regulation. These will then form the legal basis for transmissions of personal data after the end of the transition period when the UK must be regarded as a “third country”.
- These general rules on data protection are topped up with specific rules in the relevant chapters on law enforcement cooperation.

Law Enforcement Cooperation – Prüm

- Title II of Part Three (Arts. LAW.PRUM.5 et seq.) ensures that the UK can continue to participate in the exchange of information as regards DNA profiles, dactyloscopic data (fingerprints), and vehicle registration data (VRD), which are at the heart of the so-called Prüm cooperation regime set out in

Council Decisions 2008/615/JHA and 2008/616/JHA. In essence, Title II copies the relevant provisions from said Council decisions. Annex Law-1 lays down administrative and technical details for the implementation of Title II.

- To ensure a high standard of data protection, the TCA maintains the hit/no-hit procedure, i.e., retrieval is only carried out with anonymised index files. Accordingly, the querying police officer is only informed as to whether data on the searched profile is also available in the other contracting state's databank. In order to obtain further information, e.g., on the identity of the person, the police service must take up contact with the contracting state or initiate a request for mutual legal assistance.
- The UK must undergo an "ex ante evaluation" procedure (Art. LAW.PRUM.18). The meaning of this provision is unclear, however, considering that the UK became successfully connected to the exchange procedure in the areas of DNA and fingerprints after a lengthy evaluation procedure that started before the Brexit. Art. 18 is probably to be read such that the UK and EU Member States can only carry out exchanges on the basis of the Prüm regime (automated searching and comparison of DNA profiles, automated searching for dactyloscopic data, and supply of additional personal data) for nine months after entry into force of the TCA. The Specialised Committee on Law Enforcement and Judicial Cooperation can extend this time limit by another nine months. The ex ante evaluation will then take place after expiry of the 9/18 months. In any event, a pre-evaluation must take place for the exchange of VRD, because the UK has not yet implemented the cooperation system for this data category.
- Keeping in mind that the Prüm legislation will be substantially revised ("next generation Prüm", → [eu-crim 3/2020, 189-190](#)), the TCA has foreseen a consultation mechanism by means of which the UK may participate in the future Prüm agreement. If agreement is not reached, Prüm cooperation between the UK and the EU can be suspended (Art. LAW.PRUM.19).

Law Enforcement Cooperation – PNR

- Title III of Part Three (Arts. LAW.PNR.18 et seq.) sets up a cooperation agreement between the EU and the UK that ensures the transfer of passenger name records (PNR) to the UK by air carriers. It includes detailed rules for police and judicial cooperation on PNR data between the EU Member States, Euro-pol, and Eurojust, on the one hand, and UK law enforcement authorities, on the other.
- The provisions on PNR cooperation are quite unique, because the EU has, for the first time, taken into account the findings of the CJEU's opinion of 26 July 2017 that stopped the EU-Canada PNR deal (→ [eu-crim 3/2017, 114-115](#)). Therefore, the EU casted the CJEU's demands into an international PNR agreement (the TCA). This concerns mainly the following issues:
 - Purpose limitation;
 - Scope of PNR data;
 - Non-discrimination and sensitive data;
 - Transparency and passenger rights;
 - Automated processing of PNR data;
 - Data retention;
 - Conditions for the use of PNR data other than border and security checks, disclosure to other UK government authorities, and disclosure to other third-country authorities.
- If either Party considers the continued operation to be "no longer" appropriate, the cooperation on PNR may be suspended (Art. LAW.PNR.38).

