

28 June 2017

TF50 (2017) 6 – Commission to EU 27

Subject: Position paper transmitted to EU27 on Issues relating to the **Functioning of the Union Institutions, Agencies and Bodies**

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

Objective: For discussion at the Council Working party (Art. 50) of 29 June 2017

Remarks: The attached position paper on Issues relating to the **Functioning of the Union Institutions, Agencies and Bodies** contains the main principles of the EU position in this regard, to be presented to the UK in the context of negotiations under Art. 50

Essential Principles on Issues relating to the Functioning of the Union Institutions, Agencies and Bodies

I. Privileges and immunities of Union institutions, agencies and bodies in the United Kingdom

Following the withdrawal of the United Kingdom from the Union, the Union's current activities in the United Kingdom will eventually come to an end. Any residual continuation of those activities in the United Kingdom requires, however, that a level of protection equivalent to the currently applicable rules is granted also after the withdrawal date. Therefore, the Agreement should provide that the United Kingdom continues to ensure, within its jurisdiction, as regards Union institutions, agencies and bodies as well as regards their members, officials and other servants (including former members, officials and other servants) an equivalent level of protection as enjoyed before the withdrawal date on the basis of the Treaties and the Protocols to the Treaties (in particular Protocol (No. 7) on the Privileges and Immunities of the European Union), and, where applicable, of the host agreements in force on the withdrawal date, in particular as long as they are operating in the United Kingdom. This covers borrowing, financing and treasury operations of the European Investment Bank in the United Kingdom and with United Kingdom counterparts.

II. Obligation of professional secrecy

The Agreement should provide that the United Kingdom ensures, within its jurisdiction, the continued compliance with the obligations incurred before the withdrawal date by members of the institutions, agencies and bodies, members of committees, working parties and other EU related groups (including the United Kingdom representatives who took part in the work of the institutions, bodies and agencies of the Union, their advisers and technical experts), officials and other servants of the Union and members and staff of the national central banks, independently of their nationality and even after their duties have ceased, under Union law imposing an obligation of secrecy, such as Article 339 TFEU and Article 37 of Protocol 4 on the Statute of the European System of Central Banks and of the European Central Bank. This obligation applies both to the current and former groups of persons as identified above.

III. Management of access to documents requests and of EU classified information

- (1) As regards documents concerning a matter relating to the policies, activities and decisions falling within the EU sphere of responsibility, which are drawn up before the withdrawal date and are, on that date, either in the possession of the United Kingdom, originating from an EU institution/agency/body, or in the possession of the Union institutions/agencies/bodies, originating from the United Kingdom, the Agreement should provide that the United Kingdom and the Union institutions, agencies or bodies treat any requests for access to these documents under the same conditions as under Regulation (EC) 1049/2001.
- (2) The Agreement should also provide that the United Kingdom and the Union institutions, agencies or bodies guarantee to any EU classified information received before the withdrawal date the same level of protection as foreseen in the applicable provisions of Union law, as set out in particular in the Agreement of 4 May 2011 between the Member States of the European Union, meeting within the Council, regarding the protection of classified information exchanged in the interests of the European Union.

(3) Points (1) and (2) should also apply, mutatis mutandis, to documents originating from an EU institution/agency/body which were drawn up after the withdrawal date within a Union judicial or administrative procedure carried out pursuant to the Withdrawal Agreement¹ and are in the possession of the United Kingdom and to classified information received by the United Kingdom within such a procedure.

¹ See Essential Principles on Ongoing Union Judicial and Administrative Procedures.