

Explanatory Memorandum on the Political, Free Trade and Strategic Partnership Agreement between the United Kingdom of Great Britain and Northern Ireland and Ukraine

Title of the Agreement: Political, Free Trade and Strategic Partnership Agreement between the United Kingdom of Great Britain and Northern Ireland and Ukraine

Command Paper No CP 312 (2020)

Subject Matter

This explanatory memorandum has been prepared by the Foreign, Commonwealth and Development Office and is laid before Parliament as an unnumbered Act Paper.

The United Kingdom of Great Britain and Northern Ireland (the “UK”) participates in a number of international agreements as a result of, or relevant to, its previous membership to the European Union (the “EU”) and which help underpin the UK's relationships with third countries and international organisations. The Government is seeking, as far as possible, to continue the effect of these arrangements at the end of the Transition Period.

The UK's current trading relationship with Ukraine is governed by the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part (the “EU-Ukraine Agreement”). The EU-Ukraine Agreement was applied provisionally in 2016 and entered into force in 2017. The Political, Free Trade and Strategic Partnership Agreement between the United Kingdom of Great Britain and Northern Ireland and Ukraine (the “UK-Ukraine Agreement” or “the Agreement”) is based on the EU-Ukraine Agreement.

As with the EU-Ukraine Agreement, the UK-Ukraine Agreement is a broad agreement which provides a framework for continued political, foreign and security cooperation and includes a deep and comprehensive preferential trade agreement. The Agreement covers both trade in goods, including provisions on rules of origin, preferential tariffs and quotas, and trade in services. It also contains commitments in areas often covered by free trade agreements, including intellectual property, geographical indications, and government procurement. Finally, the Agreement replicates the institutional framework of the EU-Ukraine Agreement with minor modifications.

The UK-Ukraine Agreement is intended to take effect when the EU-Ukraine Agreement ceases to apply to the UK at the end of the Transition Period (or as soon as possible thereafter). The mechanism by which the UK-Ukraine Agreement is anticipated to enter into force is discussed in the Parliamentary Report which accompanies this Explanatory Memorandum (the “Report”). Ukraine are aware that we would consult with them further in the event of any changes being needed to ensure operability of the Agreement as a result of the terms of the UK's Future Relationship Agreement (“FRA”) with the EU.

The purpose of the UK-Ukraine Agreement is to maintain continuity of the effects of the EU-Ukraine Agreement in a bilateral context. The UK-Ukraine Agreement replicates all sections of the existing EU-Ukraine Agreement relevant for a bilateral agreement between the UK and Ukraine. Wherever possible, we have sought a technical replication of the original EU-Ukraine Agreement, but in some cases, we have applied bespoke solutions in order to ensure continuity of effect in a UK-only context. The provisions in the EU-Ukraine Agreement relating to approximation towards EU legislation, norms and standards that do not have a direct impact on market access have been removed in the UK-Ukraine Agreement, as these requirements no longer apply to a bilateral agreement between the UK and Ukraine.

The Report gives details of, and explains the reasons for, any significant differences between trade-related provisions in the UK-Ukraine Agreement and in the EU-Ukraine Agreement.

The Report first sets out the legal approach used, as well as the general drafting changes which are consistent across all the UK's continuity trade agreements and which have no significant impact on the effect of the UK's current trade relationships. It focuses on the changes made to the relationship between the UK and Ukraine as a result of moving from the current arrangements to a new agreement. Any impacts resulting from the UK's exit from the EU or the nature of the FRA have been excluded from the Report.

Ministerial Responsibility

The Secretary of State for Foreign, Commonwealth and Development Affairs has overall responsibility for UK policy relating to the UK's relationship with Ukraine.

The Secretary of State for International Trade has overall responsibility for UK policy relating to the UK's trade relations with Ukraine.

Policy considerations:

(i) General

The UK-Ukraine Agreement provides for broad-based cooperation in foreign policy, security and political matters. These include commitments by the Parties to cooperate on peaceful conflict resolution, defence and security, climate change, human rights and people-to-people links. As with the original EU-Ukraine Agreement, the UK-Ukraine Agreement provides that respect for democratic principles, human rights, fundamental freedoms, and the rule of law constitute essential elements of the Agreement. Promotion of respect for the principles of sovereignty and territorial integrity, inviolability of borders and independence, as well as countering the proliferation of weapons of mass destruction, related materials and their means of delivery also constitute essential elements of the Agreement. The Agreement removes the power of the Parties to take appropriate measures for breaches of non-essential elements. This change does not affect the ability of the UK or Ukraine to take appropriate measures in cases of breaches of the Agreement's essential elements.

