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WORKING PAPER

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NOTE

From: General Secretariat of the Council
To: Delegations
Subject: Outcome of the Brexit negotiations

Following today's consultations between the EU and the UK, delegations will find attached:


- a letter from the President of the European Commission to the President of the European Council, an Instrument relating to the Withdrawal Agreement and a Joint Statement supplementing the Political Declaration, and
- a unilateral declaration from the UK.



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President of the European Commission

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Brussels, 11 March 2019

Dear President Tusk, 

In 18 days' time, the United Kingdom will leave the European Union.

This was the will of the majority in the United Kingdom, as expressed in the referendum of 23 June 2016. I continue to deeply regret this decision. But it is something that we must respect. The Prime Minister of the United Kingdom notified the European Council on 29 March 2017 of the United Kingdom's intention to leave the European Union. This triggered the two-year negotiating period set out in Article 50 of the Treaty on European Union.

105 days ago, the European Union and the Government of the United Kingdom agreed on the Withdrawal Agreement and the Political Declaration on our future relationship. These documents are the result of 18 months of firm but fair negotiations.

The EU is committed to ratifying the Agreement in the interest of the United Kingdom's orderly and amicable withdrawal from the European Union.

However, the ratification of the Withdrawal Agreement has proven difficult in the United Kingdom. Despite our joint letter of 14 January, in which we provided meaningful clarifications, Prime Minister May so far did not succeed in securing the necessary majority in the House of Commons.

I believe that our hand must remain outstretched. We should continue to support the efforts of Prime Minister May to ensure an orderly withdrawal of the United Kingdom from the European Union, respecting the result of the referendum of 23 June 2016.

Mr Donald Tusk
President of the European Council



While fully respecting the principles defined unanimously by the European Council, we should – following the request of Prime Minister May – now give one last push to get the Withdrawal Agreement over the finishing line. It is in this spirit that the European Commission and its Chief Negotiator, Michel Barnier, have worked on a set of further legal reassurances, as discussed several times between Prime Minister May and me.

As a result, I am sending you an Instrument relating to the Withdrawal Agreement of the United Kingdom from the European Union and a Joint Statement supplementing the Political Declaration. These texts have been agreed at negotiators' level, agreed between Prime Minister May and me, and have been endorsed by the European Commission today. I have spoken to the Taoiseach, Leo Varadkar, this evening who would be prepared to accept this solution in the interest of securing an overall deal.

I recommend that the European Council endorses these documents at its meeting of 21-22 March, subject to a prior positive vote in the House of Commons on the Withdrawal Agreement.

I believe it is now high time to complete the withdrawal process in line with the wishes expressed by the Government of the United Kingdom and to move on, as swiftly as possible, to the negotiation of our future partnership. The Commission has taken all necessary measures in order to start preparatory talks with the United Kingdom immediately after the Withdrawal Agreement is signed. We hope that the United Kingdom is as ready and prepared for these important negotiations as we are.

Finally, I would like to stress that the United Kingdom's withdrawal should be complete before the European elections that will take place between 23-26 May this year. If the United Kingdom has not left the European Union by then, it will be legally required to hold these elections, in line with the rights and obligations of all Member States as set out in the Treaties.

Yours sincerely,

A handwritten signature in black ink, consisting of a stylized initial 'M' followed by a long horizontal line.

INSTRUMENT RELATING TO THE AGREEMENT ON THE WITHDRAWAL OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND FROM THE EUROPEAN UNION AND THE EUROPEAN ATOMIC ENERGY COMMUNITY

The Union and the United Kingdom:

Reiterate the parties' wish to establish a future partnership that is as close and strong as possible, given the global challenges they share, and underline their commitment to embark on preparations immediately after the signature of the Withdrawal Agreement to ensure that negotiations on the future relationship can start as soon as possible after the United Kingdom's withdrawal.

Recall the exchange of letters of 14 January 2019 between the Presidents of the European Council and of the European Commission, and the Prime Minister of the United Kingdom of Great Britain and Northern Ireland, and the clarifications set out therein.

Recall that the parties do not wish the backstop solution in the Protocol on Ireland/Northern Ireland to become applicable, that were it to do so it would represent a suboptimal trading arrangement for both sides, and that both parties are therefore determined to replace the backstop solution for Northern Ireland by a subsequent agreement that would ensure, on a permanent footing, the absence of a hard border on the island of Ireland, in full respect of the integrity of the Union's internal market and of the territorial integrity of the United Kingdom.

Underline that the Protocol on Ireland/Northern Ireland will be subject to regular reviews in order for the Parties to consider whether that Protocol is still necessary or could cease to apply in whole or in part.

