

EXPLANATORY MEMORANDUM ON A PROPOSAL FOR A DECISION OF THE COUNCIL ESTABLISHING AN EU POSITION AHEAD OF A TRADE AND COOPERATION AGREEMENT GOVERNANCE COMMITTEE

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Proposal for a Council Decision on the position to be taken on behalf of the European Union in the Specialised Committee on Law Enforcement and Judicial Cooperation established by the Trade and Cooperation Agreement (TCA) 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, regarding the establishment of a standard form for requests for mutual assistance in criminal matters referred to in Article 635(1) of the TCA.

Submitted by the Home Office, 22 May 2023

SUBJECT MATTER

This proposal concerns the position to be taken by the European Union (EU) in the Specialised Committee on Law Enforcement and Judicial Cooperation (Specialised Committee) regarding the adoption of a standard form for mutual assistance requests between the UK and EU Member States. **A decision by the Specialised Committee to adopt the form would be welcomed by the UK, as it provides a number of benefits to operational partners.**

Pursuant to Article 633, the Trade and Cooperation Agreement (TCA) supplements the provisions, and facilitates the application, of the European Convention on Mutual Assistance in Criminal Matters and its two additional protocols. The TCA does not include a form for requests for mutual assistance in criminal matters but instead mandates the Specialised Committee on Law Enforcement and Judicial Cooperation, in Article 635(1), to establish such a standard form. Once the Specialised Committee has adopted a decision in accordance with that provision and the standard form has entered into force, requests for mutual assistance must be made using the standard form¹. We anticipate that this decision will be on the agenda at the next meeting of the Specialised Committee on Law Enforcement and Judicial Cooperation.

SCRUTINY HISTORY

None for this decision.

MINISTERIAL RESPONSIBILITY

¹Article 635, EU-UK Trade and Cooperation Agreement. [Trade and Cooperation Agreement between UK and EU – CP 426 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1154447/Trade_and_Cooperation_Agreement_between_UK_and_EU_-_CP_426.pdf)

The Foreign Secretary is responsible for the UK-EU relationship and is Co-Chair of the TCA Partnership Council. The Home Secretary has primary responsibility for Law

Enforcement and Judicial Cooperation matters, including those within Part Three of the TCA. The Minister for Security also has an interest in this matter.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

Operational partners from across the UK including mutual legal assistance central authorities, prosecuting authorities (including the Crown Office and Procurator Fiscal Service and the Crown Prosecution Service and the Public Prosecution Service of Northern Ireland) and law enforcement agencies have fed into the development of the proposed form and agreed the final text. The Devolved Administrations have also been consulted on the contents of this Explanatory Memorandum and had no comments.

LEGAL AND PROCEDURAL ISSUES

- i. **Legal Base:** The EU's legal basis for this decision is Article 82(1) and Article 218(9) of the Treaty on the Functioning of the European Union (TFEU). Additionally, Article 635(1) of the TCA requires the Specialised Committee to undertake to establish a standard form for requests for mutual assistance by adopting an annex to the TCA. The form is expected to be adopted by the Specialised Committee in accordance with this provision.
- ii. **Voting Procedure:** The Council of Ministers shall act on the basis of a qualified majority.
- iii. **Timetable for adoption and implementation:** The Council Decision was due for adoption on 4 May at the Foreign Affairs Council. The use of the form will become mandatory for requests for mutual assistance in criminal matters between the UK and EU Member States once the Specialised Committee decision comes into effect – on the first day of the third month following the decision of the Specialised Committee.

POLICY IMPLICATIONS

During negotiations on the TCA, it was agreed that, following the UK leaving the EU, requests to share evidence to assist in criminal investigations and proceedings would be processed through mutual legal assistance (MLA) and that both sides would negotiate a standard form for these requests, as set out in Article 635 of the Agreement.

In the interim since EU Exit, requests for MLA have been made using International Letters of Request (ILORs), which include information required to meet obligations set out in the European Convention on Mutual Assistance in Criminal Matters and its two

additional protocols, as well as provide information relevant to the specific type of assistance requested.

The proposed standard form for requests for MLA has been negotiated by the UK and EU. The new form provides the following benefits:

- i. It only contains information relevant to UK-EU requests unlike the European Investigation Order (EIO) form used prior to EU Exit which included sections not relevant to the UK. This tailored approach will enable efficient triaging and prioritisation of requests.
- ii. It includes questions that capture information that was regularly missed as part of the EIO process (e.g. details on relevant law enforcement cooperation), reducing follow-up requests for further information.
- iii. It promotes secure electronic transmission for requests as standard, enabling greater digitisation of the MLA process.

The proposed Council decision on a standard form for UK-EU MLA requests is in line with the UK's position and adoption of the form by the Specialised Committee will provide the benefits outlined above. **As a result, the UK intends to agree to the adoption of the form in the Specialised Committee.**

CONSULTATION

No external consultation or impact assessment has been necessary.

FINANCIAL IMPLICATIONS

There are no financial implications for the UK. The necessary technical adjustments being made to the UK's systems for processing MLA requests are funded through existing programmes of work.



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