Law Enforcement Cooperation – Information Exchange

- Title IV of Part Three establishes a framework that will allow the efficient exchange of information between police, customs, and other authorities active in the field of the prevention, investigation, detection, and prosecution of criminal offences.
- The Title, consisting of a single provision (Art. LAW.OPCO.1), is a slimmed-down version of the EU's Framework Decision on simplifying the exchange of information and intelligence between EU countries' law enforcement authorities (FD 2006/960/JHA, also known as the "Swedish Initiative").
- The TCA enables the sharing of information that a competent authority in an EU country or in the UK holds. The purposes of the exchange have been broadly formulated. Mutual assistance through the provision of relevant information can be performed for the purposes of:
 - Preventing, investigating, detecting, and prosecuting criminal offences;
 - Executing criminal penalties;
 - Safeguarding against and preventing threats to public safety;
 - Preventing and combating money laundering and the financing of terrorism.
- The provision can also be considered compensation for the UK's terminated access to the Schengen Information System after Brexit. Therefore, Art. LAW.OPCO.1 clarifies that information on wanted and missing persons and on objects can also be requested by a competent authority from the UK or from a Member State.
- Information can be exchanged either upon request or spontaneously. Explicit grounds for refusal are not stipulated; however, the provision of information is made subject to the conditions of the domestic law that applies to the providing competent authority and within the scope of its powers.
- Like the FD 2006/960, Art. LAW.OPCO.1 clarifies that information cannot be used as evidence before a judicial authority without the consent of the country that provided it (this can be already indicated in the reply).

Cooperation with Europol

- Title V of Part Three ensures the smooth transition of the UK from being a former EU Member State to being a non-EU country. However, the aim is that the UK remains a privileged partner to Europol. Brexit mainly means that the UK no longer has direct access to the Europol Information System and loses some other Member State privileges.
- The section on Europol establishes a framework for cooperative relations between Europol and the competent UK authorities in order to maintain mutual police cooperation when preventing and combating serious crime, terrorism, and forms of crime that affect a common interest covered by Union policy.
- The provisions regulate, *inter alia*, the scope of cooperation, liaison officers, information exchanges, and personal data flows.
- ; In addition to the exchange of personal data (under the conditions laid down in Title V and in accordance with the tasks of Europol outlined in Europol Regulation 2016/794), cooperation may include:
 - The exchange of information such as specialist knowledge;
 - General situation reports;
 - Results of strategic analysis;
 - Information on criminal investigation procedures;
 - Information on crime prevention methods;
 - Participation in training activities;
 - Advice and support in individual criminal investigations and operational cooperation.

- Title V clarifies that certain provisions and details of cooperation must be implemented by Working and Administrative Arrangements that will be concluded between Europol and the competent UK authorities (on the basis of Art. 23(5) and Art. 25(1) of the Europol Regulation).

Cooperation with Eurojust

- Like cooperation with Europol, the TCA sets up the basic legal framework that ensures continuation of the UK's operational cooperation at Eurojust (Part Three, Title VI).
- Likewise, the section on Eurojust provides regulations, *inter alia*, on the scope of cooperation, the UK liaison prosecutor, and the exchange of non-personal and personal data.
- Brexit mainly affects the switch of the UK National Member at Eurojust to a liaison prosecutor position. His/her tasks, rights, and obligations and those of his/her assistant as well as any costs involved will be regulated in a working arrangement between Eurojust and the UK.
- In addition, the modalities of cooperation between the Parties as considered "appropriate to implement Title VI" shall be subject to a working arrangement concluded between Eurojust and the competent authorities of the UK (in accordance with Arts. 47 (3) and 56 (3) of Eurojust Regulation 2018/1727).

Extradition

- Title VII of Part Three provides a self-standing chapter with directly applicable regulations on extradition between an EU Member State and the UK. The regulations (Art. LAW.SURR.76-Art. LAW.SURR.112) are basically modelled on the 2006 [surrender agreement between the EU and Iceland and Norway](#).
- The Framework Decision on the European Arrest Warrant no longer applies in relation to the UK, except for EAWs issued and executed (i.e., the requested person was arrested) before the transition period.
- The TCA explicitly establishes the principle of proportionality in relation to surrenders, which mainly mirrors a corresponding provision in the UK's Extradition Act 2003 (cf. Art. LAW.SURR.77).
- The list of offences known from the FD EAW, for which double criminality checks are no longer carried out, is applicable if reciprocity is given; this means that giving up the requirement of double criminality is subject to reciprocal notifications on the part of the EU Member State and of the UK;
- In essence, Arts. LAW.SURR.81 and .82 have taken over the mandatory and facultative refusal grounds laid down in Arts. 3, 4, and 4a FD EAW. What is new, however, is an optional refusal ground for arrest warrants that are based on discriminatory prosecution.
- The political offence exception (abandoned in the FD EAW) may be principally applicable and disregarded for terrorism offences only if the UK or the EU (acting on behalf of any of its Member States) provide a corresponding notification.
- Based on reasons rooted in the fundamental principles or practice of the domestic legal order, each EU Member State (or the UK) can declare that it will not surrender its own nationals or can authorize their surrender only under certain specific conditions; in this case, the other Party can apply the principle of reciprocity. If applied, the Member State must consider initiating proceedings against its own national (principle *aut dedere aut iudicare*).
- Art. LAW.SURR.84 regulates the possibilities to make extradition subject to guarantees, e.g., in case of life imprisonment and surrender of nationals/residents, which resembles Art. 5 FD EAW. Interestingly, the provision additionally implements the CJEU case law (established in *Aranyosi/ Căldăraru* and "LM") on the respect for fundamental rights in EAW cases: before it decides whether to execute the arrest warrant, the executing judicial authority may require, as appropriate, additional guarantees as to

