

BEYOND BREXIT

Promoting Workers' Rights, Decent Jobs, and Standards through UK-EU Domestic Advisory Groups

Rosa Crawford
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The UK-EU Trade and Cooperation Agreement (TCA) contained enforceable commitments for governments to maintain high standards of employment and social rights, and environmental and climate standards, termed the »Level Playing Field« commitments. These commitments are currently being undermined by the government's Retained EU Law (Revocation and Reform) Bill, which would see almost all retained EU law leave British statute books by the end of 2023, as well as recent efforts by the government to severely limit trade union activity and strike action. The TCA states that both EU and UK governments must consult a group of civil society representatives called »Domestic Advisory Groups« (DAGs). This presents a significant platform through which threats to downgrade employment rights, including recent threats by the UK government, can be challenged.

INTRODUCTION

The UK-EU Trade and Cooperation Agreement (TCA) signed in December 2020, following the decision by the UK to leave the European Union, broke new ground as a trade agreement that contained enforceable commitments for governments to maintain the high standards of employment and social rights, as well as environmental and climate standards, that existed in the UK and EU when the agreement was signed. These were termed »Level Playing Field« commitments.

The agreement also gave a unique role to civil society to monitor these commitments. The agreement requires that both EU and UK governments consult a group of civil society representatives called »Domestic Advisory Groups« (DAGs) on issues covered by the agreement and its implementation.¹

The DAGs can submit observations to a committee of government officials from the UK and EU – termed the Trade Specialised Committee on Level Playing Field – about UK and EU governments' adherence to Level Playing Field commitments and can highlight concerns if they are not being respected.²

The DAG is therefore a significant platform through which threats to downgrade employment rights, including recent threats by the UK government, can be challenged.

In September 2022, the UK government published the Retained EU (Revocation and Reform) Bill, which would mean that the majority of EU law that was transposed to UK law when the UK left the EU would cease to apply legally at the end of 2023. This would mean crucial employment rights derived from EU law in the UK, such as paid holiday leave, agency worker rights and limits on working hours, could all be scrapped. As well as undermining commitments to keeping a Level Playing Field on rights with the EU, the Bill could also undermine the UK government's commitments in the Northern Ireland Protocol to ensure there is »no diminution« of rights of citizens in Northern Ireland compared to those in the Republic of Ireland.³

The Retained EU Law (Revocation and Reform) Bill comes on top of legislation the government has passed or proposed that limits trade unions' right to strike. In July 2022, regulations were passed that would allow agency workers to replace striking workers. In October, the government announced it would be bringing in »minimum service level« requirements for the rail sector. This would prevent strikes if a

¹ UK-EU Trade and Cooperation Agreement (2020), Title II, Article 13 online at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2021.149.01.0010.01.ENG&toc=OJ%3AL%-3A2021%3A149%3ATOC

² F. Ortino (2021) *Protecting workers rights using the EU-UK Trade and Cooperation Agreement*, <https://www.tuc.org.uk/research-analysis/reports/protecting-workers-rights-using-eu-uk-trade-and-cooperation-agreement>, p. 27

³ Protocol on Ireland/Northern Ireland – Article 2, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840230/Revised_Protocol_to_the_Withdrawal_Agreement.pdf.

very vaguely defined »minimum level of service« could not be guaranteed: it is clearly designed to prevent unions from taking legitimate industrial action.⁴ This goes against commitments to the Level Playing Field as well as commitments contained in the TCA to respect fundamental International Labour Conventions on freedom of association and collective bargaining.

UK DOMESTIC ADVISORY GROUP

Following an open application process, the UK government appointed representatives of employers, trade unions and civil society to form its Domestic Advisory Group in April 2022.⁵ While there are more business representatives than trade union or civil society representatives on the group, decision making is equally balanced between the groups as each group occupies a position in the governing Executive Council of the group. The Executive Council is comprised currently of the Confederation of British Industry (CBI) as the Chair and Trades Union Congress (TUC) and the Scottish Council for Voluntary Organisations (SCVO) as Vice Chairs.

Currently, the secretariat for the UK DAG is provided by the Foreign, Commonwealth and Development Office (FCDO). Trade unions have been calling for the secretariat to be arms-length from the government (similar to the Health and Safety Executive) so that it can act independently, just as the EU DAG has the independent EU Economic and Social Committee as its secretariat. The TUC made recommendations about how this could function in March 2021 in its submission to the government consultation on the Domestic Advisory Group.⁶ Trade unions have also highlighted the need for UK government support for DAG members to attend meetings just as members of the EU DAG have their participation paid for by the European Commission. The UK government has stated such funding is not currently available.

Some of the emerging priorities of the UK DAG include Level Playing Field commitments, regulatory divergence and barriers to mobility.

While the TCA does not specify how governments should act on the observations and recommendations of the DAG, UK DAG members are calling for the government to act quickly on its recommendations and reverse any action that may breach Level Playing Field commitments.

