

6 February 2018

TF50 (2018) 30 – Commission to EU 27

Subject: Position paper "**Transitional Arrangements in the Withdrawal Agreement**"

Origin: European Commission, Task Force for the Preparation and Conduct of the Negotiations with the United Kingdom under Article 50 TEU

Objective: **To be published on Wednesday 7 February 2018 on the TF50 website**

Remarks: This position paper on "**Transitional Arrangements in the Withdrawal Agreement**" translates into legal terms the principles laid down in the European Council Guidelines of 29 April and 15 December 2017 and in the supplementary negotiating directives annexed the Council Decision of 29 January 2018

Transitional Arrangements in the Withdrawal Agreement

The underpinning principles for the arrangements for the transition period are laid down in the European Council guidelines of 29 April and 15 December 2017 and they were further developed in the Council negotiating directives of 29 January 2018.

On this basis, this paper outlines in legal terms how such arrangements should be given effect in the Withdrawal Agreement.

It should be noted that the detailed provisions relating to the financial settlement aspects of the transition will be covered under the Financial Provisions of the Withdrawal Agreement. In addition to the elements contained in the Joint report of 8 December 2017, the Financial Provisions of the Withdrawal Agreement should also cover the financing, during the transition period, of the relevant Common Foreign and Security Policy and Common Security and Defence Policy agencies or operations on the basis of the same contribution key as before the withdrawal date.

PART [X] [of the Withdrawal Agreement]
TRANSITION PERIOD

Article X
Transition period

There shall be a transition period, which shall start on the date of entry into force of this Agreement and end on 31 December 2020.

Article X + 1
Scope of the transition

1. Unless otherwise provided in this Part, Union law¹ shall be binding upon and applicable in the United Kingdom during the transition period.

However, the following provisions of the Treaties and acts adopted by the institutions, bodies, offices or agencies of the Union shall not be applicable to and in the United Kingdom during the transition period:

- (a) provisions of the Treaties and acts which, pursuant to Protocol (No 15) on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland, Protocol (No 19) on the Schengen *acquis* integrated into the framework of the European Union or Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, or pursuant to the provisions of the Treaties on enhanced cooperation, were not binding upon and applicable in the United Kingdom before the date of entry into force of this Agreement as well as acts amending such acts;
- (b) Article 11(4) TEU, Articles 20(2)(b), 22 and the first paragraph of Article 24 TFEU and acts adopted on the basis of those provisions;

¹ The Withdrawal Agreement will contain, in its Part on Common Provisions, an article defining Union law as meaning:

- (i) the Treaty on European Union ("TEU"), the Treaty on the Functioning of the European Union ("TFEU") and the Treaty establishing the European Atomic Energy Community ("Euratom Treaty"), together referred to as "the Treaties", as amended or supplemented, as well as the successive Treaties of Accession;
- (ii) the general principles of Union law;
- (iii) the acts adopted by the institutions, bodies, offices or agencies of the Union;
- (iv) the international agreements to which the Union and/or Euratom is party;
- (v) the agreements between Member States entered into in their capacity as Member States of the Union and/or of Euratom;
- (vi) decisions and agreements of the Representatives of the Governments of the Member States meeting within the European Council or the Council.

The Part on Common Provisions will also contain an article to the effect that the provisions of the Agreement referring to concepts or provisions of Union law in their implementation and application are interpreted in conformity with the relevant decisions of the Court of Justice of the European Union given before the end of the transition period.

Furthermore, a specific article of the Part on Common Provisions will clarify that where a provision of Union law is amended, supplemented or replaced during the transition period, the reference to this provision of Union law is to be read as referring to the amended, supplemented or successor provision, provided that the change takes effect before the end of the transition period.

2. Should an agreement between the Union and the United Kingdom governing their future relationship in the area of the Common Foreign and Security Policy and the Common Security and Defence Policy become applicable during the transition period, Chapter 2 of Title V of the TEU and the acts adopted on the basis of those provisions shall cease to apply to the United Kingdom from the date of entry into force of that agreement.
3. During the transition period, the Union law applicable pursuant to paragraph 1 shall deploy in respect of and in the United Kingdom the same legal effects as those which it deploys within the Union and shall be interpreted and applied in accordance with the same methods and general principles as those applicable within the Union.
4. The United Kingdom shall not participate in any enhanced cooperation:
 - (a) in relation to which authorisation has been granted on or after the date of entry into force of this Agreement; or
 - (b) within the framework of which no acts have been adopted before the date of entry into force of this Agreement.
5. In relation to acts adopted pursuant to Title V of Part III of the TFEU by which the United Kingdom is bound before the date of entry into force of this Agreement, Article 5 of Protocol (No 19) on the Schengen *acquis* integrated into the framework of the European Union and Article 4a of Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice shall continue to apply during the transition period. The United Kingdom shall, however, not have the right of opt-in provided for in those Protocols to measures other than those referred to in Article 4a of Protocol No 21.
6. Unless otherwise provided in this Part, during the transition period, any reference to Member States in the Union law applicable pursuant to paragraph 1 shall be understood as including the United Kingdom.

However, where acts of the Union provide for the participation of Member States, nationals of Member States or natural or legal person residing or established in a Member State in an information exchange, procedure or programme and where such participation would grant access to sensitive information that a third country or natural or legal person residing or established in a third country is not to have knowledge of, these references to Member States shall be understood as not including the United Kingdom.

