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From: General Secretariat of the Council

To: Delegations

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Subject: ANNEX to Council decision (EU, Euratom) 2017/... authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for an agreement setting out the arrangements for its withdrawal from the European Union

- Directives for the negotiation of an agreement with the United Kingdom of Great Britain and Northern Ireland setting out the arrangements for its withdrawal from the European Union

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**Directives for the negotiation of an agreement with the United Kingdom of Great Britain and Northern Ireland setting out the arrangements for its withdrawal from the European Union**

**I. OBJECTIVE OF THE WITHDRAWAL AGREEMENT**

1. Following the notification by the United Kingdom of Great Britain and Northern Ireland (hereinafter "the United Kingdom") of its intention to withdraw from the European Union, the Union shall negotiate and conclude a withdrawal agreement with the United Kingdom in accordance with Article 50 of the Treaty on European Union ("the Agreement").
2. This Agreement will set out the arrangements for the withdrawal of the United Kingdom, taking account of the framework for its future relationship with the Union.
3. The main objective of the Agreement is to ensure an orderly withdrawal of the United Kingdom from the European Union and from the European Atomic Energy Community. In these negotiating directives the term "the Union" means the European Union founded on the Treaty on European Union and on the Treaty on the Functioning of the European Union and/or, as the case may be, the European Atomic Energy Community founded on the Treaty establishing the European Atomic Energy Community.
4. The Agreement will be negotiated in the light of the European Council guidelines and in line with the negotiating directives. The negotiating directives build on the European Council guidelines by developing the Union's positions for the withdrawal negotiations in full respect of the objectives, principles and positions that the guidelines set out. The negotiating directives may be amended and supplemented as necessary throughout the negotiations, in particular to reflect the European Council guidelines as they evolve.

## **II. NATURE AND SCOPE OF THE AGREEMENT**

5. The Agreement will be negotiated and concluded by the Union. In this respect, Article 50 of the Treaty on European Union confers on the Union an exceptional horizontal competence to cover in this agreement all matters necessary to arrange the withdrawal. This exceptional competence is of a one-off nature and strictly for the purposes of arranging the withdrawal from the Union. The exercise by the Union of this specific competence in the Agreement will not affect in any way the distribution of competences between the Union and the Member States as regards the adoption of any future instrument in the areas concerned.
6. The Agreement should recall that Union law (including all primary law, in particular the Treaty on European Union, the Treaty on the Functioning of the European Union, the Accession Treaties and the Treaty establishing the European Atomic Energy Community, as well as the secondary law and international agreements) ceases to apply to the United Kingdom on the date of entry into force of the withdrawal agreement ("withdrawal date").
7. In accordance with Article 50 of the Treaty on European Union and with the European Council guidelines, the Agreement should also recall that Union law ceases to apply on the withdrawal date to the overseas countries and territories having special relations with the United Kingdom<sup>1</sup> and to the European territories for whose external relations the United Kingdom is responsible, to which the Treaties apply by virtue of Article 355 of the Treaty on the Functioning of the European Union. On the territorial scope of the withdrawal agreement and of the future framework, the negotiating directives should fully respect paragraphs 4 and 24 of the European Council guidelines.

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<sup>1</sup> Listed in the twelve last indents of Annex II to the Treaty on the Functioning of the European Union.

8. The Agreement should set a withdrawal date which is at the latest 30 March 2019 at 00:00 (Brussels time), unless the European Council, in agreement with the United Kingdom, unanimously decides to extend this period in accordance with Article 50(3) of the Treaty on European Union. The United Kingdom will become a third country from the withdrawal date.

