



# Questions & Answers: Publication of the draft Withdrawal Agreement between the European Union and the United Kingdom

Brussels, 28 February 2018

## I. Introduction

### What have you published today?

The European Commission has today published the draft Withdrawal Agreement between the European Union and the United Kingdom. This is a draft of the agreement on the UK's orderly withdrawal from the EU and including introductory provisions, citizens' rights, other separation issues such as goods placed on the market before the withdrawal date, the financial settlement, transitional arrangements, and institutional provisions – and a protocol on Ireland/Northern Ireland. It will now be discussed by the Council (Article 50) and with the Brexit Steering Group of the European Parliament before being transmitted to the United Kingdom for negotiation. A final version of the Withdrawal Agreement should be agreed by the EU and the UK by October 2018 to allow for the timely ratification by the European Parliament, the Council (Article 50) and the UK, according to its own constitutional requirements.

The European Council (Article 50) is expected to adopt additional guidelines in March 2018, in particular as regards the framework for the future relationship and has called on the UK to provide further clarity on its position on the framework for the future relationship.

### Why publish this text now?

Time is of the essence. The European Commission, as the Union's negotiator, is publishing the draft Withdrawal Agreement today to allow for some time for an exchange of views with the Council (Article 50) and the European Parliament and to give as much time as possible to the EU and UK negotiators to reach a deal on the terms of the UK's orderly withdrawal from the EU. The UK will leave the EU on 30 March 2019.

### Is this the final text? If not, what other steps need to be completed before it is final and agreed?

This is a draft Withdrawal Agreement, which has now been submitted to the Council (Article 50) for discussion. It will then be formally sent to the United Kingdom for negotiation. At the end of the negotiation period, the Commission will present a proposal for an agreement to the European Parliament and the Council, taking into account the framework of the future relationship of the UK with the EU. The European Parliament must give its consent, by a vote of simple majority, including Members of the European Parliament from the UK. The Council will conclude the agreement, acting by a qualified majority representing 72% of the 27 Member States, i.e. 20 Member States representing 65% of the EU27 population. The UK must also ratify the agreement according to its own constitutional arrangements.

### When will negotiations on the future relationship begin?

The European Council (Article 50) of 15 December 2017 stated that while an agreement on a future relationship can only be finalised and concluded once the United Kingdom has become a third country, the EU will be ready to engage in preliminary and preparatory discussions with the aim of identifying an overall understanding of the framework for the future relationship, once additional guidelines have been adopted to this effect. The European Council (Article 50) is set to adopt additional guidelines in March 2018.

## II. Citizens' rights

### Is this text in any way different to what was agreed in December?

The [Joint Report of 8 December 2017](#) on the rights of EU27 and UK citizens post-Brexit, as well as [the EU-UK Joint Technical note](#), serve as a detailed blueprint for the draft Withdrawal Agreement. Today's draft Withdrawal Agreement "translates" the Joint Report and Joint Technical note into a legal text. The section on citizens' rights is extremely precise so that it can be relied upon directly by EU citizens in British courts.

The text develops the Joint Report and the EU-UK Joint Technical note in more detail in order to fill in

the blanks not expressly covered in the December document (such as the rules applicable to those persons covered by the December document related to crossing the border when travelling from the host State and returning back).

The text offers much more detail on safeguards to persons protected by the Joint Report (for example what happens when national authorities are not able to accept an application due to technical problems).

Finally, with respect to family members, it translates into legal terms the position set out in the Commission Communication of 8 December 2017, that also future spouses and civil partners should be covered. This will be the subject of further negotiations.

### **What rights will citizens have during the transition period?**

The provisions of the draft Withdrawal Agreement on citizens' rights will apply **as of the end of any transitional period.**

Given that the whole of the EU acquis, including EU free movement law, should continue to apply **during the transition period**, the EU's position is that all EU citizens arriving in the host State during this period should have exactly the same rights as EU citizens who arrived before the UK's withdrawal. After the end of the transition period, those EU citizens, and UK citizens who arrive in a Member State after withdrawal but before the end of the transition period, should be covered by the personal scope of the Withdrawal Agreement.

### **What will the "independent authority" do?**

The common understanding reached in December envisages that an independent Authority should be created in the UK to monitor the implementation and application of the citizens' right part of the Withdrawal Agreement.

This Authority should have the power to receive and investigate complaints from Union citizens and their family members, and to conduct inquiries on its own initiative, concerning alleged breaches by administrative authorities of the United Kingdom of their obligations under the citizens' rights part of the Withdrawal Agreement. The Authority should also inform the European Commission of any such legal actions.

