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COM(2017) 218 final

Recommendation for a

COUNCIL DECISION

authorising the Commission to open negotiations on an agreement with the United Kingdom of Great Britain and Northern Ireland setting out the arrangements for its withdrawal from the European Union

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

According to Article 50 of the Treaty on European Union, any Member State may decide to withdraw from the Union in accordance with its own constitutional requirement and shall, if it so decides, notify the European Council of its intention.

On 29 March 2017, the United Kingdom notified the European Council of its intention to withdraw from the Union and from the European Atomic Energy Community.

Article 50 of the Treaty on European Union provides that in the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with the State wishing to leave the European Union, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union.

It is recalled that the date of entry into force of the withdrawal agreement should be at the latest 30 March 2019, 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. Failing that, on 30 March 2019 at 00:00 (Brussels time), all Union Treaties and the Treaty establishing the European Atomic Energy Community cease to apply to the United Kingdom. The United Kingdom will become a third country from the withdrawal date. On the same date, the Treaties cease also to apply to the overseas countries and territories having special relations with the United Kingdom¹ 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.

The European Council adopted guidelines on 29 April 2017. In the light of these guidelines, the present Recommendation proposes that the Council authorises the Commission to open the negotiations for an agreement with the United Kingdom setting out the arrangements for its withdrawal from the European Union and from the European Atomic Energy Community, nominates the Commission as the Union negotiator, and addresses negotiating directives to the Commission.

The negotiations will be conducted in the light of the European Council guidelines, in line with the negotiating directives and with due regard to the resolution of the European Parliament of 5 April 2017. There will be a phased approach to the negotiations, as set out in the European Council guidelines. The recommended negotiating directives in Annex cover the first phase of the negotiations, which will prioritise matters which, at this stage, have been identified as strictly necessary to ensure an orderly withdrawal. Negotiating directives may be amended and supplemented as necessary throughout the negotiations, in particular to reflect the European Council guidelines as they evolve and to cover the subsequent phase of the negotiations.

An agreement on a future relationship between the Union and the United Kingdom can only be finalised and concluded once the United Kingdom has become a third country. However, Article 50 of the Treaty on European Union requires that the framework for the future relationship with the Union is taken into account in the agreement setting out the

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

arrangements for the withdrawal. To this end, as soon as the European Council decides that sufficient progress has been achieved to allow negotiations to proceed to the next phase, an overall understanding with the United Kingdom on the framework for the future relationship should be identified during the second phase of the negotiations under Article 50.

Determining transitional arrangements under the withdrawal agreement, including bridges towards the foreseeable framework for the future relationship, in the light of the progress made, depends on the identification of an understanding over the framework for the future relationship between the Union and the United Kingdom which will be determined in the second phase of the negotiations. Therefore, matters that could be part of such transitional arrangements are not covered by the present recommended negotiating directives and will be identified at a later stage. 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.

In accordance with the European Council guidelines, the following core principles will apply equally to the negotiations on an orderly withdrawal, to any preliminary and preparatory discussions on the framework for a future relationship, and to any form of transitional arrangements:

- The Agreement will have to be based on a balance of rights and obligations, and ensure a level-playing field;
- Preserving the integrity of the Single Market excludes participation based on a sector-by-sector approach;
- A non-member of the Union, which does not have the same obligations as a member, cannot have the same rights and enjoy the same benefits as a member;
- Participation in the Single Market requires the acceptance of all four freedoms;
- Negotiations with the United Kingdom will be conducted as a single package. In accordance with the principle that nothing is agreed until everything is agreed, individual items cannot be settled separately. The Union will approach the negotiations with unified positions, exclusively through the channels set out in the European Council guidelines and in the negotiating directives and there will be no separate negotiations between individual Member States and the United Kingdom on matters pertaining to the withdrawal;
- The Agreement will have to respect the autonomy of the Union as regards its decision-making as well as the role of the Court of Justice of the European Union.

- **Consistency with other Union policies**

The negotiations and the Agreement under Article 50 of the Treaty on European Union will fully respect the Treaties and preserve the integrity and the autonomy of the Union legal order. They will promote the values, objectives, and interests of the Union, and ensure the consistency, effectiveness and continuity of its policies and actions.

- **Fundamental rights**

According to Article 6 of the Treaty on European Union, the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union, which has the same legal value as the Treaties. Moreover, fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, constitute general principles of the Union's law.

These rights, freedoms and principles will continue to be fully preserved and protected in the Union, both during the process of negotiation with the United Kingdom under Article 50 of the Treaty on European Union, and after withdrawal of the United Kingdom from the Union.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The United Kingdom has notified its intention to withdraw from the European Union. As a consequence, Article 50 of the Treaty on European Union constitutes the legal basis for the negotiation and conclusion of a withdrawal agreement. It is recalled that in accordance with Article 106(a) of the Treaty establishing the European Atomic Energy Community, Article 50 of the Treaty on European Union applies also to the European Atomic Energy Community.