Amendments have been made to the foreign and security provisions of the EU-Ukraine Agreement to bring the UK-Ukraine Agreement up-to-date and accurately reflect the current bilateral relationship between the Parties. The original EU-Ukraine Agreement predated the conflict in eastern Ukraine. New provisions have therefore been inserted into the UK-Ukraine Agreement to recognise Russia's hostile actions against Ukraine. Provisions have also been inserted to reflect the UK's ongoing commitment to upholding the sovereignty and territorial integrity of Ukraine.

In further recognition of the current situation in eastern Ukraine, an amendment has been made to the territorial scope of the EU-Ukraine agreement, by introducing Article 416(2) into the UK-Ukraine Agreement. Paragraph two provides that the application of the Agreement, or of Title IV (Trade and Trade-related Matters) thereof, shall commence in the Autonomous Republic of Crimea, the city of Sevastopol and parts of the Donetsk and Luhansk Oblasts of Ukraine, once Ukraine ensures the full implementation and enforcement of the Agreement, or of Title IV thereof, on its entire territory. The Strategic Partnership Dialogue created under Article 400 of the Agreement shall adopt a bilateral decision on when full implementation and enforcement of the Agreement has been ensured.

(ii) Trade

The trade provisions of EU association agreements aim to reduce barriers to trade and investment between countries. Barriers can be taxes charged on goods as they cross borders (tariffs), or different rules and regulations that can add to trade costs (non-tariff measures). Barriers make it more difficult and costly to trade or invest overseas. Reducing these barriers can improve the flow of trade between countries and help businesses to access new markets.

Pursuant to arrangements made under the Withdrawal Agreement between the UK and the EU, during the Transition Period the UK participates in around 40 free trade agreements, covering more than 70 countries. Ahead of the end of the Transition Period, the Government has committed to putting in place the necessary arrangements to ensure there is no disruption to the UK's global trading relationships. Given that Ukraine has an existing agreement with the EU, the Government has concluded that transitioning the EU-Ukraine Agreement is the best way to ensure continuity of trade flows.

Total trade in goods and services between the UK and Ukraine was £1.5 billion in 2019, accounting for 0.1% of total UK trade. Ukraine is the UK's 69th largest trading partner.

(iii) Amendments

The Government is committed to ensuring the right level of Parliamentary scrutiny for all amendments to international agreements, whilst ensuring that the UK can keep agreements up-to-date and respond to changes in domestic legislation or wider economic considerations.

There is no overarching amendment article in the EU-Ukraine Agreement, however the parties to a treaty can always mutually agree to amend the text by way of an exchange of notes, in accordance with their internal procedures. In the UK, amendments to an agreement that are subject to a formal exchange of notes to confirm completion of internal procedures would engage the parliamentary scrutiny process set out in the CReG Act 2010.

Articles 400 and 404 of the UK-Ukraine Agreement establish a 'Strategic Partnership Dialogue' and a 'Trade Committee', respectively. These committees streamline the powers of the Association Council and the Association Committee (which had the power to sit in a trade configuration) under the EU-Ukraine Agreement, whilst retaining the necessary sub-committees in Title IV (Trade and Trade-Related Matters). The Association Council under the EU-Ukraine Agreement had the power under Article 463(3) to update or amend the annexes to that Agreement. The Dialogue and the Trade Committee of the UK-Ukraine Agreement therefore also have the power under Article 403(3) and 404(7), respectively, to update or amend the annexes to the UK-Ukraine Agreement. It is in the UK's interests for the Committees to have this function, both to ensure continuity of effect of the EU-Ukraine Agreement as far as possible and to streamline the process of making changes to the UK-Ukraine Agreement, if required.

