

11 March 2019

TF50 (2019) 61 – Commission to EU 27

Subject: 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.

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

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**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.
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

¹ Articles 6 to 10 of the Protocol.

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.

11 March 2019

TF50 (2019) 62 – Commission to EU 27

Subject: 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.

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

Published on the TF50 website on 11 March 2019

**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.



Brussels, **XXX**
[...](2019) **XXX** draft

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COMMUNICATION TO THE COMMISSION

on the endorsement by the Commission of the result of the discussions with the United Kingdom on Interpretative Declarations related to the Agreement on the withdrawal of the United Kingdom from the European Union and Euratom, and on their transmission to the European Council

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The United Kingdom has decided to leave the European Union, following a referendum on 23 June 2016, in which a majority of participants voted to leave the European Union.

On 29 March 2017, the United Kingdom notified the European Council, in accordance with Article 50 of the Treaty on European Union, of its intention to withdraw¹ from the European Union and Euratom, thereby triggering a two year period during which the Union and Euratom are to negotiate, and conclude, an agreement with the United Kingdom setting out the arrangements for its withdrawal (the “Withdrawal Agreement”).

On 29 April 2017, the European Council (Article 50) adopted Guidelines for such negotiations. On 22 May 2017, the Council adopted a decision authorising the opening of negotiations with the United Kingdom on a Withdrawal Agreement, including the Negotiating Directives, and appointing the Commission as negotiator.

On 14 November, an agreement was reached, at technical level, on the text of the Withdrawal Agreement (TF50(2018)55). This text fully reflected the European Council Guidelines and the Council Negotiating Directives. On 22 November 2018, the Commission approved the Withdrawal Agreement.²

On 25 November 2018, the European Council (Article 50) and the United Kingdom endorsed the Withdrawal Agreement and approved 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.

On 5 December 2018, the Commission adopted a proposal for a Council Decision on the signing, on behalf of the European Union and of the European Atomic Energy Community, of 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 (COM(2018) 833), and for a proposal for a Council Decision on the conclusion of 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 (COM(2018) 834).

On 11 January 2019, the Council authorised the signature of the Withdrawal Agreement³ and transmitted the draft Council Decision on the conclusion of the Withdrawal Agreement to the European Parliament for its consent.

If the Withdrawal Agreement is not ratified, the United Kingdom will withdraw from the European Union in a disorderly fashion. While this is not a desirable outcome, the European Union has nevertheless been preparing for a no-deal scenario since December 2017. The Commission has taken all the measures required to protect the Union’s interests and mitigate

¹ Before 29 May 2019, the United Kingdom may revoke unilaterally, in an “unequivocal and unconditional manner”, the notification of its intention to withdraw from the EU, Case C-621/18 Wightman and Others v Secretary of State for Exiting the European Union.

² Communication to the Commission, endorsed on 22 November 2018, C(2018)9001.

³ Council Decision (EU) 2019/274 of 11 January 2019 on the signing, on behalf of the European Union and of the European Atomic Energy Community, of 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 (OJ L 471 , 19.2.2019, p. 1).

the most disruptive consequences of such a scenario.⁴ To date, the Commission has tabled 19 legislative proposals of which 11 have been adopted or agreed by the European Parliament and the Council and 8 are advancing well. In addition to this, the Commission has adopted 19 non-legislative acts.

Additional reassurances for the United Kingdom Parliament were provided in an exchange of letters between Presidents Tusk and Juncker and Prime Minister May on 14 January 2019. They underline in particular that the Union does not wish the backstop solution to become applicable and confirm the intention of both parties to embark on negotiations on the future partnership immediately after the signature of the Withdrawal Agreement. Subsequently, President Juncker and Prime Minister May met in Brussels on 7 February⁵ and on 20 February⁶ and in Sharm El Sheikh on 25 February 2019.

Following the meeting between President Juncker and Prime Minister May of 20 February 2019, discussions resumed and intensified on three strands: possible guarantees with regard to the backstop that underline once again its temporary nature and give the appropriate legal assurance to both sides; the process for the European Commission and the United Kingdom will follow when working in detail on the role alternative arrangements could play in replacing the backstop in future; and whether additions or changes to the Political Declaration could be made.

Discussions between the Commission and United Kingdom negotiators continued between 21 February and 10 March 2019. They resulted in an agreement, at technical level, on an 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, as well as on a 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.

The Commission, as negotiator for the Union, should endorse the 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 and the 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.

The Commission should also authorise President Juncker to transmit the 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 and the 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, with the recommendation that the European Council (Article 50) endorse

⁴ See in particular, and for an overview of measures taken: Commission Brexit Preparedness and Contingency Communications of 19 July (COM(2018)556), 13 November (COM(2018)880) and 19 December 2019 (COM(2018)890).

⁵ Joint statement on behalf of President Juncker and Prime Minister May, http://europa.eu/rapid/press-release_STATEMENT-19-903_en.htm.

⁶ Joint statement on behalf of President Juncker and Prime Minister May, http://europa.eu/rapid/press-release_STATEMENT-19-1335_en.htm

these documents subject to a prior positive vote in the House of Commons on the Withdrawal Agreement.

The Commission is therefore invited to:

- endorse the 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 (TF50(2019)XX) and the 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 (TF50(2019)XX).
- authorise the President to transmit the two abovementioned documents to the European Council (Article 50), with the letter enclosed.

Encl : draft letter from President Juncker to President Tusk.



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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 dark ink, consisting of a stylized 'J' or 'L' shape followed by a horizontal line.