### **What does the Withdrawal Agreement mean for professionals?**

A professional who had his or her professional qualifications recognised in the country (an EU Member State or the United Kingdom) where he or she currently resides or, for frontier workers, where he or she works, will be able to continue to rely on the recognition decision there for the purpose of carrying out the professional activities linked to the use of those professional qualifications.

In addition, if he or she has already applied for the recognition of his or her professional qualifications before the end of the transition period, his or her application will be processed domestically in accordance with the EU rules applicable when the application was made.

## **III. Ireland / Northern Ireland**

### **Why are you only providing for one of the three options outlined in Paragraph 49 of the Joint Report?**

All three options remain on the table.

Today's draft Withdrawal Agreement is based on the Joint Report of 8 December 2017, in which the UK recalled its commitment to avoid a hard border, including any physical infrastructure or related checks and controls, and its respect for Ireland's rights and obligations as an EU member.

Paragraph 49 of the Joint Report indeed sets out three options for avoiding a hard border on the island of Ireland and to support North-South cooperation, the all-island economy and the protection of the Good Friday Agreement.

Given that two of the three options can only be made operational in the context of discussions on the future relationship, a Protocol has been included setting out, in legal terms, how the third option may be operationalised. This option means that the United Kingdom maintains full alignment with those rules of the Internal Market and the Customs Union which, now or in the future, support North-South cooperation, the all-island economy and the protection of the 1998 Agreement.

### **Why include this section in a Protocol rather than in the body of the Withdrawal Agreement?**

In the case where a solution is found that is different to the Protocol – and which addresses the overarching objectives of avoiding a hard border and protecting the Good Friday Agreement in all its parts – this option could in principle supersede the Protocol. In legal terms, a protocol forms an integral part of an international agreement and has exactly the same effect as any other part of the agreement.

## **Does this mean that you think that full regulatory alignment between the UK and the EU is the only possible option to avoid a hard border on the island of Ireland?**

As set out in the Joint Report, both the EU and the UK recognise the need to safeguard North-South cooperation, the all-island economy and the Good Friday Agreement. Paragraph 49 of the Joint Report sets out that the United Kingdom's intention is to achieve the objectives of protecting North-South cooperation and avoiding a hard border on the island of Ireland through the overall EU-UK relationship. As discussions on the overall future relationship have not yet begun, today's text clarifies the way in which the option of regulatory alignment would work.

## **How will the "common regulatory area" work?**

The aim of the common regulatory area is to safeguard North-South cooperation, the all-island economy, and the Good Friday Agreement. This regulatory area would allow for the free movement of goods to operate on the island of Ireland, and would include provisions on agriculture and inland fisheries, the Single Electricity Market, environmental protection, and state aid, amongst others.

## **IV. Financial Settlement**

### **What have you included in the draft Withdrawal Agreement on the financial settlement?**

Today's draft Withdrawal Agreement translates into legal terms the agreement reached on 8 December 2017 between the EU and UK negotiators on the terms of the financial settlement and includes certain practical modalities, such as payment deadlines, as proposed by the Commission.

### **Will the financial settlement need to change now that there could be a transition phase included in the Withdrawal Agreement?**

The United Kingdom and the EU have committed to honouring their share of the financing of all the obligations undertaken while the United Kingdom was a member of the Union (and in particular the Multi-annual Financial Framework [MFF] 2014-2020). As outlined in Part 4 of the Withdrawal Agreement, the transition period will end on 31 December 2020, at the same day as when the current MFF finishes. There is, therefore, no need to make any adjustment to the financial settlement.

## **V. Transitional arrangements**

### **Can the UK negotiate and sign new trade deals with third countries during the transition period?**

The UK has requested to continue benefitting from the Single Market and Customs Union for a period of "around two years." During this period, which will end on 31 December 2020, the entire Union acquis will continue to apply to the UK. This means that the UK will have to comply with the EU's trade policy and will continue to be bound by the Union's exclusive competence, in particular in respect of the Common Commercial Policy.

As a result, the UK will remain bound during the transition period by the obligations stemming from all bilateral and multilateral EU-only agreements, i.e. third countries would keep the same UK market access. The UK cannot become bound by new agreements on its own in areas of Union competence unless authorised to do so by the EU.

### **When will there be certainty that there will be a transition period?**

Provisions on transitional arrangements will form part of the overall Withdrawal Agreement. Full certainty will therefore only come once the Withdrawal Agreement has been fully ratified by the EU (i.e. adopted by the Council following the consent of the European Parliament) and the UK (i.e. according to its own constitutional requirements). We are ready to intensify negotiations on this part of the Withdrawal Agreement over the coming weeks.

### **Why does the transition period end on 31 December 2020?**

The United Kingdom requested a transition period of "around two years". Today's text takes account of that request, and makes it coincide with the end of the current MFF.