Upon entry into force of the UK-Ukraine Agreement, any decisions adopted by the Association Council, Association Committee or any other committees or sub-committees established by the EU-Ukraine Agreement before that Agreement ceases to apply to the UK, shall, to the extent those decisions relate to the UK and Ukraine, be deemed to have been adopted by the equivalent body or sub-committee established by the UK-Ukraine Agreement, *mutatis mutandis*. This approach provides for continuity of effect, as it ensures that the decisions in force when the EU-Ukraine Agreement ceases to apply to the UK will continue to apply under the UK-Ukraine Agreement.

Article 4(1) provides that the Dialogue shall meet at least once a year in a specific configuration to address all aspects of bilateral cooperation, including security, economic and migration issues, as well as on international and regional issues of mutual interest. Article 404(3) provides that the Trade Committee shall also meet at least once a year, or as otherwise agreed by the Parties.

(iv) Financial

The UK-Ukraine Agreement provides for continuity of the UK's obligations under the EU-Ukraine Agreement. There will be financial costs associated with meeting the obligations for managing the Agreement, which include travel costs. Under the EU-Ukraine Agreement, the UK contributed to the associated costs as a Member State of the EU.

The Report provides further analysis of the financial impacts of the UK-Ukraine Agreement and the impacts of not ratifying the Agreement.

(v) Human Rights

The provisions of the EU-Ukraine Agreement concerning human rights have been replicated in the UK-Ukraine Agreement, without modification. Accordingly, the UK-Ukraine Agreement provides that respect for democratic principles, human rights, fundamental freedoms, the rule of law, sovereignty and territorial integrity and countering the proliferation of weapons of mass destruction constitute essential elements.

Article 3(2)(h) of the Agreement further commits the parties to developing and strengthening democratic principles, the rule of law and good governance, human rights and fundamental freedoms, including the rights of persons belonging to national minorities, non-discrimination of persons belonging to minorities and respect for diversity.

(vi) Reservations and Declarations

The UK-Ukraine Agreement includes a number of declarations, the majority of which replicate, with minor modifications, declarations made by the Parties to the EU-Ukraine Agreement. These declarations consist of:

- A Joint Declaration Concerning the Principality of Andorra
- A Joint Declaration Concerning the Republic of San Marino
- A Joint Declaration concerning a trilateral approach to rules of origin
- A Joint Declaration relating to Article 29(4) of Title IV this Agreement

The UK-Ukraine Agreement also includes a number of reservations, the majority of which replicate, with minor modifications, reservations made by the Parties to the EU-Ukraine Agreement. These reservations consist of:

United Kingdom reservations

Reservations in conformity with Article 84(2) (Establishment): Annex XII-A

List of commitments in conformity with Article 91(1) (Cross-Border Supply): Annex XII-B

Reservations in conformity with Articles 97 (Contractual services suppliers) and 98 (Independent Professionals): Annex XII-C

Ukraine reservations

Reservations in conformity with Article 84(1) (Establishment) Annex XII-D;

List of commitments in conformity with Article 91(1) (Cross-Border Supply): Annex XII-E

Reservations in conformity with Articles 97 (Contractual services suppliers) and 98 (Independent Professionals): Annex XII-F

(vii) Implementation

The Government is working to implement the tariffs and tariff quotas in regulations to be made under the Taxation (Cross-border Trade) Act 2018. The UK's obligations relating to geographical indications will be implemented by retained EU law on geographical indications under the European Union (Withdrawal) Act 2018 and regulations made thereunder.

The UK's current procurement obligations to suppliers from third countries with whom the EU has an agreement are contained in various provisions of the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016 and the Concession Contracts Regulations 2016, as well as the predecessor legislation. Equivalent provisions for Scotland are included in the Public Contracts (Scotland) Regulations 2016, the Utilities (Scotland) Regulations 2016 and the Concession (Scotland) Regulations 2016.

The UK and Scottish Governments have made statutory instruments under the European Union (Withdrawal) Act 2018 to amend deficiencies in their respective procurement regulations that arise as a result of the UK's withdrawal from the EU. One effect of these statutory instruments will be to keep alive the EU-derived procurement obligations to suppliers from third countries for a period of 18 months. Doing so will allow the UK to demonstrate compliance with existing procurement commitments of any transitioned free trade agreements, insofar as they replicate the provisions of the EU agreement, pending the enactment of bespoke implementing powers in future trade-related legislation. As the EU Exit Regulations were made for the context of no withdrawal agreement, they are currently under review. In any event, the intention remains that the UK's EU-derived procurement obligations to suppliers from third countries will be preserved for a limited time period.