According to Article 218(3) of the Treaty on the Functioning of the European Union, to which Article 50 of the Treaty on European Union refers, the Commission shall submit recommendations to the Council, which shall adopt a decision authorising the opening of negotiations and nominate the Union negotiator.

• Proportionality

The present Recommendation proposes to the Council to authorise the opening of negotiations and to nominate the Union negotiator, as required under Article 50 of the Treaty on European Union, in conjunction with Article 218(3) of the Treaty on the Functioning of the European Union. The purpose of the negotiations under Article 50 of the Treaty on European Union will be to ensure an orderly withdrawal of the United Kingdom from the Union. As an agreement on a future relationship between the Union and the United Kingdom can only be concluded once the United Kingdom has become a third country, the negotiations will not address matters relating to the framework for the future relationship between the EU and the United Kingdom, except by taking into account that framework in the negotiations.

• Choice of the instrument

According to Article 50 of the Treaty on European Union, an agreement is to be negotiated with the United Kingdom setting out the arrangements for its withdrawal from the European Union. Article 218(3) of the Treaty on the Functioning of the European Union provides that the Commission is to submit recommendations to the Council, which shall adopt a decision nominating the Union negotiator and authorising the opening of negotiations. A Council decision is the appropriate instrument for the Council to authorize the Commission in that respect.

3. BUDGETARY IMPLICATIONS

The present Recommendation which proposes that the Council nominates the Union negotiator and authorises the Commission to open negotiations with the United Kingdom is not expected to have immediate budgetary implications, in so far as the negotiating process in concerned. The budgetary implications of the agreement under Article 50 of the Treaty on European Union, resulting from the above mentioned negotiations, will be outlined when the relevant proposals on signature and conclusion of the withdrawal agreement are presented.

4. OTHER ELEMENTS

- **Detailed explanation of the specific provisions of the proposal**

In Article 1 of the recommended Council Decision, the Council authorises the opening of negotiations and nominates the Commission as the Union negotiator for the agreement with the United Kingdom setting out the arrangements for its withdrawal from the Union and from the European Atomic Energy Community.

In Article 2 of the recommended Council Decision, the Council establishes that the negotiations shall be conducted in the light of the guidelines provided by the European Council and of the directives set out in the Annex.

The recommended Annex to the Council Decision sets out the negotiating directives for the following matters:

- Citizens' rights;
 - Single financial settlement related to the Union budget and to the termination of the membership of the United Kingdom of the institutions or bodies established by the Treaties, as well as to the participation of the United Kingdom in specific funds and facilities related to Union policies;
 - Arrangements regarding goods placed on the market and ongoing procedures based on Union law;
 - Arrangements relating to other administrative issues relating to the functioning of the Union;
 - Governance of the Agreement.
- **Publication of the Decision and of the Negotiating Directives set out in the Annex**

The Commission proposes to the Council to make public the Decision authorising the opening of negotiations for an agreement with the United Kingdom of Great Britain and Northern Ireland setting out the arrangements for its withdrawal from the European Union and nominating the Commission as the Union negotiator, as well as the Negotiating Directives set out in its Annex.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaties, and in particular Article 50 of the Treaty on European Union, in conjunction with Article 218(3) of the Treaty on the Functioning of the European Union,

Having regard to the guidelines of the European Council of 29 April 2017,

Having regard to the Recommendation from the European Commission,

Whereas:

- (1) On 29 March 2017, the United Kingdom of Great Britain and Northern Ireland notified to the European Council of its intention to withdraw from the European Union.
- (2) On 29 April 2017, the European Council adopted guidelines that define the framework for negotiations under Article 50 of the Treaty on European Union and set out the overall principles that the Union will pursue throughout the negotiation.
- (3) In the light of the guidelines of the European Council, the Union should negotiate and conclude an agreement with the United Kingdom setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union ('Withdrawal Agreement').
- (4) The Treaties will cease to apply to the United Kingdom from the date of entry into force of the Withdrawal Agreement or, failing that, two years after the notification, unless the European Council, in agreement with the United Kingdom, unanimously decides to extend this period.
- (5) The negotiations should thus be opened immediately with a view to concluding a withdrawal agreement.
- (6) On 5 April 2017, the European Parliament adopted a resolution setting out its position on the withdrawal negotiations.
- (7) The Commission should be authorised to open the negotiations for a Withdrawal Agreement and should be nominated as the Union negotiator.
- (8) In accordance with Article 106(a) of the Treaty establishing the European Atomic Energy Community, Article 50 of the Treaty on European Union applies to the European Atomic Energy Community.

HAS ADOPTED THIS DECISION:

Article 1

The Commission is hereby authorised to open negotiations, on behalf of the Union, for an agreement with the United Kingdom of Great Britain and Northern Ireland setting out the arrangements for its withdrawal from the European Union and from the European Atomic Energy Community, taking account of the framework for its future relationship with the Union, and is hereby nominated as the Union negotiator.

Article 2

The negotiations shall be conducted in the light of the guidelines adopted by the European Council and in line with the negotiating directives set out in the Annex.

Article 3

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*