### **III. PURPOSE AND SCOPE OF THESE NEGOTIATING DIRECTIVES**

9. The European Council guidelines set out a two-phased approach to the negotiations. The first phase will aim to:
- Provide as much clarity and legal certainty as possible to citizens, businesses, stakeholders and international partners on the immediate effects of the United Kingdom's withdrawal from the Union;
  - Settle the disentanglement of the United Kingdom from the Union and from all the rights and obligations the United Kingdom derives from commitments undertaken as a Member State.
10. The present set of negotiating directives is intended for the first phase of the negotiations. In line with the aim established for the first phase of the negotiations by the European Council, these negotiating directives prioritise some matters which, at this stage, have been identified as necessary to ensure an orderly withdrawal of the United Kingdom from the Union. Other matters not covered by this set of negotiating directives, such as services, will be part of subsequent sets of negotiating directives.

11. Safeguarding the status and rights of the EU27 citizens and their families in the United Kingdom and of the citizens of the United Kingdom and their families in the EU27 Member States is the first priority for the negotiations because of the number of people directly affected and of the seriousness of the consequences of the withdrawal for them. The Agreement should provide the necessary effective, enforceable, non-discriminatory and comprehensive guarantees for those citizens' rights, including the right to acquire permanent residence after a continuous period of five years of legal residence and the rights attached to it.
12. An orderly withdrawal of the United Kingdom from the Union requires settling the financial obligations resulting from the whole period of the UK membership in the Union. Hence, the methodology for the financial settlement based on the principles laid down in section III.2 has to be established in the first phase of the negotiations.
13. It has been identified at this stage that the Agreement should clarify the situation of goods placed on the market before the withdrawal date as well as of the ongoing procedures listed in section III.3, including judicial cooperation proceedings in civil, commercial and criminal matters, as well as administrative and law enforcement cooperation procedures.

14. In line with the European Council guidelines, the Union is committed to continuing to support peace, stability and reconciliation on the island of Ireland. Nothing in the Agreement should undermine the objectives and commitments set out in the Good Friday Agreement in all its parts and its related implementing agreements; the unique circumstances and challenges on the island of Ireland will require flexible and imaginative solutions. Negotiations should in particular aim to avoid the creation of a hard border on the island of Ireland, while respecting the integrity of the Union legal order. Full account should be taken of the fact that Irish citizens residing in Northern Ireland will continue to enjoy rights as EU citizens. Existing bilateral agreements and arrangements between Ireland and the United Kingdom, such as the Common Travel Area, which are in conformity with EU law, should be recognised. The Agreement should also address issues arising from Ireland's unique geographic situation, including transit of goods (to and from Ireland via the United Kingdom). These issues will be addressed in line with the approach established by the European Council guidelines.
15. In line with the European Council guidelines, the Union should agree with the United Kingdom on arrangements as regards the Sovereign Base Areas of the United Kingdom in Cyprus and recognise in that respect bilateral agreements and arrangements between the Republic of Cyprus and the United Kingdom which are compatible with Union law, taking into account Protocol 3 to the Act of Accession<sup>1</sup>, the 1960 Treaty of Establishment and the associated Exchanges of Notes, in particular as regards safeguarding the rights and interests of those Union citizens residing or working in the Sovereign Base Areas.
16. The Agreement should ensure the necessary protection of the Union's interests in the United Kingdom.

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<sup>1</sup> Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded - Protocol No 3 on the sovereign base areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus, OJ L 236, 23.09.2003, p.940 -944.