Article X+2
Institutional arrangements

1. Notwithstanding Article X+1, during the transition period [points (a), (b) and (c) of Article NN from the Common Provisions²] shall apply.

² The Withdrawal Agreement will contain, in its Part on Common Provisions, the following:
"For the purposes of this Agreement, all references to Member States and competent authorities of Member States in provisions of Union law made applicable by this Agreement shall be read as including the United Kingdom and its competent authorities, except as regards:

- (a) the nomination, appointment or election of members of the institutions, bodies, offices and agencies of the Union, as well as the participation in the decision-making of the institutions;
- (b) the attendance in the meetings of the committees referred to in Article 3(2) of Regulation (EU) No 182/2011 of the European Parliament and of the Council, of Commission expert groups or of other similar entities, or in the meetings of expert groups or similar entities of bodies, offices and agencies of the Union, unless otherwise provided in this Agreement;
- (c) the participation in the decision-making and governance of the bodies, offices and agencies of the Union; [...]"

2. For the purposes of the Treaties, during the transition period, the parliament of the United Kingdom shall not be considered to be a national parliament.
3. For the purposes of Articles 282 and 283 TFEU and of Protocol (No 4) on the Statute of the European system of central banks and of the European Central Bank, during the transition period, the Bank of England shall not be considered to be a national central bank.
4. By way of derogation from paragraph 1, during the transition period, representatives or experts of the United Kingdom, or experts designated by the United Kingdom, may, upon invitation and on an case-by-case basis, exceptionally attend meetings or parts of meetings of the committees referred to in Article 3(2) of Regulation (EU) No 182/2011 of the European Parliament and of the Council³, of Commission expert groups, of other similar entities, or of bodies, offices or agencies where and when representatives or experts of the Member States or experts designated by Member States take part, provided that one the following conditions is fulfilled:
 - (a) the discussion concerns individual acts to be addressed during the transition period to the United Kingdom or to natural or legal persons residing or established in the United Kingdom;
 - (b) the presence of the United Kingdom is necessary and in the interest of the Union, in particular for the effective implementation of Union law during the transition period.

During such meetings or parts of meetings, the representatives or experts of the United Kingdom or experts designated by it shall have no voting rights and their presence shall be limited to the specific agenda points that fulfil the conditions set out in point (a) or (b). In the invitation to be sent to representatives or experts of the United Kingdom or to experts appointed or designated by it, the chair of the meeting concerned shall clearly identify the agenda points for which their attendance is allowed.

5. During the transition period, the United Kingdom shall not act as leading authority for risk assessments, examinations, approvals and authorisation procedures provided for in Union law.

Article X+3

Specific arrangements relating to the Union's external action

1. Without prejudice to Article X+1(2), during the transition period, the United Kingdom shall be bound by the obligations stemming from the international agreements concluded by the Union, or by Member States acting on its behalf, or by the Union and its Member States acting jointly.
2. During the transition period, representatives of the United Kingdom shall not participate in the work of any bodies set up by international agreements concluded by the Union, or by Member States acting on its behalf, or by the Union and its Member States acting jointly.
3. In accordance with the principle of sincere cooperation, the United Kingdom shall abstain, during the transition period, from any action or initiative which is likely to be prejudicial to

³ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers, OJ L 55, 28.2.2011, p. 13–18.

the Union's interests in the framework of any international organisation, agency, conference or forum of which the United Kingdom is a party in its own right.

4. During the transition period, the United Kingdom may not become bound by international agreements entered into in its own capacity in the areas of exclusive competence of the Union, unless authorised to do so by the Union.
5. Without prejudice to Article X+1(2), whenever there is a requirement for coordination, including on sanctions policy, or representation in international organisations or conferences, the United Kingdom may be consulted by the Commission or the High Representative of the Union for Foreign Affairs and Security Policy, as the case may be, on a case-by-case basis.
6. During the transition period, the United Kingdom shall not provide commanders of civilian operations, heads of mission, operation commanders or force commanders for missions or operations conducted under Articles 42 to 44 TEU, nor shall it provide the operational headquarters for such missions or operations. During the transition period, the United Kingdom shall not provide the head of any operational actions under Article 28 TEU.

Article X+4

Specific arrangements relating to Fisheries Policy

As regards the fixing of fishing opportunities within the meaning of Article 43 TFEU for any period prior to the end of the transition period, the United Kingdom shall be consulted by the Commission during the decision-making process within the Council and during international negotiations in respect of the fishing opportunities related to the United Kingdom.

Article X+5

Supervision and enforcement

During the transition period, the institutions, bodies, offices and agencies of the Union shall have the powers conferred upon them by Union law also in relation to the United Kingdom and natural and legal persons residing or established in the United Kingdom. In particular, the Court of Justice of the European Union shall have jurisdiction as provided for in the Treaties.⁴

Article X+6

European Schools

The United Kingdom shall be bound by the Convention defining the Statute of the European Schools⁵ until the end of the school year that is ongoing at the end of the transition period.

⁴ In addition, the Governance and Dispute Settlement Part of the Withdrawal Agreement should provide for a mechanism allowing the Union to suspend certain benefits deriving for the United Kingdom from participation in the internal market where it considers that referring the matter to the Court of Justice of the European Union would not bring in appropriate time the necessary remedies.

⁵ OJ, L 212, 17.8.1994, p. 3.