

EU-UK Cooperation post Brexit

A European Perspective

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ECBA, Malta, October 2022

Overview

1. Pre-TCA: Concerns emerging from the Trade & Cooperation Agreement (TCA) after its publication
 - a. Human Rights
 - b. Conditionality of TCA
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2. Post-TCA (22 months later): First Insights
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 - b. Human Rights
 - c. Partnership Council and specialised Committee
3. Outlook

1. Pre-TCA: Concerns emerging from the Trade & Cooperation Agreement (TCA) after its publication

a. Human Rights

- Charta of Fundamental Rights no longer applicable
 - ⇒ Many specific human rights no longer applicable
 - ⇒ inter alia Art. 50 (non bis in idem), as UK is no Schengen state Art. 54 CISA neither
- Doubts about ECHR validity after Brexit: CJEU requested for preliminary ruling on whether a person could be surrendered from Ireland to the United Kingdom, while there could not be any safeguards that the person's rights under the ECHR would be respected in the UK (Case C-327/18 PPU *RO*)

b. Conditionality of TCA

1. General Conditionality of TCA

Art. 763(1) TCA: *The Parties shall continue to uphold the shared values and principles of democracy, the rule of law, **and respect for human rights**, which underpin their domestic and international policies. In that regard, the Parties reaffirm their respect for the Universal Declaration of Human Rights and the international human rights treaties to which they are parties.*

⇒ Pursuant to Art. 771 these values constitute **essential elements** of the partnership.

⇒ Art. 772(1) TCA: *If either Party considers that there has been a serious and substantial failure by the other Party to fulfil any of the obligations that are described as essential elements in Article 771, **it may decide to terminate or suspend the operation of this Agreement** or any supplementing agreement in whole or in part.*

b. Conditionality of TCA

2. Specific Conditionality of Part III of TCA (Law Enforcement and Judicial Cooperation in Criminal Matters)

Art. 692(2): (...) if this Part is terminated on account of the United Kingdom or a Member State having denounced the European Convention on Human Rights or Protocols 1, 6 or 13 thereto, this Part shall cease to be in force (...)

=> Immediate, mandatory stop of cooperation

Art. 693(1): In the event of serious and systemic deficiencies within one Party as regards the protection of fundamental rights or the principle of the rule of law, the other Party may suspend this Part or Titles thereof (...)