17. The Agreement should contain provisions relating to the overall governance of the Agreement. Such provisions must include effective enforcement and dispute settlement mechanisms that fully respect the autonomy of the Union and of its legal order, including the role of the Court of Justice of the European Union, in order to guarantee the effective implementation of the commitments under the Agreement, as well as appropriate institutional arrangements allowing for the adoption of measures to deal with unforeseen situations not covered by the agreement and for the incorporation of future amendments to Union law in the Agreement.
18. In addition, in line with the European Council guidelines, a constructive dialogue should be engaged as early as practicable with the United Kingdom during the first phase of the negotiation on a possible common approach towards third country partners, international organisations and conventions in relation to the international commitments contracted before the withdrawal date, by which the United Kingdom remains bound, as well as on the method to ensure that the United Kingdom honours these commitments.
19. As soon as the European Council decides that sufficient progress has been achieved to allow negotiations to proceed to the second phase, there will be new sets of negotiating directives. In this context, to the extent necessary and legally possible, matters that should be subject to transitional arrangements (i.e. bridges towards the foreseeable framework for the future relationship) and which are in the interest of the Union, will be included in those future sets of negotiating directives in the light of the progress made. Any such transitional arrangements must be clearly defined, limited in time, and subject to effective enforcement mechanisms. Should a time-limited prolongation of Union *acquis* be considered, this would require existing Union regulatory, budgetary, supervisory, judiciary and enforcement instruments and structures to apply. This approach will allow an efficient allocation of the limited time that Article 50 of the Treaty on European Union imposes for the conclusion of the Agreement by avoiding the need to address the same matter several times at different phases of the negotiations.

### III.1. CITIZENS' RIGHTS

20. The Agreement should safeguard the status and rights derived from Union law at the withdrawal date, including those the enjoyment of which will intervene at a later date (e.g. rights related to old age pensions) as well as rights which are in the process of being obtained, including the possibility to acquire them under current conditions after the withdrawal date (e.g. the right of permanent residence after a continuous period of five years of legal residence which started before the withdrawal date). This should cover both EU27 citizens residing (or having resided) and/or working (or having worked) in the United Kingdom and United Kingdom citizens residing (or having resided) and/or working (or having worked) in one of the Member States of the EU27. Guarantees to that effect in the Agreement should be reciprocal and should be based on the principle of equal treatment amongst EU27 citizens and equal treatment of EU27 citizens as compared to United Kingdom citizens, as set out in the relevant Union acquis. Those rights should be protected as directly enforceable vested rights for the life time of those concerned. Citizens should be able to exercise their rights through smooth and simple administrative procedures.
21. The Agreement should cover at least the following elements:
- a) **Definition of the persons to be covered:** the personal scope should be the same as that of Directive 2004/38 (both economically active, i.e. workers and self-employed, as well as students and other economically inactive persons, who have resided in the UK or EU27 before the withdrawal date, and their family members who accompany or join them at any point in time before or after the withdrawal date). In addition, the personal scope should include persons covered by Regulation 883/2004, including frontier workers and family members irrespective of their place of residence.

- b) **Definition of the rights to be protected:** this definition should include at least the following rights:
- i) the residence rights and rights of free movement derived from Articles 18, 21, 45 and 49 of the Treaty on the Functioning of the European Union and set out in Directive 2004/38 (covering *inter alia* the right of permanent residence after a continuous period of five years of legal residence and the right as regards access to health care) and the rules relating to those rights; any document to be issued in relation to the residence rights (for example, registration certificates, residence cards or certifying documents) should have a declaratory nature and be issued under a simple and swift procedure either free of charge or for a charge not exceeding that imposed on nationals for the issuing of similar documents;
  - ii) the rights and obligations set out in Regulation 883/2004 on the coordination of social security systems and in Regulation 987/2009 implementing Regulation 883/2004 (including future amendments of both Regulations) covering *inter alia*, rights to aggregation, export of benefits, and principle of single applicable law for all the matters to which the Regulations apply;
  - iii) the rights set out in Regulation 492/2011 on freedom of movement for workers within the Union (e.g. access to the labour market, to pursue an activity, social and tax advantages, training, housing, collective rights as well as rights of workers' family members to be admitted to general educational, apprenticeship and vocational training courses under the same conditions as the nationals of the host State);
  - iv) the right to take up and pursue self-employment derived from Article 49 of the Treaty on the Functioning of the European Union.