FIRST JOINT UK-EU DAG MEETING

On 3.10.2022, the UK and EU Domestic Advisory Groups met collectively for the first time in Brussels. At this meeting, there was agreement that the Retained EU Law (Revocation and Reform) Bill described above posed a significant threat to Level Playing Field commitments.

The DAGs released a joint declaration calling for governments to respect Level Playing Field commitments and maintain high standards of workers' rights. The statement also called for the UK and EU to find a mutually agreeable solution on the Northern Ireland Protocol to safeguard the Good Friday Agreement, rights and decent jobs.⁷ It is significant that this statement was signed by trade unions from across the UK and EU as well as BusinessEurope, European Services Forum, the Confederation of British Industry, MakeUK and the Federation of Small Businesses, and a number of other employer and civil society groups.

CIVIL SOCIETY FORUM

The TCA requires a Civil Society Forum (CSF) to be held annually to conduct »a dialogue on the implementation«⁸ of the TCA between civil society groups and EU and UK government representatives. The first meeting was on 4.10.2022 in Brussels.

At this meeting, the EU and UK DAG chairs raised issues in the joint statement⁹ mentioned above and concerns about the Retained EU Law (Revocation and Reform) Bill with UK officials. EU trade unions raised concerns with the EU Commission that the Bill would lead to their rights being undermined. EU businesses also raised concerns that the Bill would give UK businesses an unfair advantage by lowering standards in the UK. The EU Commission said it was watching the Bill closely.

TOWARDS 2026

The TCA requires that the agreement is reviewed by EU and UK governments in 2026. Trade union members of the DAG are working actively with our trade union allies across the EU, supportive MPs in the UK, MEPs and progressive governments, to press the key improvements to the deal that we want to result from this review.

⁴ The Guardian (2022), 'Truss publishes plans to ensure transport services run during strikes', online at: <https://www.theguardian.com/uk-news/2022/oct/20/truss-publishes-plans-to-ensure-transport-services-run-during-strikes>

⁵ UK Government (2022) 'UK-EU Trade and Cooperation Agreement Domestic Advisory Group', online at: <https://www.gov.uk/government/groups/uk-eu-trade-and-cooperation-agreement-domestic-advisory-group>.

⁶ Trades Union Congress (2021), 'Briefing on TUC recommendations – Domestic Advisory Group under EU-UK TCA', online at: <https://www.tuc.org.uk/research-analysis/reports/briefing-tuc-recommendations-domestic-advisory-group-under-eu-uk-tca>.

⁷ EESC (2022), 'Joint Declaration: EU and UK Domestic Advisory Groups', online at: <https://www.eesc.europa.eu/en/documents/joint-declaration/eu-and-uk-domestic-advisory-groups-eu-uk-trade-and-cooperation-agreement>.

⁸ EU-UK Trade and Cooperation Agreement (2020), Title II, Article 14, online at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2021.149.01.0010.01.ENG&toc=OJ%3AL%-3A2021%3A149%3ATOC.

⁹ EESC (2022).

Key improvements unions are calling for include:

- a reduction of barriers on UK-EU trade that are risking jobs across the UK through alignment with EU regulations
- an end to barriers for creative workers touring which are having a detrimental impact on the sector
- mutual recognition of qualifications to make it easier for workers to work across borders
- improvements to the agreement to better enforce workers' rights by:
 - › eliminating the requirement that violations of Level Playing Field commitments must be proven to have an effect on trade or investment
 - › enabling the DAG to trigger investigations into violations of Level Playing Field commitments
 - › requiring that the UK and EU continue to keep pace with each other's legislation to protect workers' rights. Important provisions are being debated and implemented in the EU which could substantially increase workers' rights that we would want to apply to workers in the UK, including the Minimum Wage Directive that would strengthen collective bargaining; the Platform Workers Directive, and the Artificial Intelligence Liability Directive that will make it easier for workers who have been harmed by the use of Artificial Intelligence in the workplace to seek justice.

CONCLUSION

While the Domestic Advisory Groups for the UK-EU Trade and Cooperation Agreement are still new structures, trade unions, employers and other civil society groups across the UK and EU are already actively using them to highlight threats to Level Playing Field commitments the UK government is making with its proposals to repeal almost all EU derived law and attack unions' right to strike.

In order to make the UK DAG more effective it is important that the UK government establishes an independent secretariat for its Domestic Advisory Group and dedicated funding for its activities, as is provided for the EU Domestic Advisory Group.

Trade unions in the UK DAG hope that the DAG will be an influential platform that UK and EU governments will actively engage with and respond to. Critical to achieving this is increasing awareness amongst UK and EU politicians and civil society about the DAGs and the influence they can have to hold governments to Level Playing Field commitments to protect fundamental rights.

ABOUT THE AUTHOR

Rosa Crawford is policy lead on international trade and Brexit at the Trades Union Congress. She sits on a number of government advisory groups on trade as well as the Domestic Advisory Group for the UK-EU Trade and Cooperation Agreement. She regularly writes on trade and has provided evidence on a number of occasions to the House of Commons international trade committee, most recently raising concerns about a UK trade deal with the Gulf States at a committee session in July.

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