the treatment of the requested person after his/her surrender if there are substantial grounds for believing that there is a real risk to the protection of the fundamental rights of the requested person.

- Art. LAW.SURR.89 sets out the rights of the requested person in the extradition procedure and takes up the relevant provisions laid down in the EU's procedural rights Directives, in particular the right to be informed and the right of access to a lawyer.
- Annex LAW-5 provides a form to be used for surrender requests.
- Since the UK is no longer connected to the SIS, the main channel for transmission will be the red notice procedure via Interpol.
- Notifications that limit surrender – i.e., those on double criminality, the political offence exception, and the nationality exception – are subject to review and evaluation. The notification referring to the nationality exception must be renewed every five years in order to remain applicable (cf. Art. LAW.SURR.110).

Mutual Legal Assistance in Criminal Matters

- Unlike the provisions on extradition/surrender, the TCA does not provide for an own corpus of law as regards mutual assistance in criminal matters. Instead, Arts. LAW.MUTAS.113 – LAW.MUTAS.122 (Title VIII of Part Three) include only provisions that aim to supplement the mutual legal assistance framework of the Council of Europe, i.e., the CoE's "mother" Convention on Mutual Assistance in Criminal Matters of 1959 and its two Additional Protocols of 1978 and 2001. A peculiarity of these supplements is that they include some elements of the Directive on the European Investigation Order, such as the provisions on conditions for an MLA request reflecting the proportionality principle, recourse to a different type of investigative measure, the obligations to inform, the transnational *ne bis in idem* principle as a refusal ground, and time limits for the execution of an MLA request.
- Unlike the chapter on surrender, there is no agreed form for MLA requests yet. A standard form will be established by the Special Committee on Law Enforcement and Judicial Cooperation.
- If direct transmission channels are provided by the CoE's MLA Convention and its Protocols, MLA requests can also be directly transmitted between the public prosecutor's offices of the UK and EU Member States. In urgent cases and if information needs to be provided spontaneously, the authorities can also resort to the communication channels of Europol and Eurojust.
- EU Member States may invite the UK to participate in Joint Investigation Teams.

Exchange of Criminal Records

- As a special form of mutual legal assistance, the exchange of criminal record information is defined in specific rules in Title IX of Part Three. The provisions in this title take precedence over the provisions foreseen for mutual assistance in Title VIII.
- The future exchange of criminal record information is based on the respective provisions of the aforementioned CoE Convention on Mutual Assistance in Criminal Matters and its protocols, which are supplemented by Title IX. The supplements aim to maintain certain elements of the established ECRIS system after Brexit.
- Requests for criminal records can be made to and from a UK designated authority and an EU Member State central authority and must be complied with as soon as possible – in any event, within 20 working days.
- At least once a month, the UK will notify the respective EU Member States of convictions of EU nationals. Conversely, EU Member States have the same obligations to report to the UK any convictions of UK nationals in their jurisdictions.
- Annex LAW-6 lays down technical and procedural specifications, enabling the communication of criminal record information to take place electronically.

