

**THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND**  
**RESPONSE TO THE INTERNATIONAL LAW COMMISSION QUESTIONNAIRE**  
**REGARDING SETTLEMENT OF INTERNATIONAL DISPUTES TO WHICH**  
**INTERNATIONAL ORGANIZATIONS ARE PARTIES**

**1. What types of disputes/issues have you encountered?**

- a) The UK has not encountered examples of disputes between two or more international organisations.
- b) The UK is aware of examples of disputes between international organizations and States in particular disputes between the European Union (EU) and the UK arising under the Withdrawal Agreement (WA)<sup>1</sup> and the Trade and Cooperation Agreement (TCA).<sup>2</sup>
- c) The UK is aware of some examples of disputes between private parties and international organisations. Some of these have arisen in the context of post-EU Exit disputes between UK-based private parties and the EU in the context of “legacy” cases relating to a decision taken by EU institutions while the UK was still a Member State. There are other miscellaneous examples (many of which are fairly historic) of disputes between private parties and an international organisation, generally of a contractual nature.

**2. What methods of dispute settlement have been resorted to in cases of disputes with other international organizations, states or private parties? Please provide any relevant case law, or a representative sample thereof. If you cannot provide such information for confidentiality reasons, could you provide any such decisions or awards in redacted form, or a generic description/digest of such decisions?**

In respect of b) above, concerning disputes between the United Kingdom and the EU, none of these disputes has proceeded beyond initial stages. Examples of these disputes include:

Under the TCA, the UK formally requested consultations on 16 August 2022 pursuant to Article 738 relating to the UK’s association to certain EU research programmes (such as Horizon Europe). Consultations were held in the context of the Specialised Committee on Participation in Union Programmes on 22 September 2022. Formal consultations are (except where the parties agree to dispense with them) a necessary prelude to initiating arbitration under the TCA. The method of dispute resolution in each case was the method prescribed in the agreement itself.

---

<sup>1</sup> *Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community*

<sup>2</sup> *Trade and Cooperation Agreement 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* CP 426

Under the WA, the EU (the European Commission) initiated the pre-litigation stages of the infraction process under Article 12(4) of the Northern Ireland Protocol (now referred to as the Windsor Framework) in relation to alleged non-compliance by the UK with various obligations under the Protocol.<sup>3</sup> Article 12(4) provides for the European Commission to be able to bring infringement proceedings against the United Kingdom before the Court of Justice of the European Union in relation to certain obligations in the Protocol. The method of dispute resolution in each case was the method prescribed in the agreement itself.

We are also aware of an ongoing dispute concerning the United Kingdom via the World Trade Organisation but concerning a complaint brought by the EU regarding contracts for difference in low carbon energy generation which is currently at the consultation stage.<sup>4</sup> The method of dispute resolution in this case is the method prescribed in the Understanding on Rules and Procedures Governing the Settlement of Disputes which governs disputes relating to the General Agreement on Tariffs and Trade 1994.

There are other “legacy cases” between UK-based private parties and the EU, for example, in Joined Cases T-363/19 and T-456/19, *United Kingdom and ITV v Commission* (now C-555/22 P on appeal to the Court of Justice of the European Union) in which ITV plc contested the validity of a European Commission state aid decision.

In respect of c) above we are aware of cases decided under by the UK’s domestic courts where an international organisation was a party including:

1. *Maclaine Watson & Co Ltd v International Tin Council* [1990] 2 A.C. 418 (and other related cases concerning the International Tin Council)
2. *Arab Monetary Fund v Hashim and Others* [1991] UKHL
3. *Canary Wharf (BP4) T1 Ltd v European Medicines Agency* [2019] EWHC 335 (Ch)

These cases were brought in the domestic courts of the UK. The Civil Procedure Rules require parties in most cases to carry out steps before resorting to court proceedings to resolve issues including with Alternative Dispute Resolution.<sup>5</sup>

There are likely to be a number of other cases involving private parties, including those that are subject to confidential settlements and/or resolved by methods of alternative dispute resolution that are not published.