### **What happens if the UK does not respect certain rules of the Single Market during the transition period?**

In accordance with Article 126 of the draft Withdrawal Agreement, the Court of Justice of the European Union has full jurisdiction over the United Kingdom with regard to all matters in the Withdrawal Agreement during the transition period. If the UK does not respect certain rules of the Single Market, the Commission could thus launch a normal infringement procedure in accordance with the rules set out in Article 258 of the TFEU.

In addition, Article 165 of the Withdrawal Agreement provides that where the Court of Justice of the European Union has already found that the UK has breached a rule or had issued an order, and the UK does not comply with the judgment or the order and where the functioning of the internal market, the

customs union, the financial stability of the EU or the Member States would be jeopardised as a result, the Union may suspend certain benefits deriving from the United Kingdom's participation in the internal market. In such a scenario, the EU shall inform the UK of its intention to suspend certain benefits of the internal market and allow the UK 20 days to remedy the situation. Any suspension will be proportionate to the breach of the obligation concerned, taking into account the gravity of the breach and the rights in question.

### **Is it possible that the EU and the UK can reach an agreement on the future relationship on security and defence during the transition period?**

Yes, negotiations on the future relationship on security and defence could be negotiated and wrapped up more quickly. Article 122(2) of the draft Withdrawal Agreement provides for this possibility.

### **Does Spain need to agree bilaterally with the UK before any transitional arrangements apply to Gibraltar?**

As set out in paragraphs 4 and 24 of the European Council guidelines of 29 April 2017, and repeated in the Council's negotiating directives of 29 January 2018, no agreement between the EU and the United Kingdom may apply to the territory of Gibraltar without the agreement between Spain and the UK.

The territorial scope of the Withdrawal Agreement, including as regards the transition period, respects these guidelines.

## **VI. Governance of the Withdrawal Agreement**

### **What provisions on governance have you included in the draft Withdrawal Agreement? Where does the Court of Justice of the European Union play a role?**

Part six of today's draft Withdrawal Agreement sets out a complete and effective governance mechanism for the Withdrawal Agreement.

A Joint Committee will be responsible for supervising and facilitating the implementation and application of the Agreement. It will comprise representatives of the EU and the UK.

For certain cases, namely those concerning part 3 and some provisions of part 5 of the Withdrawal Agreement, the normal dispute settlement procedures under the Treaties apply (Article 153 of the Withdrawal Agreement).

In other cases, both the EU and UK may have recourse to the Joint Committee to settle the dispute. The Joint Committee may, at any point, decide to submit the dispute to the Court of Justice of the European Union for a ruling. In the case of disagreement, each party can decide to submit a dispute to the Court of Justice. In this case, the Court of Justice shall have jurisdiction and its rulings shall be binding on both the Union and the UK.

In the case of non-compliance with such a ruling of the Court of Justice by either party, the Court may impose a lump sum or penalty payment. The Union or the United Kingdom may also decide to suspend parts of the Withdrawal Agreement (except for the part on citizens' rights) or any other agreements between the EU and the UK.

With regards to the issue of citizens' rights (as detailed in Part two of the draft Withdrawal Agreement), Article 151 of the Agreement translates in legal terms the specific mechanism which was agreed between the UK and EU negotiators in the Joint Report of 8 December 2017. This mechanism would allow a court or tribunal in the UK to request the Court of Justice to give a preliminary ruling on a question on the interpretation of the citizens' rights part of the Withdrawal Agreement. The Court's ruling in this case is binding and is available for cases which commence at first instance within eight years from the end of the transition period.

## **VII. Other separation provisions**

### **Other separation issues (such as Euratom matters or intellectual property issues) were not fully covered in the Joint Report of 8 December 2017. What have you based today's legal text on?**

The section on other separation issues reflects the position papers adopted by the Commission throughout 2017. It establishes rules applicable to procedures that are on-going when EU law ceases to apply to the United Kingdom, from European Arrest Warrants to Geographical Indicators.

Given that the Joint Report of 8 December 2017 did not finalise all aspects of the UK's orderly withdrawal from the EU, the European Commission has drafted today's text on the basis of the progress made in the negotiations thus far (as outlined in the Joint Report and the Commission's Communication) as well as the position papers on each of the relevant topics that were published in the course of 2017. Some of these issues have not been discussed yet with the UK authorities; for others, the Commission's Communication of 8 December 2017 has noted the points of disagreement

which all persist today.

**For More Information**

[Text of the draft Withdrawal Agreement](#)

[Press release on the publication of the draft Withdrawal Agreement](#)

[EU negotiating documents and position papers](#)

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