Anti-Money Laundering and Counter-Terrorist Financing

- By means of Title X of Part Three, the UK and the EU agreed to support and strengthen action to prevent and combat money laundering and terrorist financing. Measures shall include:
 - Support for international efforts in this area;
 - Recognition of the need to cooperate;
 - Exchange of relevant information (as appropriate and provided the UK system is considered equivalent in terms of data protection);
 - Maintenance of a comprehensive regime in the UK and EU and endeavours to regularly enhance it, taking into account FATF Recommendations.
- Detailed provisions were introduced to ensure the transparency of beneficial ownership. They reinforce that UK-EU cooperation goes beyond FATF standards and reflects the achievements reached at the EU level. The UK and the EU will, for instance, ensure that legal entities maintain adequate, accurate, and up-to-date information about beneficial owners, set up central registers with beneficial ownership, and grant their competent authorities access to such registers without restriction and in a timely manner.

Freezing and Confiscation

- The EU and the UK agreed on a comprehensive set of rules to govern the execution of requests for the purposes of both investigations and proceedings aimed at freezing property, with a view to its subsequent confiscation, as well as investigations and proceedings aimed at confiscating property. Like the provisions on surrender, the rules stipulated in Title XI of Part Three (Arts. LAW.CONFISC.1 – LAW.CONFISC.34) represent a self-standing legal agreement with directly applicable cooperation rules.
- The section was inspired by the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, (also known as the Strasbourg Convention, CETS 141) and the 2005 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, (also known as the Warsaw Convention, CETS 198). This legal framework is rounded off with elements of EU Regulation 2018/1805 on the mutual recognition of freezing and confiscation orders (→ [eucrim 4/2018, 201-202](#)).
- Title XI provides a twofold regime: (1) mandatory cooperation for freezing and confiscation of property within the framework of criminal proceedings and (2) cooperation in favour of non-criminal (e.g., civil or administrative) proceedings, where the States are (only) obliged to assist “to the widest extent possible under [their] domestic law”.
- As a rule, cooperation takes place via central authorities. In urgent cases direct communication between the competent judicial authorities of the requesting state and the requested state is possible. The EPPO as Union body is also entitled to participate in the confiscation scheme; it is considered both a competent authority and a central authority.
- Title XI provides for the different forms of investigative assistance, e.g., identification and tracing of instrumentalities, proceeds, and other property liable to confiscation, information on bank accounts and safe deposit boxes, information on banking transactions, and the monitoring of banking transactions.
- Rules inspired by the 2018 EU Regulation mainly concern time limits, form (provided in Annex-LAW 8), language regime, and grounds for refusal (for the latter, cf. Art. LAW CONFISC.15).
- Title XI includes obligations to take provisional measures in relation to confiscation and in relation to the execution of confiscation requests. For both measures, each State ensures that the affected persons have effective remedies to preserve their rights; however, substantive reasons for requested measures can only be challenged before a court of the requesting State.

Cross-Cutting Issues and Dispute Settlement

- Title XII of Part Three deals with several cross-cutting issues affecting all the other parts of the law enforcement and judicial cooperation chapters. Art. LAW.OTHER.134 regulates the *modus operandi* for notifications to be made, in particular as regards those provided for in the chapter on surrender. The Parties also agreed on a joint review of Part Three five years after the entry into force of the TCA (Art. LAW.OTHER.135).
- Each Party may terminate Part Three at any moment by written notification through diplomatic channels. Termination can be explicitly justified if the UK or a EU Member State have denounced the European Convention on Human Rights or Protocols 1, 6, or 13 thereto (cf. Art. LAW.OTHER.136).
- There are two reasons for a suspension of Part III or individual Titles thereof, which can be notified by each Party through diplomatic channels (Art. LAW.OTHER.137):
 - An event involving serious and systemic deficiencies within one Party as regards the protection of fundamental rights or the principle of the rule of law;
 - An event involving serious and systemic deficiencies within one Party as regards the protection of personal data, including deficiencies leading up to a relevant adequacy decision ceasing to apply.
- Title XIII of Part Three (Arts. LAW.DS.1 - LAW.DS.7) designed a dedicated dispute resolution mechanism in order to effectively settle disputes that concern law enforcement and judicial cooperation in criminal matters. The provisions are *lex specialis* to the general provisions on dispute settlement laid down in Part Six (cf. Art. INST.10(2)).
- The mechanism of Title XIII does not apply to provisions in Part Three that explicitly provide for the termination or suspension of the agreement, including the aforementioned provisions in Title XII and specific suspension provisions in the chapters on PNR and Prüm cooperation (see above).
- The dispute settlement mechanism is triggered if a Party (“the complaining Party”) considers the other Party (“the responding Party”) to have breached an obligation under Part Three of the TCA. The procedure involves consultations aimed at finding amicable solutions within three months.
- If no amicable solution is found and the complaining Party considers the responding Party to have been in serious breach of its obligations, the complaining Party may suspend the Title(s) concerned. In this case, the responding Party may counteract and suspend all remaining Titles of Part III.