Recall that after the end of the transition period, any dispute concerning compliance with Article 5 of the Withdrawal Agreement, Articles 2(1) and 20 of the Protocol on Ireland / Northern Ireland will be subject to the dispute settlement mechanism enshrined in Articles 167 to 181 of the Withdrawal Agreement.

Note that this instrument provides, in the sense of Article 31 of the Vienna Convention on the Law of Treaties, a clear and unambiguous statement by both parties to the Withdrawal Agreement of what they agreed in a number of provisions of the Withdrawal Agreement, including the Protocol on Ireland/Northern Ireland. Therefore, it constitutes a document of reference that will have to be made use of if any issue arises in the implementation of the Withdrawal Agreement. To this effect, it has legal force and a binding character.

A. IN RELATION TO ARTICLE 5 OF THE WITHDRAWAL AGREEMENT AND ARTICLE 2(1) OF THE PROTOCOL ON IRELAND/NORTHERN IRELAND

Negotiations on the future agreement and replacement of the Protocol in whole or in part

1. The Union and the United Kingdom recall their commitment to ensure, in full mutual respect and good faith, the fulfilment of the obligations arising from the Withdrawal Agreement.
2. The preamble of the Protocol on Ireland/Northern Ireland (“the Protocol”) records the “Union's and the United Kingdom's intention to replace the backstop solution on Northern Ireland by a subsequent agreement that establishes alternative arrangements for ensuring the absence of a hard border on the island of Ireland on a permanent footing”, while protecting the integrity of the Union’s internal market and the territorial integrity of the United Kingdom.
3. Article 2(1) of the Protocol contains the obligation for the Union and the United Kingdom to “use their best endeavours to conclude, by 31 December 2020, an agreement which supersedes this Protocol in whole or in part”.
4. The Union and the United Kingdom consider that, for example, a systematic refusal to take into consideration adverse proposals or interests, would be incompatible with their obligations under Article 2(1) of the Protocol and Article 5 of the Withdrawal Agreement.
5. In light of their obligation under Article 2(1) of the Protocol, the Union and the United Kingdom will start negotiations on a subsequent agreement as soon as possible after the United Kingdom's withdrawal from the Union. Those negotiations should be conducted as a matter of priority, and efforts redoubled should the negotiations not be concluded within 1 year from the date of the United Kingdom's withdrawal.
6. In order to enable the rapid commencement of and progress in those formal negotiations, the Union and the United Kingdom commit, in line with paragraphs 141 to 143 of the political declaration agreed between them in November 2018, to embark on preparations for those negotiations immediately after signature of the Withdrawal Agreement, including by setting up their respective negotiating structures and discussing logistical arrangements. The Union and the United Kingdom are therefore committed to working speedily on a subsequent agreement that establishes by 31 December 2020 alternative arrangements, so that the backstop will not need to be triggered.
7. The Union and the United Kingdom further agree to establish, immediately following the ratification of the Withdrawal Agreement, a negotiating track for replacing the customs and regulatory alignment in goods elements of the Protocol¹ with alternative arrangements. That negotiating track, referred to in the joint statement supplementing the political declaration, will include, inter alia, consideration of comprehensive customs cooperation arrangements, facilitative arrangements and technologies. By virtue of being embedded in the overall negotiation structure, the negotiating track on alternative arrangements will be able to take account of progress made in the wider negotiations on the future relationship, in particular on goods regulations and customs.

¹ Articles 6 to 10 of the Protocol.

8. In accordance with paragraph 147 of the political declaration, a high level conference will be convened at least every six months from the date of the United Kingdom's withdrawal from the Union to take stock of progress and agree, as far as is possible between them, actions to move forward. In order to ensure that a subsequent agreement can enter into force by the end of the transition period, the Union and the United Kingdom consider it important to review the progress on alternative arrangements at every high level conference, alongside wider progress on the future relationship. In light of those considerations, the United Kingdom, in line with Article 3 of the Protocol, may request an extension of the transition period to allow further time for the future relationship and the subsequent agreement to be finalised.
9. With a view to rapidly addressing any substantive obstacles that could delay or risk progress, the Union and the United Kingdom also agree to convene immediately, upon the request of either party and at short notice, additional extraordinary high-level conferences at any moment.
10. A subsequent agreement replacing the customs and regulatory alignment in goods elements of the Protocol could stand alone or form part of a wider agreement or agreements on the future relationship, depending on the progress of the wider negotiations. Alternative arrangements, which supersede the Protocol in whole or in part, in accordance with Article 2 of the Protocol, are not required to replicate its provisions in any respect, provided that the underlying objectives continue to be met. In the event that the agreement needs to stand alone due to delays in progress on the wider negotiations, the parties will aim at establishing this agreement very rapidly after the end of the transition period in full respect of the parties' respective legal orders.
11. The Union and the United Kingdom agree that once negotiations on alternative arrangements have been completed to the satisfaction of both parties, the outcome will be transposed into a subsequent agreement. The subsequent agreement transposing the alternative arrangements will be applied as soon as possible after its signature, if necessary and appropriate by means of provisional application, in line with the applicable legal frameworks and existing practice.

