

28 June 2017

TF50 (2017) 4 - Commission to EU 27

Subject: Position paper transmitted to EU27 on **Governance**

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 **Governance** 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 Governance

The Withdrawal Agreement should establish institutional arrangements to ensure the effective management, implementation and enforcement of the Agreement. It should include appropriate dispute settlement mechanisms regarding the application and interpretation of the Withdrawal Agreement. The Withdrawal Agreement should respect the Union's autonomy and its legal order, including the role of the Court of Justice of the European Union (hereafter 'Court of Justice') as regards in particular the interpretation and application of Union law.

I. General principles

The Withdrawal Agreement should provide that:

- (1) The Union and the United Kingdom supervise the implementation of the Withdrawal Agreement.
- (2) Unless provided otherwise in the Agreement, any reference to concepts or provisions of Union law made in the Agreement must be understood as including the case-law of the Court of Justice interpreting such concepts or provisions before the withdrawal date. As regards any transitional arrangements providing for the continued application of Union law, future case-law of the Court of Justice intervening after the withdrawal date should also be taken into account in interpreting those provisions of Union law.
- (3) The provisions of the Withdrawal Agreement (i) on citizens' rights, and (ii) enshrining the continued application of Union law should deploy, within the legal orders of the contracting parties, the same legal effects as those which Union law had deployed within the Union until the date of withdrawal. The United Kingdom should ensure compliance with the foregoing, including as regards the required powers of judicial and administrative authorities, through a legislative act.
- (4) Disputes concerning the application or interpretation of the Withdrawal Agreement, including those concerning the application or interpretation of any concepts or provisions of Union law referred to in the Agreement, should be settled exclusively by the means foreseen in the Withdrawal Agreement.
- (5) All rulings given by the Court of Justice pursuant to the provisions of the Withdrawal Agreement are binding on the Union and the United Kingdom, and are enforceable in the United Kingdom under the same conditions as those laid down in Article 299 TFEU.
- (6) In any procedure before the Court of Justice relating to the application and the interpretation of the Withdrawal Agreement and touching upon the interests of the United Kingdom, the United Kingdom should enjoy the same procedural rights as the rights enjoyed by the Union Member States under the Statute and the Rules of Procedures of the Court of Justice.

II. Institutional arrangements

The Withdrawal Agreement should establish a Joint Committee, in which the Union and the United Kingdom are represented. The Joint Committee should have the following tasks and competences:

- (1) Ensure the good functioning of the Agreement.
- (2) Adopt all measures necessary to deal with unforeseen situations not covered in the Withdrawal Agreement under the conditions set out in the Withdrawal Agreement.
- (3) Decide on the incorporation of future amendments to Union law in the Withdrawal Agreement where such incorporation is provided for in the Withdrawal Agreement.
- (4) Discuss divergences of views between the parties as set out in the Withdrawal Agreement.
- (5) Perform any other task conferred on it by the Withdrawal Agreement.

III. Enforcement and Dispute Settlement

The Withdrawal Agreement should establish separate regimes for the enforcement of the provisions of the Withdrawal Agreement on citizens' rights and enshrining the continued application of Union law, on the one hand, and other provisions on the other hand.

a. Provisions on citizen's rights and continued application of Union law

- (1) The Withdrawal Agreement should provide that the Commission has full powers for the monitoring of the implementation of the provisions relating to citizens' rights, as laid down in Articles 258 and 260 TFEU and under the relevant monitoring procedures set out in Union secondary legislation, and the Court of Justice has jurisdiction corresponding to the duration of the protection of citizen's rights in the Withdrawal Agreement, by making applicable the procedures laid down in Articles 258, 260, 263-268 TFEU (including the Court's powers under Articles 278 and 279 TFEU).
- (2) The same rules should apply to provisions on the continued application of Union law, in particular as regards goods placed on the market, ongoing Union procedures or cooperation procedures between Member States.

b. Other provisions of the Withdrawal Agreement

- (1) Where either contracting party considers that the other party has not properly implemented a provision of the Withdrawal Agreement or where there are divergences of views as regards the interpretation of the Withdrawal Agreement, it may request a discussion of the issue in the Joint Committee. The Joint Committee should be empowered to adopt, where necessary, appropriate measures to implement the solution agreed between the contracting parties.
- (2) Where the Joint Committee is unable to reach a solution between the two parties, the matter may be referred to the Court of Justice (i) jointly by both parties at any time, or (ii) by either party three months after the Joint Committee was first seized of the matter.

IV. Non-compliance with Court rulings

The Withdrawal Agreement should provide for an effective mechanism to ensure compliance by the parties with judgments of the Court of Justice handed down in accordance with the Withdrawal Agreement.

The Withdrawal Agreement should provide that where one party considers that the other party has not taken the necessary steps to comply with a ruling of the Court of Justice, the complaining party may seize the Court to request a lump sum or a penalty payment or the suspension of certain parts of the Withdrawal Agreements other than citizens' rights in order to ensure compliance with the ruling, after giving the other party the opportunity to express its position.