



EUROPEAN COMMISSION

*Brussels, 5.7.2018
C(2018)4204 final*

*Mr Michael MÜLLER
President of the Bundesrat
Leipziger Straße 3 - 4
D – 10117 BERLIN*

Dear President,

The Commission would like to thank the Bundesrat for its Opinion on the Recommendation for a Council Decision supplementing the Council Decision of 22 May 2017 authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for an agreement setting out the arrangements for its withdrawal from the European Union {COM(2017) 830 final}.

The withdrawal of the United Kingdom from the European Union is an extraordinary and unprecedented event. The Commission has been given the mandate as the Union negotiator by the Council in Article 50 formation (i.e. comprising the remaining 27 Member States) to carry out the negotiations with the United Kingdom under Article 50 of the Treaty on European Union on behalf of the Union. The European Council (Article 50) has adopted detailed guidelines for these negotiations on 29 April 2018¹, on 15 December 2017², and on 23 March 2018³. In addition, the Council (Article 50) at 27 Member States has issued negotiating directives on 22 May 2017⁴ and 29 January 2018⁵, the latter based on the above mentioned Commission Recommendation. Everything the Commission does in relation to the withdrawal of the United Kingdom from the European Union therefore rests on a clear mandate from the European Council and the Council in their respective Article 50 formations. The European Parliament is being kept fully and regularly informed by the Commission through its Brexit Steering Group.

The Commission regrets the decision of the United Kingdom to withdraw from the European Union, but it respects this democratic choice.

¹ <http://www.consilium.europa.eu/en/press/press-releases/2017/04/29/euco-brexite-guidelines/>

² <http://www.consilium.europa.eu/media/32236/15-euco-art50-guidelines-en.pdf>

³ <http://www.consilium.europa.eu/media/33458/23-euco-art50-guidelines.pdf>

⁴ <http://data.consilium.europa.eu/doc/document/XT-21016-2017-ADD-1-REV-2/en/pdf>

⁵ <http://www.consilium.europa.eu/media/32504/xt21004-ad01re02en18.pdf>

The Commission's first priority is for the United Kingdom's withdrawal to be orderly, based on an agreement under Article 50 of the Treaty on European Union. Significant progress has been made by the negotiators, with agreement on parts of the legal text of the Withdrawal Agreement covering citizens' rights, the financial settlement, a number of other withdrawal issues and the transition. Yet other issues still require agreement in legal form, and negotiations can only progress as long as all commitments undertaken so far are respected in full. Nothing is agreed until everything is agreed.

For the future, as set out in the European Council guidelines of 29 April 2017, the European Union wishes to have as close as possible a partnership with the United Kingdom. Any such agreement will have to be based on a balance of rights and obligations, and ensure a level playing field.

The European Council set out additional guidelines on the future relationship on 23 March 2018. According to these guidelines, a partnership with the United Kingdom should cover trade and economic cooperation and areas such as the fight against terrorism and international crime, and defence and foreign policy. The United Kingdom has repeatedly stated positions which limit the depth of such a future partnership. Being outside the Customs Union and the Single Market will inevitably lead to friction in trade. The European Council guidelines of 23 March 2018 therefore reflect the level of rights and obligations compatible with the position stated by the United Kingdom.

The Commission agrees with the wish expressed by the Bundesrat to have the freest possible exchange of goods, services, capital and persons, which at the same time guarantees the integrity and functioning of the Single Market. The United Kingdom has expressed its wish to leave the Single Market. There can be no "cherry picking" via sector-by-sector participation in the Single Market.

The European Union stands ready to work towards a balanced, ambitious and wide-ranging free trade agreement as long as there are sufficient guarantees for a level playing field. Such an agreement would address:

- *trade in goods, with the aim of covering all sectors and maintaining zero tariffs and no quantitative restrictions with appropriate accompanying rules of origin;*
- *appropriate customs cooperation;*
- *technical barriers to trade and sanitary and phytosanitary measures;*
- *voluntary regulatory cooperation;*
- *trade in services with market access under host state rules; and*
- *access to public procurement markets, investments and protection of intellectual property rights, including geographical indications, and other areas of interest to the European Union.*

In the overall context of the free trade agreement, existing reciprocal access to fishing waters and resources should be maintained.

To deliver for both sides, the future relationship must also include robust guarantees which ensure a level playing field. Unfair competitive advantages for the United Kingdom through undercutting levels of protection and European Union standards in areas such as competition and state aid, tax, social, environment and regulatory measures and practices must be prevented. This will require a combination of substantive rules in line with the European Union's and international standards, adequate implementation mechanisms, enforcement and dispute settlement mechanisms, as well as European Union's autonomous remedies.

In response to several aspects highlighted in the Bundesrat's Opinion, the future partnership would also cover other areas of cooperation. In line with the European Council guidelines, the future partnership:

- should include ambitious provisions on movement of natural persons and related areas such as coordination of social security and recognition of professional qualifications. In this context, options for judicial cooperation in matrimonial, parental responsibility and other related matters could be explored;*
- could achieve continued connectivity in aviation through an air transport agreement, combined with aviation safety and security agreements;*
- should also include rules on personal data protection.*

For European Union programmes such as on research and innovation, and education and culture, any United Kingdom participation should be subject to the relevant conditions for third country participation to be established in the corresponding programmes.

Law enforcement and judicial cooperation in criminal matters should constitute an important element of the future relationship of the European Union and the United Kingdom, and cover effective exchanges of information, support for operational cooperation between law enforcement authorities and judicial cooperation in criminal matters. This has to take into account that the United Kingdom will be a third country outside the Schengen acquis.

The Commission hopes that these clarifications address the issues raised by the Bundesrat and looks forward to continuing the political dialogue in the future.

Yours faithfully,

*Frans Timmermans
First Vice-President*