Compliance and unilateral suspension

12. The Union and the United Kingdom agree that it would be inconsistent with their obligations under Article 5 of the Withdrawal Agreement and Article 2(1) of the Protocol for either party to act with the objective of applying the Protocol indefinitely. Should the Union or the United Kingdom consider the other party was acting in this way after the Protocol became applicable, it could make use of the dispute settlement mechanism enshrined in Articles 167 to 181 of the Withdrawal Agreement.
13. If a dispute arises in relation to Article 5 of the Withdrawal Agreement and Article 2(1) of the Protocol, the Union and the United Kingdom will immediately enter into consultations in the Joint Committee. They will endeavour to resolve the dispute in a timely manner, with the aim of reaching a mutually agreed solution. With a view to facilitating such a solution, each party will provide a written reasoned justification of its respective position and will respond in writing to the other.

14. Under the dispute settlement mechanism, a ruling by the arbitration panel that a party acts with the objective of applying the Protocol indefinitely would be binding on the Union and the United Kingdom. Persistent failure by a party to comply with a ruling, and thus persistent failure by that party to return to compliance with its obligations under the Withdrawal Agreement, may result in temporary remedies. Ultimately, the aggrieved party would have the right to enact a unilateral, proportionate suspension of its obligations under the Withdrawal Agreement (other than Part Two), including the Protocol. Such a suspension may remain in place unless and until the offending party has taken the necessary measures to comply with the ruling of the arbitration panel.

B. IN RELATION TO SAFEGUARDS FOR NORTHERN IRELAND

15. The Protocol does not affect or supersede the provisions of the 1998 Agreement in any way. In particular, it does not alter in any way the arrangements under Strand II of the 1998 Agreement, whereby areas of North-South cooperation in areas within their respective competences are matters for the Northern Ireland Executive and Government of Ireland to determine.
16. In accordance with Article 15(5) of the Protocol, any new Union act that falls within the scope of the Protocol, but neither amends nor replaces a Union act listed in the Annexes to the Protocol, will require the agreement of the United Kingdom in the Joint Committee in order to be added to the relevant Annex of the Protocol.
17. The Union and the United Kingdom confirm that the Protocol does not prevent the United Kingdom from facilitating, as part of its delegation, the participation of Northern Ireland Executive representatives in the Joint Committee, the Committee on issues related to the implementation of the Protocol, or the joint consultative working group, in matters pertaining directly to Northern Ireland.

C. IN RELATION TO ARTICLE 184 OF THE WITHDRAWAL AGREEMENT

18. The sole purpose of Article 184 of the Withdrawal Agreement is to create best endeavours obligations for the Union and the United Kingdom to negotiate agreements governing their future relationship and that this provision imposes no obligations regarding the territorial scope of such agreements. Therefore, there is no obligation or presumption, on the basis of this provision, for such agreements to have the same territorial scope as the one provided for in Article 3 of the Withdrawal Agreement.

**JOINT STATEMENT SUPPLEMENTING THE POLITICAL DECLARATION SETTING OUT THE FRAMEWORK FOR
THE FUTURE RELATIONSHIP BETWEEN THE EUROPEAN UNION AND THE UNITED KINGDOM OF GREAT
BRITAIN AND NORTHERN IRELAND**

