



### **European Commission's draft negotiating directives for Article 50 negotiations with the United Kingdom - Q&A**

Brussels, 3 May 2017

#### **What have you adopted today?**

The European Commission has today adopted a recommendation to the Council to open the Article 50 negotiations with the UK, in accordance with Article 218 (3) of the Treaty on European Union. The recommendation includes draft negotiating directives. This text complements the political guidelines adopted by the 27 Heads of State or Government on 29 April 2017 and provides the necessary details to conduct the first phase of the negotiations.

#### **What are the next steps?**

The General Affairs Council will meet on 22 May 2017 to adopt the draft negotiating directives (by strong qualified majority) and to authorise the opening of negotiations. Once adopted by the Council, the European Union will be ready to begin formal negotiations with the United Kingdom.

#### **When will negotiations start?**

The European Union is ready to begin negotiating once the Council authorises the opening of the negotiations. The first formal meeting between the EU and the UK negotiators is likely to be in June given the date of the General Election in the UK.

#### **What about the practical side of the negotiations? What language will they be in? How often will both sides meet?**

Practical issues, such as language regime and negotiation structure, will be agreed jointly between the EU and UK negotiators.

#### **Will you be transparent in the negotiations?**

Yes, the Commission's aim will be to ensure full transparency so as to allow for informed public debate. This is why the Commission has made today's recommendation public.

#### **When does the United Kingdom cease to be a member of the European Union?**

The UK will cease to be a member of the European Union at midnight on 29 March 2019, unless the European Council decides unanimously to extend the two-year negotiating period. The United Kingdom will become a third country from the date of withdrawal.

#### **What will be your core principles in the negotiations?**

The withdrawal agreement should be based on a balance of rights and obligations, while ensuring a level-playing field. Cherry-picking of the Single Market will not be permitted and the Union's four freedoms will remain indivisible. The negotiations will be based on the principle that nothing is agreed until everything is agreed. The European Union will remain united throughout the negotiation period and separate negotiations between individual Member States and the United Kingdom on matters pertaining to the UK's withdrawal will not be permitted. The withdrawal agreement should respect the autonomy of the decision-making of the Union, as well as the role of the Court of Justice of the European Union.

#### **What is in the recommendation?**

The Commission's recommendation reflects the two-phased approach established by the European Council guidelines and prioritises those matters which are necessary to ensure an orderly withdrawal of the United Kingdom from the Union. They are as follows:

#### **I. CITIZENS' RIGHTS**

##### **How does the European Commission aim to protect the rights of EU citizens in the UK and UK citizens in the EU?**

The decision by the United Kingdom to leave the European Union has created great uncertainty in the lives of many European citizens. The European Commission's first priority in the Article 50 negotiations is to give them certainty. In this respect, the EU will seek to guarantee the rights of both EU citizens in

the UK and UK citizens in the EU, as well as their families (regardless of nationality). This includes rights that will only enter into effect in the future, such as old-age pensions. The European Commission aims to ensure that the withdrawal agreement provides the necessary effective, enforceable, non-discriminatory and comprehensive guarantees for those citizens' rights.

### **Who would be protected by the Article 50 Agreement?**

The European Commission aims to ensure that all those EU citizens who have made life-choices on the basis of EU law should be protected. This refers to workers, job-seekers, self-employed persons, students, pensioners, and family members. On that basis, the personal scope should be the same as that of Directive 2004/38 and Regulation 883/2004.

### **What rights would be protected?**

The withdrawal agreement should safeguard those rights which citizens enjoy at the date of the withdrawal of the United Kingdom from the Union. They should have the same material scope as the following pieces of legislation: The Treaty on the Functioning of the EU, Directive 2004/38, Regulation 883/2004, and Regulation 492/2011.

#### **Right to reside in another Member State**

Citizens of the EU and their family members have the right to move and reside freely within the territory of the EU, subject to certain conditions. This right is conferred directly on every EU citizen by Article 21, 45 and 49 of the Treaty on the Functioning of the European Union and set out in Directive 2004/38. In particular:

- The family members of EU citizens (regardless of nationality) should continue to have the right to accompany or join them in the UK, subject to certain conditions;
- EU citizens should continue to automatically acquire the right to permanent residence in the UK after legally residing there for a continuous period of five years, even if they moved to the UK less than 5 years before the date of withdrawal.

#### **Right to work in another Member State**

The free movement of workers and self-employed persons is a fundamental principle of the Treaty enshrined in Article 45 and Article 49 of the Treaty on the Functioning of the European Union, as specified in Regulation 492/2011 and the case law of the Court of Justice. The withdrawal agreement should continue to ensure that EU citizens are entitled to have access to the labour market, pursue an activity and enjoy equal treatment with nationals in access to employment, working conditions and all other social and tax advantages.

#### **Right to social security and health care systems**

The EU's social security coordination rules are laid out in Regulation 883/2004 and Regulation 987/2009. The withdrawal agreement should continue to provide the same level of protection for EU citizens in the UK and UK citizens in the EU. Rights include:

- Sickness, maternity and equivalent paternity benefits;
- Old-age pensions, pre-retirement and invalidity benefits;
- Survivors' benefits and death grants;
- Unemployment benefits;
- Rights to aggregate, export of benefits, and the principle of single applicable law;
- Family benefits;
- Benefits in respect of accidents at work and occupational diseases.