The similarities between the procurement provisions of the EU-Ukraine Agreement and the UK-Ukraine Agreement are such that the Government considers that this approach will allow it to appropriately implement its procurement obligations under the UK-Ukraine Agreement. However, if further implementing powers are required, these will be delivered through future trade-related legislation.

Article 418(2) of the UK-Ukraine Agreement states that it shall enter into force on the later of: (a) the date on which the EU-Ukraine Association Agreement ceases to apply to the United Kingdom, and (b) the date of receipt of the later of the Parties' notifications that they have completed their internal procedures.

The UK-Ukraine Agreement applies to the UK, Gibraltar, the Crown Dependencies (being the Isle of Man, Bailiwick of Jersey, and Bailiwick of Guernsey) to the same extent and under the same conditions as the EU-Ukraine Agreement applied to them.

The European Atomic Energy Community (EURATOM) is a party to the EU-Ukraine Agreement and Article 483 of the EU-Ukraine Agreement provides that the Agreement applies to the territories to which the EURATOM Treaty applies, under the conditions laid down in that Treaty. The EURATOM Treaty applies to all Overseas Territories for whose international relations the UK is responsible excluding the Sovereign Base Areas of the UK in Cyprus. The Government understands that EURATOM is specified because provisions relating to civil nuclear trade and co-operation (which make up only a small part of the Agreement) fall within an area of EURATOM competence. It was not intended that this should extend the application of the EU-Ukraine Agreement to territories to which such Agreement would not otherwise apply. The Government has therefore amended the territorial scope of the EU-Ukraine Agreement to remove reference to territories to which the EURATOM Treaty applies, having consulted with relevant territories to ensure they would not be affected. The Report provides further detail on the extent of the application of the UK-Ukraine Agreement to these territories.

The relevant Secretaries of State have been informed of the application of the UK-Ukraine Agreement to the territories for which they are responsible.

The territories mentioned have been consulted and the Government is working with these territories to ensure any necessary implementation will have taken place ahead of entry into force of the UK-Ukraine Agreement.

Consultations

The Department for International Trade (“DIT”) on behalf of Her Majesty’s Government (“HMG”), engages extensively with a variety of stakeholders. This programme of engagement has included regular progress updates on transitioning existing EU free trade agreements. As part of HMG’s commitment to a transparent and inclusive trade policy, DIT has held regular ‘town hall’ style meetings to update business organisations and has run a series of regional roundtables in collaboration with the British Chamber of Commerce to ensure that this dialogue extends across the UK.

International relations, including the making of treaties, and the regulation of international trade, are not devolved matters. However, as there is likely to be a significant impact on Scotland, Wales and Northern Ireland, HMG has regularly updated the Devolved Administrations (the “DAs”).

Throughout the Trade Agreement Continuity Programme, HMG has engaged with the DAs. Both Ministers and officials have spoken to their counterparts in the DAs on a regular basis, sharing progress and inviting them to highlight international agreements of importance or concern. HMG has also consulted the Crown Dependencies and Gibraltar on the progress of the UK-Ukraine Agreement and is working closely with these territories to ensure any legislative measures necessary to implement the Agreement are enacted prior to its entry into force.

HMG has offered briefings on the agreements, where appropriate, at the request of the DAs, the Crown Dependencies and Gibraltar. HMG welcomes the views of the DAs, the Crown Dependencies and Gibraltar as progress is made. HMG shares stable agreement texts, draft Parliamentary Reports and Explanatory Memoranda on individual agreements. HMG has shared the stable text of the UK-Ukraine Agreement with the DAs, the Crown Dependencies and Gibraltar. In the case of the latter two, this is in line with the spirit of the recommendations in the House of Lords EU Committee's report on International Agreements.¹

A handwritten signature in black ink, reading 'Wendy Morton' with a stylized flourish at the end.

Wendy Morton
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¹ European Union Committee, Scrutiny of international agreements: treaties considered on 12 February 2019.