=> Potential stop of cooperation

c. Judicial bodies with jurisdiction over TCA

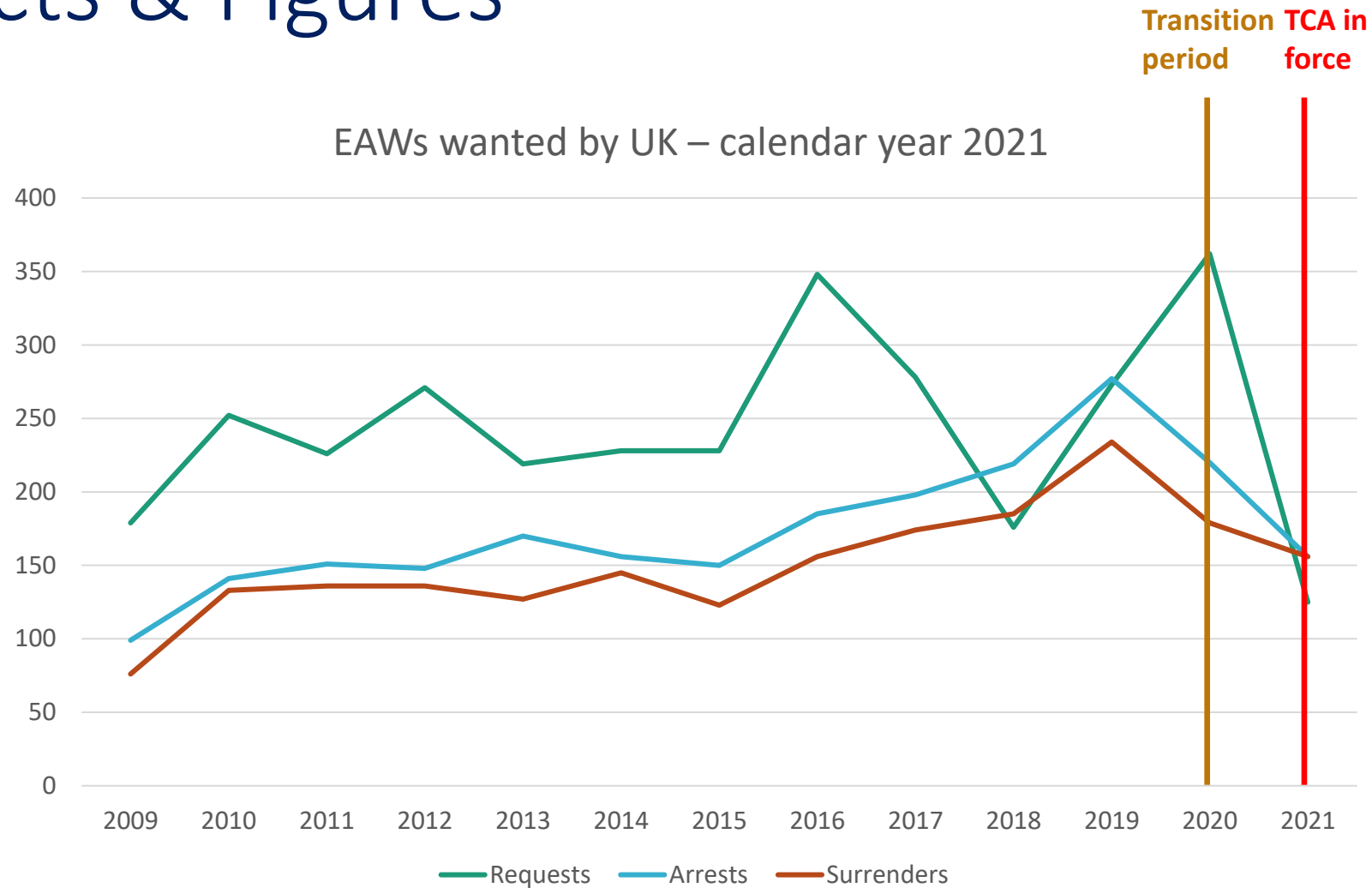
- **Partnership Council (Art. 7 TCA)**
 - Consists of 16 specialised committees and 4 working groups
 - Shall oversee the attainment of the objectives of the TCA or supplementary agreements
 - shall supervise and facilitate the implementation and application of the TCA or supplementary agreements
 - Shall adopt decisions in respect of all matters where the TCA or any supplementing agreement so provides
 - Can make amendments to TCA, including procedural rules of Partnership Council
 - Binding effect for respective authorities?
 - Who executes the decisions?
 - ⇒ Both judicial and legislative powers
 - ⇒ No Court for judicial review of breaches of TCA affecting

c. Judicial bodies with jurisdiction over TCA

- **Specialised Committee on Law Enforcement and Judicial Cooperation (Art. 8(1)(r) TCA)**
 - Shall receive notifications from each party (e.g. about its central authorities, nationality exception, political offence exception, double criminality etc.)
 - Shall make a form for requests for MLA, this form then shall be used (Art. 635) and can make other amendments to annexes
 - Decides what steps should be taken in case of suspension (Art. 541, 562)
- ⇒ No court for judicial review of breaches of TCA