- 3. In your dispute settlement practice, for each of the types of disputes/issues arising, please describe the relative importance of negotiation, conciliation or other informal consensual dispute settlement and/or third-party dispute resolution, such as arbitration or judicial settlement.**

---

<sup>3</sup> [Letter from Vice-President Maroš Šefčovič to David Frost, 15 March 2021 \(europa.eu\)](#)

<sup>4</sup> *DS612: United Kingdom — Measures Relating to the Allocation of Contracts for Difference in Low Carbon Energy Generation* [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds612\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds612_e.htm)

<sup>5</sup> [PRACTICE DIRECTION – PRE-ACTION CONDUCT AND PROTOCOLS - Civil Procedure Rules \(justice.gov.uk\)](#)

**4. Which methods of dispute settlement do you consider to be most useful? Please indicate the preferred methods of dispute settlement for different types of disputes/issues.**

We recognise the importance of all methods of alternative dispute resolution and the potential benefits of resolving disputes outside of a formal adjudication or court, including via diplomatic means. The relative importance of these methods and their utility varies significantly based on the facts and nature of the dispute in question.

**5. From a historical perspective, have there been any changes or trends in the types of disputes arising, the numbers of such disputes and the modes of settlement used?**

We are not aware of any particular trends in this regard given disputes of this nature remain rare.

**6. Do you have suggestions for improving the methods of dispute settlement (that you have used in practice)?**

The methods of dispute settlement will vary significantly depending on the nature and complexity of the dispute. In general terms we would welcome improvements in the efficiency of dispute resolution methods to ensure disputes are resolved as quickly and efficiently as possible.

**7. Are there types of disputes that remain outside the scope of available dispute settlement methods?**

There may be circumstances where there is no express provision for dispute settlement, but there are options for parties to a dispute to agree a method of dispute resolution in any event.

**8. Does your organization have a duty to make provision for appropriate modes of settlement of disputes arising out of contracts or other disputes of a private law character under the 1946 Convention on the Privileges and Immunities of the United Nations, the 1947 Convention on the Privileges and Immunities of the Specialized Agencies, or an equivalent treaty? How in practice has your organization interpreted and applied the relevant provisions?**

While questions 8-11 seem to be aimed at organisations, the UK makes the following comments in case they are helpful. The UK's obligations regarding privileges and immunities are implemented via statute in domestic law. For international organisations the International Organisations Acts 1968 and 1981 make provision for immunity from suit and legal process to be conferred on certain intentional organisations, and privileges and immunities in relation to certain officials.

In relation to disputes of a private law nature (*acta res gestionis*) the relevant immunity may be a complete procedural defence so that the matter cannot be resolved by a court. If they are not, then the matter is liable to litigation in the normal way.

An international organisation can waive immunity where it enjoys (or its officials enjoy) immunity, and individual contracts may be negotiated to include a prior waiver or submission to the jurisdiction in the event of a dispute.

**9. Are there standard/model clauses concerning dispute settlement in your treaty and/or contractual practice? Please provide representative examples.**

In contractual practice the UK frequently uses model contractual clauses for example Schedule 23 of the [Model Services Contract - GOV.UK \(www.gov.uk\)](http://www.gov.uk).

We are not aware of standard dispute settlement clauses although it is likely that the UK will use similar wording in similar agreements. Examples of recent free trade agreements concluded by the UK are available at <https://www.gov.uk/government/collections/the-uks-trade-agreements>.

**10. Does “other disputes of a private law character” (see 8) above encompass all disputes other than those arising from contracts? If not, which categories are not included? What has been the practice of your organization in determining this? What methods of settlement have been used for “other disputes of a private law character” and what has been regarded as the applicable law?**

We are not aware of a specific practice in terms of settlement of disputes of a private law character. The method of dispute settlement and applicable law will vary on a case by case basis.

**11. Have you developed a practice of agreeing ex post to third-party methods of dispute settlement (arbitration or adjudication) or waiving immunity in cases where disputes have already arisen and cannot be settled otherwise, e.g. because no treaty/contractual dispute settlement has been provided for?**

We are not aware of a specific practice of agreeing ex post to third-party methods of dispute settlement but this may arise in specific circumstances and would be considered on a case-by-case basis.