22. For reasons of legal certainty, the Agreement should ensure, in the United Kingdom and in the EU27, the protection, in accordance with Union law applicable before the withdrawal date, of recognised professional qualifications (diplomas, certificates and other evidence of formal qualification) obtained in any of the Union Member States before that date. The Agreement should also ensure that professional qualifications (diplomas, certificates or other evidence of formal qualification) obtained in a third country and recognised in any of the Union Member States before the withdrawal date in accordance with Union law rules applicable before that date continue to be recognised also after the withdrawal date. It should also provide for arrangements relating to procedures for recognition which are ongoing on the withdrawal date.

### **III.2. FINANCIAL SETTLEMENT**

23. A single financial settlement - including issues resulting from the MFF as well as those related to the European Investment Bank (EIB), the European Development Fund (EDF) and the European Central Bank (ECB) - should ensure that both the Union and the United Kingdom respect the obligations resulting from the whole period of the United Kingdom membership in the Union. The negotiations relating to the methodology for the financial settlement should be based on the following principles.

24. There should be a single financial settlement related to :
- the Union budget
  - the termination of the membership of the United Kingdom of all bodies or institutions established by the Treaties<sup>1</sup> (e.g. the European Investment Bank, the European Central Bank<sup>2</sup>);
  - the participation of the United Kingdom in specific funds and facilities related to Union policies (e.g. the European Development Fund and the Facility for Refugees in Turkey).
25. This single financial settlement should be based on the principle that the United Kingdom must honour its share of the financing of all the obligations undertaken while it was a member of the Union.
26. In accordance with paragraph 10 of the European Council guidelines, this covers obligations resulting from the MFFs, liabilities including pensions and contingent liabilities and any other obligations deriving from a basic act within the meaning of Article 54 of the Financial Regulation<sup>3</sup>. In addition, the United Kingdom should fully cover the specific costs related to the withdrawal process such as the relocation of the agencies or other Union bodies.

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<sup>1</sup> This is without prejudice to the statutory requirements specific to the institutions or bodies concerned stemming in particular from the relevant Protocols to the Treaties.

<sup>2</sup> In accordance with Article 47 of the Protocol (No 4) to the Treaties, Decision ECB/2010/28 of 13 December 2010 on the paying-up of the European Central Bank's capital by the non-euro area national central banks (2011/22/EU) has established the extent and form of subscribed and paid-up ECB capital in relation to the Bank of England's share. The paid-up capital is a contribution to the operational costs of the European Central Bank.

<sup>3</sup> Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002, OJ L 298, 26.10.2012, p. 1–96.

27. The calculation method should use the amounts from relevant basic acts (including reference amounts), the financial programming and official consolidated annual accounts to be supplemented, as necessary, by making use of interim accounts audited by the European Court of Auditors. The obligations should be defined in euro.
28. On this basis, the calculation method of the United Kingdom's obligations towards the Union budget should be based on the own resources decision<sup>1</sup> in all its dimensions and take into account past data related to its share of the financing before the withdrawal date.
29. Modalities of payments should be agreed in order to mitigate the impact of the withdrawal on the budget for the Union and on its Member States.
30. The Agreement should therefore contain:
  - a) A calculation of all obligations that the United Kingdom has to honour in order to settle its financial obligations toward the Union budget, all institutions or bodies established by the Treaties, and other issues with a financial impact. The calculated obligations may be subject to limited future technical adjustments.
  - b) A schedule of payments to be made by the United Kingdom and the practical modalities for making these payments.

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<sup>1</sup> Council Decision (2014/335/EU, Euratom) of 26 May 2014 on the system of own resources of the European Union, OJ L 168, 7.6.2014, p. 105–111

- c) Transitional rules to ensure control by the Commission (or, where applicable, another body responsible under Union law before the withdrawal date), the European Parliament, the Court of Auditors, OLAF and the power to adjudicate of the Court of Justice of the European Union for past payments/recovery orders to United Kingdom beneficiaries and any payments made to United Kingdom beneficiaries after the withdrawal date to honour all legal commitments (including possible loans) authorised by the responsible entity before the withdrawal date.
- d) Possible arrangements in relation to legal commitments or future legal commitments made towards United Kingdom beneficiaries after the withdrawal date (e.g. concerning the managing authorities for the payment of United Kingdom beneficiaries).
- e) Specific rules to address the issue of contingent liabilities assumed by the Union budget or specific institutions or bodies or funds (such as those relating to financing provided by the European Investment Bank and the European Investment Fund).