#### **Recognition of diplomas, certificates and other qualifications**

The withdrawal agreement should ensure the protection of recognised diplomas, certificates and other qualifications obtained in any EU Member State or in a third country, in accordance with Union law, before the withdrawal of the United Kingdom from the EU.

### **For how long would these rights be protected?**

All rights should be protected for the lifetime of the person concerned. This means, for instance, that an EU citizen residing in the UK who marries a third country national after the withdrawal of the UK maintains the current right to family reunification. It means that a UK citizen who returns to the UK after a career in various EU countries can aggregate easily all pension rights. Or that an EU citizen who has worked in the UK for ten years and loses his job after the withdrawal of the UK can use the unemployment benefit period to find another job in another EU Member State.

## **How would they be protected and enforced?**

The withdrawal agreement should contain provisions providing for dispute settlement and enforcement mechanisms. Citizens should be able to directly invoke their rights based on the withdrawal agreement before national courts. The jurisdiction of the Court of Justice of the European Union should be maintained for the rights that citizens currently have under EU law.

## **Will people have to apply for residence documents?**

Any document issued in relation to residence rights (e.g. registration certificates, residence cards) should have a declaratory nature only 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.

## **How many EU citizens live in the United Kingdom and vice-versa?**

- The total number of EU-27 nationals living in the UK is approximately 3.2 million.
- The total number of UK citizens living in the EU is approximately 1.2 million.

## **Where can I find out more information about my rights?**

As an EU citizen, you have the right to contact the EU in your own language and get information and assistance on your EU rights. The Europe Direct Contact Centre can help you with any questions you might have. Representation offices of the European Commission are also at your service in your home countries.

## **II. FINANCIAL SETTLEMENT**

### **What is the "single financial settlement"?**

During the time of its membership, the UK has taken – and will take – financial commitments. They should be honoured in full. This will be an essential element of the negotiations on the orderly separation. The "single financial settlement" refers to the settlement of all financial commitments between the UK and the EU. Therefore, this refers to the Union budget, the European Investment Bank, the European Central Bank, the European Development Fund and other funds such as the Facility for Refugees in Turkey.

### **How will you calculate the sum?**

The calculation of the UK's financial obligations will be based on objective and verifiable data.

## **III. ONGOING PROCEDURES**

### **What will happen to products put on the market just before the United Kingdom leaves the European Union?**

It is possible that a product may enter into circulation just before the UK leaves the EU and may still be in the distribution chain after the UK has left. Today's recommendation provides that in these cases it should be ensured that the product can remain on the market (both the UK and EU27) under the conditions set out in EU law until it reaches its end user.

### **What do you intend to do in the areas of judicial cooperation and ongoing administrative and law enforcement cooperation procedures?**

EU law provides for a considerable number of detailed cooperation procedures between Member States administrations (for example, cooperation in the area of market surveillance of goods), in the area of judicial proceedings (for example, mutual assistance in taking evidence, or recognition of judgments handed down) and in the area of law enforcement (for example, exchange of information and intelligence between law enforcement authorities). Such cooperation procedures may have started prior to the UK leaving the EU, and may still be ongoing after the withdrawal. Today's recommendation provides that, where necessary and appropriate, rules should be drawn up to ensure that ongoing procedures at the time of the withdrawal of the UK from the EU are finalised under the conditions set out in EU law.

## **IV. NORTHERN IRELAND**

### **What have you included in the recommendation concerning Northern Ireland?**

The European Union remains committed to the Good Friday Agreement and will work towards minimising the consequences of the UK's decision to leave the EU on the peace process. This means looking at innovative and creative solutions in order to avoid a hard border on the island of Ireland. This will be a priority in the negotiations.

## **V. CYPRUS:**

### **What have you included in the recommendation concerning Cyprus?**

Once the United Kingdom leaves the European Union, an arrangement must be found to protect the

rights and interests of the persons living in the two 'Sovereign Base Areas' ('SBAs') of Akrotiri and Dhekelia in Cyprus, as well as ensuring the proper circulation of goods. The 'Sovereign Base Areas' are British Overseas Territories established in 1960. The Union should recognise the bilateral agreements and arrangements entered into by the Republic of Cyprus and the United Kingdom to the extent that they are compatible with Union law.

## **VI. UNION'S INTERESTS**

### **What do you mean by ensuring the "necessary protection" of the Union's interests in the United Kingdom?**

This refers to the privileges and immunities that the Union enjoys today on the basis of the Protocol (No 7) to the Treaties, which should continue in the future as well.

## **VII. GOVERNANCE & ADMINISTRATIVE ISSUES**

### **How should the Article 50 Agreement be enforced?**

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 withdrawal 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. The regulatory autonomy of the EU and the autonomy of its legal order should be fully preserved.

## **VIII. The next phase**

### **When will the negotiations move on to discussions on the future relationship of the European Union and the United Kingdom?**

Discussions on the framework for a future relationship with the United Kingdom will only begin once sufficient progress has been made in the first phase of the negotiations. It will be for the European Council to decide whether there has been sufficient progress.

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