1. The European Union, hereafter referred to as “the Union”, and the United Kingdom of Great Britain and Northern Ireland, hereafter referred to as “the United Kingdom”, have agreed a number of measures to enhance and expedite the process of negotiating and bringing into force their future relationship, supplementing those set out in the Political Declaration endorsed by the Union and the United Kingdom on 25 November 2018.
2. First, the Union and the United Kingdom wish to emphasise their shared and solemn regard for the vision for the future relationship detailed in the Political Declaration. In this context, and in line with Paragraph 1 of the Political Declaration, both the Union and the United Kingdom reiterate the clear and important link between the Withdrawal Agreement and the Political Declaration, which while being of a different nature are part of the same negotiated package. As stated in Article 184 of the Withdrawal Agreement and reflected also in Paragraph 138 of the Political Declaration, the Union and the United Kingdom have committed to use best endeavours, in good faith and in full respect of the respective legal orders, to take necessary steps to negotiate expeditiously the agreements governing their future relationship referred to in the Political Declaration. The Union underlined this relationship between them when it published the two texts side by side in its Official Journal on 19 February, and the Parliament of the United Kingdom must consider and approve both together.
3. Second, the Union and the United Kingdom have the shared ambition to have the future relationship in place by the end of the transition period. To this end, the Union and the United Kingdom have confirmed that immediately following the United Kingdom’s withdrawal, they will take the steps necessary to begin formal negotiations. The Union and the United Kingdom have agreed that negotiations on the various strands of the future relationship will then proceed in parallel. Should national ratifications be pending at the end of the transition period, the European Commission has already made clear that it is ready to propose applying on a provisional basis relevant aspects of the future relationship, in line with the applicable legal frameworks and existing practice and the United Kingdom welcomes this intent.
4. Third, with a view to providing a sound foundation for the talks and building on the commitments already contained in the Political Declaration, the Union and the United Kingdom will expeditiously:
 - a. identify those areas which are likely to require the greatest consideration, and the associated technical and legal issues that will need to be addressed, in order that the necessary technical preparations can be made on both sides; and
 - b. draw up a full schedule for the negotiations, taking into account various internal processes, including the European Parliament elections and the appointment of a new Commission.

5. Fourth, and in the context of open and fair competition, the Union notes the United Kingdom's intention to ensure that its social and employment standards and its environmental standards do not regress from those in place at the end of the transition period, and to provide its Parliament the opportunity to consider future changes in Union law in these areas.

6. Fifth, given the Union's and the United Kingdom's firm commitment to work at speed on a subsequent agreement that establishes by 31 December 2020 alternative arrangements such that the backstop solution in the Protocol on Ireland/Northern Ireland will not need to be applied, a specific negotiating track will be established at the outset and as part of the negotiations to lead the analysis and development of these alternative arrangements. This dedicated track will consider the use of all existing and emerging facilitative arrangements and technologies, with a view to assessing their potential to replace, in whole or in part, the backstop solution in the Protocol on Ireland/Northern Ireland. That assessment will include an evaluation of their practicability and deliverability in the unique circumstances of Northern Ireland. By virtue of being embedded in the overall negotiation structure, the negotiating track on alternative arrangements will be able to take account of progress made in the wider negotiations on the future relationship, in particular on goods regulations and customs. In addition, and in support of their work on alternative arrangements, both the Union and the United Kingdom will consult with private sector experts, businesses, trade unions, the institutions established under the Good Friday or Belfast Agreement, and appropriate involvement of parliaments. In the first instance, the progress concerning alternative arrangements will be assessed at the first high level conference envisaged by the Political Declaration. To ensure that the negotiations are concluded in good time, further progress will be reviewed at each subsequent high level conference.

UNILATERAL DECLARATION

The United Kingdom reiterates its wish to establish a future partnership that is as close and strong as possible, given the global challenges it shares with the European Union, and underlines its commitment to embark on preparations immediately after the signature of the Withdrawal Agreement to ensure that negotiations on the future relationship can start as soon as possible after withdrawal.

In that light, the United Kingdom notes, subject to Article 1(4) of the Protocol on Ireland/Northern Ireland, that the objective of the Withdrawal Agreement is not to establish a permanent relationship between the Union and the United Kingdom, and that the provisions of the Protocol are therefore intended to apply only temporarily, taking into account the commitments of the Parties set out in Article 2(1). The preamble to the Protocol further recalls that the Withdrawal Agreement, which is based on Article 50 TEU, does not aim at establishing a permanent future relationship between the Union and the United Kingdom.

The United Kingdom wishes to record its understanding of the effect of this provision if, contrary to the intentions of the parties, it is not possible for them to conclude an agreement which supersedes the Protocol in whole or in part due to a breach of Article 5 of the Withdrawal Agreement by the Union. The United Kingdom would not consider its application to be temporary in these circumstances, as in its view the Protocol would then constitute a permanent relationship between the Union and the United Kingdom. Article 1(4) makes clear this is not the Parties' intention. If under these circumstances it proves not to be possible to negotiate a subsequent agreement as envisaged in Article 2 of the Protocol, the United Kingdom records its understanding that nothing in the Withdrawal Agreement would prevent it from instigating measures that could ultimately lead to disapplication of obligations under the Protocol, in accordance with Part Six, Title III of the Withdrawal Agreement or Article 20 of the Protocol, and under the proviso that the UK will uphold its obligations under the 1998 Agreement in all its dimensions and under all circumstances and to avoid a hard border on the island of Ireland.