### **III.3. SITUATION OF GOODS PLACED ON THE MARKET AND OUTCOME OF PROCEDURES BASED ON UNION LAW**

#### **A. Goods placed on the market under Union law before the withdrawal date**

31. Agreement should ensure that any good lawfully placed on the single market on the basis of Union law before the withdrawal date can continue to be made available on the market or put into service after that date both in the United Kingdom and in the EU27 under the conditions set out in the relevant Union law applicable before the withdrawal date. Other matters, such as services, where there may be a need to reduce uncertainty or avoid a legal vacuum, will be covered by subsequent sets of negotiating directives.

## **B. Ongoing judicial cooperation in civil, commercial and criminal matters between Member States under Union law**

32. The Agreement should provide for arrangements relating to judicial cooperation proceedings in civil, commercial and criminal matters governed by Union law which are ongoing on the withdrawal date. It should establish in particular that such proceedings remain governed until their completion by the relevant provisions of Union law applicable before the withdrawal date.
33. Regarding judicial cooperation in civil and commercial matters between the United Kingdom and the EU27, the Agreement should ensure that the recognition and enforcement of national judicial decisions handed down before the withdrawal date remain governed by the relevant provisions of Union law applicable before the withdrawal date. The Agreement should also ensure the continued application of the rules of Union law relating to choices of forum and choices of law made before the withdrawal date.

## **C. Ongoing administrative and law enforcement cooperation procedures under Union law**

34. The Agreement should provide for arrangements relating to administrative and law enforcement cooperation procedures, including verification, governed by Union law which are ongoing on the withdrawal date. Such arrangements should in particular ensure that these procedures remain governed until their completion by the relevant provisions of Union law applicable before the withdrawal date. They should also establish rules for the possible use of information and data in law enforcement investigations and criminal proceedings ongoing on the withdrawal date. They should cover both information and data received/held by United Kingdom which originates from the EU27 or Union institutions, bodies, offices and agencies, and information and data received/held by the EU27 or Union institutions, bodies, offices and agencies which originates from the United Kingdom. They should comprise rules on the protection of personal data and classified information, including security data.

## **D. Ongoing Union judicial and administrative procedures**

35. The Agreement should provide for arrangements relating to:

- a) Judicial proceedings pending before the Court of Justice of the European Union on the withdrawal date involving the United Kingdom, United Kingdom natural and/or legal persons (including preliminary references); the Court of Justice should remain competent to adjudicate in these proceedings and its rulings must be binding upon the United Kingdom;
- b) Ongoing administrative procedures in the Union institutions, bodies, offices and agencies concerning the United Kingdom (for example infringements proceedings, state aid) or, where applicable, concerning United Kingdom natural or legal persons;
- c) The possibility to commence both administrative procedures before the Union institutions and judicial proceedings before the Court of Justice of the European Union concerning the United Kingdom (for example infringements proceedings, state aid) after the withdrawal date for facts that have occurred before the withdrawal date, including the possibility for the UK courts or tribunals to address questions to the Court of Justice of the European Union;
- d) Continued enforceability of Union acts that impose pecuniary obligations and of judgments of the Court of Justice of the European Union, adopted or rendered before the withdrawal date or in the course of ongoing judicial and administrative proceedings.