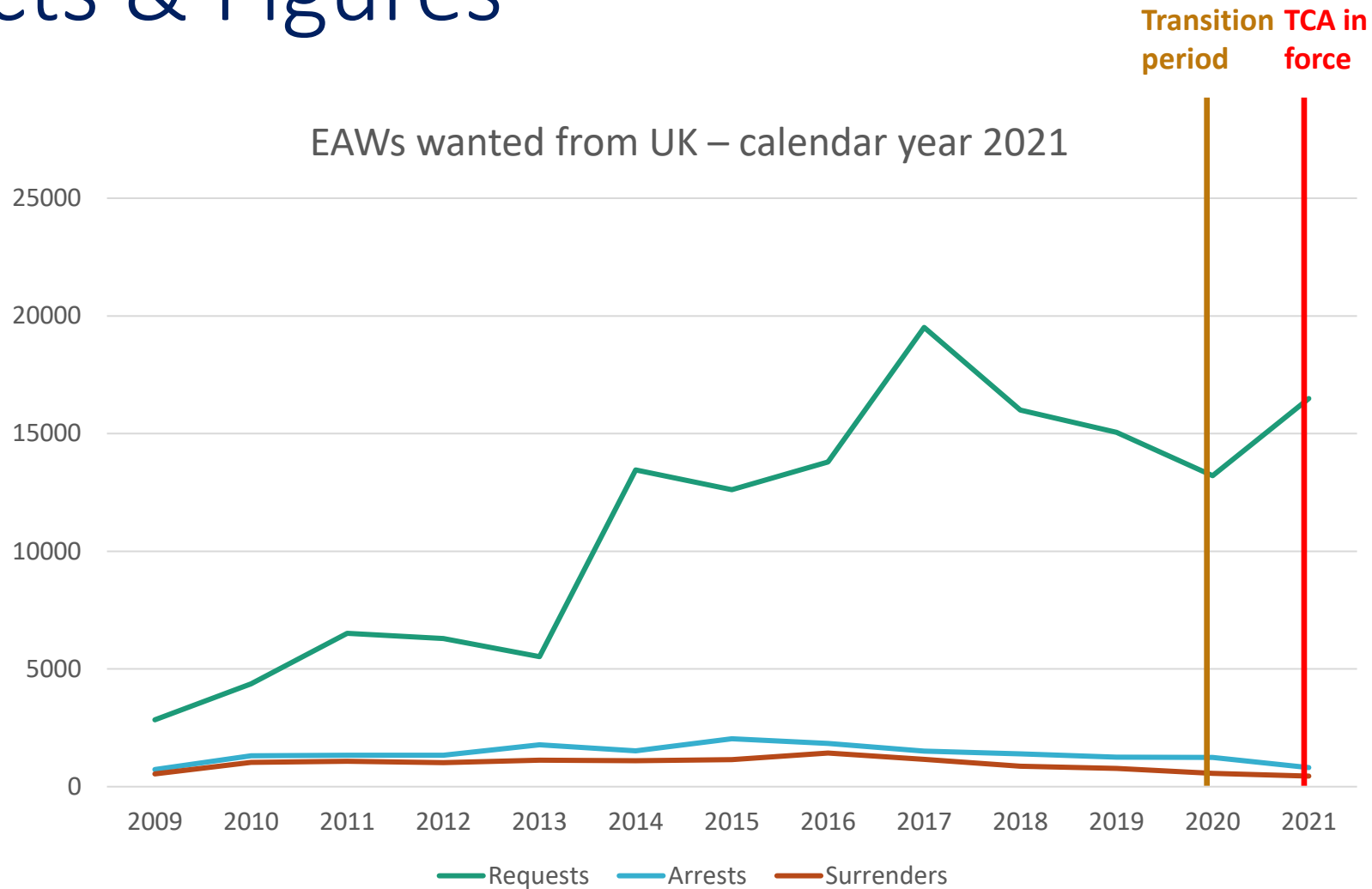
2. Post-TCA (22 months later): First insights

a. Facts & Figures



Source: NCA, by the UK -
EAW-TACA statistics -
calendar year 2021

a. Facts & Figures



Source: NCA, Wanted from the UK - EAW-TACA statistics - calendar year 2021

b. Human Rights – cases from UK

STATISTICS

United Kingdom - Royaume-Uni

23/09/2022



<https://www.coe.int/en/web/execution/united-kingdom>

b. Human Rights



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b. Human Rights



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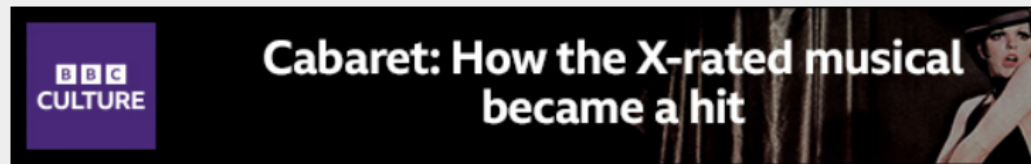
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b. Human Rights



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 CHRISTOPHER MARGLAND and 37 others

5 comments 5 shares

d. Partnership Council

To this date (04.10.2022) there have been 3 decisions made by the TCA Partnership Council

- Decision 1: 23.02.2021
 - Decision on the date on which provisional application pursuant to the Trade and Cooperation Agreement is to cease.
- Decision 2: 21.12.2021
 - On the extension of the interim period during which the United Kingdom may derogate from the obligation to delete Passenger Name Record data of passengers after their departure from the United Kingdom
- Decision 3: 05.05.2022
 - On the adoption of operational guidelines for the conduct of the Civil Society Forum
- *The decisions were signed by the Co-Chairs of the Partnership Council but it is not stated who actually was involved in the decision-making process*

d. Specialised Committee for Law Enforcement and Judicial Cooperation

First meeting on 10 October 2021.

[Meeting minutes](#)

Second meeting on 13 October 2022

[Meeting Agenda](#)

3. Outlook

- Incoming requests from UK to EU diminished significantly since transition period
- Outgoing requests to UK from EU diminished significantly since TCA is in force
- Art. 692 TCA: if UK (or another EU MS) denounces ECHR, immediate mandatory stop of cooperation
- Current developments make this scenario not unrealistic
- Judicial remedies against provisions of the TCA?

Questions? Ideas?

Thank you for your attention!

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