Cyber Security

- The Parties confirm their “endeavour to establish a regular dialogue in order to exchange information about relevant policy developments, including in relation to international security, security of emerging technologies, internet governance, cybersecurity, cyber defence and cybercrime”. In Title II of Part Four, the UK and the EU agreed on a “thematic cooperation” in the field of cyber security. Measures of cooperation may include:
 - Sharing of best practices and joint practical actions aimed at promoting and protecting an open, free, and secure cyberspace;
 - Information exchange on methods/tools, general threats, and vulnerabilities among the computer emergency response teams of the EU and the UK;
 - Subject to invitation, participation of the UK in activities of the EU’s Network and Information Security Cooperation Group;
 - Upon invitation, participation of the UK in certain activities carried out by the EU Cybersecurity Agency (ENISA).

Counter-Terrorism

- The framework for cooperation in the fight against terrorism has been laid down in the horizontal provisions of Part Six of the TCA. In Art. COMPROV.9, the EU and UK reaffirm their commitments to “cooperate at the bilateral, regional and international levels to prevent and combat acts of terrorism in all its forms and manifestations in accordance with international law...”.
- A regular dialogue will be established with the aim to promote and facilitate, *inter alia*:
 - The sharing of assessments on the threat of terrorism;
 - The exchange of best practices and expertise on counter-terrorism;
 - Operational cooperation and information exchange;
 - Information exchange on cooperation within the framework of multilateral organisations.

Governance

Another peculiarity is that the TCA established a single and clear horizontal institutional governance framework to ensure the proper implementation and operation of the agreement and to control the Parties' commitments. To facilitate overall management of the agreement, the EU and the UK agreed to create a joint body, called the Partnership Council. The Partnership Council is to be co-chaired by a Member of the European Commission and a representative of the UK at the ministerial level. The Partnership Council will meet at least once a year and oversees the attainment of the TCA's objectives. The EU or the UK can refer any issue to the Partnership Council relating to the implementation, application, and interpretation of the TCA. The powers of the Partnership Council are included in Part One, Title III, Art. INST.1(4).

The Partnership Council will be assisted by Specialised Committees, which will address matters regulated in the different parts and titles of the TCA, such as matters of law enforcement and judicial cooperation as well as the UK's participation in EU programmes. The general powers of the Specialised Committees are provided for in Part One, Title III, Art. INST.2(4).

The TCA also enables the European Parliament and the UK Parliament to create a joint parliamentary assembly to exchange views on the Agreement and make recommendations to the Partnership Council. The EU and the UK commit to regularly consulting civil society organisations on implementation of the TCA. This is in keeping with the EU's commitments as is customary in modern international agreements negotiated by the EU.

Summaries

The Commission has provided a brochure that gives an [overview of the new relationship](#) and the most important changes it entails. Another brochure contains a compilation of the [consequences of the UK's choice to leave the EU and the benefits](#) of the TCA. Summaries of the various components of the TCA are given in a [Q&A memo](#).

First Assessment

The EU-UK “Christmas deal” offers citizens, businesses, and administrations legal certainty on the rules that need to be followed and the guarantees that need to be provided after 1 January 2021. In the field of justice and home affairs, a number of provisions ensure that the UK is not suddenly cut off from the most important tools in police and judicial cooperation. In particular, the fact that the UK will not be treated as a third country for a transition period will enable the exchange of personal data to continue, in particular in the field of law

enforcement. When applying the TCA's JHA chapters, practitioners should keep in mind, however, that the EU and UK have decided on a three-part system:

- Self-standing cooperation agreements, such as those on PNR, surrender, and confiscation;
 - Arrangements supplementing the Council of Europe cooperation framework, such as those on mutual legal assistance;
 - In some cases, no regulations at all (e.g., for the transfer of prisoners).
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