## **III.4. OTHER ADMINISTRATIVE ISSUES RELATING TO THE FUNCTIONING OF THE UNION**

36. The Agreement should contain the necessary provisions relating to the protection of the property, funds, assets and operations of the Union and its institutions or bodies, and of their personnel (including retired personnel) and members of their family, as provided for in the Treaties and the Protocols to the Treaties (in particular Protocol No. 7 on the Privileges and Immunities of the European Union).

37. The Agreement should ensure, where appropriate, the transfer to the United Kingdom of the ownership of:
- a) Special fissile material located on the territory of the European Atomic Energy Community which is currently the property of the said Community in accordance with Article 86 of the Treaty establishing the European Atomic Energy Community, the right of use of which is currently with a natural or legal person, whether public or private, in the United Kingdom;
  - b) European Atomic Energy Community property located in the United Kingdom used for the purposes of providing safeguards in accordance with the Treaty establishing the European Atomic Energy Community.

The Agreement should also provide that the United Kingdom assumes all rights and obligations associated with the ownership of materials or property transferred and regulate other questions related to material and property under the Treaty establishing the European Atomic Energy Community, in particular safeguards obligations to be applied to the material referred to above.

38. The Agreement should also provide that the United Kingdom ensures, within its jurisdiction, the continued respect by members of Union institutions, bodies, offices and agencies, members of committees, officials and other servants of the Union of the obligations incurred by them under Article 339 of the Treaty on the Functioning of the European Union before the withdrawal date.

### **III.5. GOVERNANCE OF THE AGREEMENT**

39. The Agreement should set up an institutional structure to ensure an effective enforcement of the commitments under the Agreement, bearing in mind the Union's interest in effectively protecting its autonomy and its legal order, including the role of the Court of Justice of the European Union.

40. It should contain appropriate institutional arrangements allowing for the adoption of measures to deal with unforeseen situations not covered in the Agreement and for the incorporation of future amendments to Union law in the Agreement where this is necessary for the proper implementation of the Agreement.
41. The Agreement should include provisions ensuring the settlement of disputes and the enforcement of the Agreement. In particular, these should cover disputes in relation to the following matters:
- continued application of Union law;
  - citizens' rights;
  - application and interpretation of the other provisions of the Agreement, such as the financial settlement or measures adopted by the institutional structure to deal with unforeseen situations.
42. In these matters, the jurisdiction of the Court of Justice of the European Union (and the supervisory role of the Commission) should be maintained. For the application and interpretation of provisions of the Agreement other than those relating to Union law, an alternative dispute settlement should only be envisaged if it offers equivalent guarantees of independence and impartiality to the Court of Justice of the European Union.
43. The Agreement should foresee that any reference to concepts or provisions of Union law made in the Agreement must be understood as including the case-law of the Court of Justice of the European Union interpreting such concepts or provisions before the withdrawal date. Moreover, to the extent an alternative dispute settlement is established for certain provisions of the Agreement, a provision according to which future case-law of the Court of Justice of the European Union intervening after the withdrawal date must be taken into account in interpreting such concepts and provisions should be included.

#### **IV. PROCEDURAL ARRANGEMENTS FOR THE CONDUCT OF THE NEGOTIATIONS**

44. In line with the Statement of the Heads of State or Government of 27 Member States, as well as of the Presidents of the European Council and the European Commission, these negotiating directives establish the detailed arrangements governing the relationship between the Council and its preparatory bodies, on the one hand, and the Union negotiator on the other.
45. The Union negotiator will conduct negotiations with the United Kingdom in continuous coordination and permanent dialogue with the Council and its preparatory bodies. In this respect, in full compliance with the institutional balance set out by the Treaties, the Council and Coreper, assisted by the Working Party on Article 50, will provide guidance to the Union negotiator, in light of the European Council guidelines and in line with the negotiating directives.
46. The Union negotiator will in a timely manner consult and report to the preparatory bodies of the Council. To that end, the Council will organise before and after each negotiating session a meeting of the Working Party on Article 50. The Union negotiator will provide in a timely manner all necessary information and documents relating to the negotiations.

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