



## Questions and Answers on the United Kingdom's withdrawal from the European Union on 31 January 2020

Brussels, 24 January 2020

The United Kingdom is set to leave the European Union on 31 January 2020 at midnight (Brussels time). It will no longer be a Member State of the European Union. This is a decision that the EU regrets but respects.

The EU and the United Kingdom have conducted intensive negotiations to agree on the terms of the UK's withdrawal and create legal certainty once EU law ceases to apply to the UK. Throughout these negotiations, the European Commission has ensured an inclusive process, with regular meetings of the 27 EU Member States, as well as with the European Parliament and national parliaments. Additional input from EU consultative bodies and stakeholders has helped the European Commission gather evidence in the process. Unprecedented transparency was ensured throughout, as the European Commission published negotiating documents, and all other relevant documents on its website.

The result of the negotiations is the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community. It was today formally signed by the President of the European Council, Charles Michel, and the President of the European Commission, Ursula von der Leyen. Prime Minister Boris Johnson will sign the Agreement today in the United Kingdom.

This is one of the last steps in the ratification process of the Withdrawal Agreement, which will be concluded by the Council on 30 January, after the European Parliament's consent on 29 January.

### What happens on 1 February 2020?

When the United Kingdom leaves the European Union on 31 January 2020, after full ratification of the Withdrawal Agreement, we will enter into the transition period. This time-limited period was agreed as part of the Withdrawal Agreement and will last until at least 31 December 2020. Until then, it will be business as usual for citizens, consumers, businesses, investors, students and researchers in both the EU and the United Kingdom. The United Kingdom will no longer be represented in the EU institutions, agencies, bodies and offices but EU law will still apply in the United Kingdom until the end of the transition period.

The EU and the United Kingdom will use these months to agree on a new and fair partnership for the future, based on the Political Declaration agreed between the EU and the United Kingdom in October 2019.

The Commission will adopt comprehensive draft negotiating directives on 3 February. It will then be for the General Affairs Council to adopt this mandate. Formal negotiations with the United Kingdom can then begin.

As for the structure of the negotiations, this will be agreed between the EU and the United Kingdom.

### Who will lead the negotiations on the EU side?

In line with the Commission's decision of 22 October 2019, the Task Force for Relations with the United Kingdom (UKTF) is in charge of the preparation and conduct of the negotiations on the future relationship with the United Kingdom. Michel Barnier is the Head of the Task Force.

The UKTF will coordinate the Commission's work on all strategic, operational, legal and financial issues related to the relations with the United Kingdom.

The UKTF will also retain its coordinating role with other institutions, namely the European Parliament and the Council, under the direct authority of the President of the European Commission, Ursula von der Leyen.

### What is the transition period?

The transition period is a time-limited period, starting on 1 February 2020. The exact terms of the transition period are set out in Part Four of the Withdrawal Agreement. It is currently foreseen that the transition period ends on 31 December 2020. It can be extended once by up to one to two years. Such a decision must be taken jointly by the EU and United Kingdom before 1 July 2020.

## **What status will the United Kingdom have during the transition period?**

The United Kingdom will no longer be a Member State of the European Union and of the European Atomic Energy Community as of 1 February 2020. As a third country, it will no longer participate in the EU's decision-making processes. In particular:

- It will no longer participate in the EU institutions (such as the European Parliament and the Council), EU agencies, offices or other bodies.

However, all institutions, bodies, offices and agencies of the European Union continue to hold the powers conferred upon them by EU law in relation to the United Kingdom and to natural and legal persons residing or established in the United Kingdom throughout the transition period.

The Court of Justice of the European Union continues to have jurisdiction over the United Kingdom during the transition period. This also applies to the interpretation and implementation of the Withdrawal Agreement.

The transition period gives the United Kingdom time to negotiate the future relationship with the EU.

Finally, during the transition period, the United Kingdom can conclude international agreements with third countries and international organisations even in areas of EU exclusive competence, provided that these agreements do not apply during the transition period.

## **What obligations will the United Kingdom have during the transition period?**

All EU law, across all policy areas, will still be applicable to and in the United Kingdom, with the exception of provisions of the Treaties and acts, which were not binding upon and in the United Kingdom before the entry into force of the Withdrawal Agreement. The same is true for acts amending such acts.

In particular, the United Kingdom will:

- remain in the **EU Customs Union and in the Single Market** with all four freedoms, and all EU policies applying;
- continue to apply the EU's **Justice and Home Affairs policy**:[\[1\]](#) The United Kingdom may choose to exercise its right to opt-in/opt-out with regard to measures amending, replacing or building upon those EU acts the United Kingdom was bound to during its membership;
- be subject to the EU's enforcement mechanisms, such as infringement procedures;
- have to respect all **international agreements** the EU has signed, and will not be able to apply new agreements in areas of EU exclusive competence, unless authorised to do so by the EU.

## **What happens to the European Union's external action during the transition period?**

The EU's Common Foreign and Security Policy (CSDP) will apply to the United Kingdom during the transition period. For example, the United Kingdom will continue to have the possibility to participate in CSDP missions and operations. EU's restrictive measures will continue to be applicable to and in the United Kingdom. Wherever there is a need for coordination, the United Kingdom will be consulted, on a case-by-case basis.

## **What happens to fisheries during the transition period?**

The United Kingdom will be bound to the Common Fisheries Policy of the EU and the terms of relevant international agreements.

## **Can the United Kingdom conclude new international agreements with other third countries during the transition period?**

The United Kingdom will be able to take steps to prepare and establish new international arrangements of its own, including in areas of EU exclusive competence. Such agreements can only enter into force or start applying during the transition period if explicitly authorised by the EU.

## **What is the timeline of the transition period? Can it be extended?**

The transition period starts on 1 February 2020, and will end on 31 December 2020, unless a decision to extend it is taken by mutual EU-UK agreement before 1 July 2020. Such an extension can only be decided once, for a period of 1 or 2 years.

## **What is the Withdrawal Agreement?**

The Withdrawal Agreement establishes the terms of the United Kingdom's withdrawal from the EU. It ensures that the withdrawal will happen in an orderly manner, and offers legal certainty once the Treaties and EU law will cease to apply to the United Kingdom.

The Withdrawal Agreement covers the following areas:

- **Common provisions**, setting out standard clauses for the proper understanding and operation of the Withdrawal Agreement.
- **Citizens' rights**, protecting the life choices of over 3 million EU citizens in the United Kingdom, and over 1 million United Kingdom nationals in EU countries, safeguarding their right to stay and ensuring that they can continue to contribute to their communities.
- **Separation issues**, ensuring a smooth winding-down of current arrangements and providing for an orderly withdrawal (for example, to allow for goods placed on the market before the end of the transition to continue to their destination, for the protection of existing intellectual property rights including geographical indications, the winding down of ongoing police and judicial cooperation in criminal matters and other administrative and judicial procedures, the use of data and information exchanged before the end of the transition period, issues related to Euratom, and other matters).
- A **transition period**, during which the EU will treat the United Kingdom as if it were a Member State, with the exception of participation in the EU institutions and governance structures. The transition period will help in particular administrations, businesses and citizens to adapt to the withdrawal of the United Kingdom.
- The **financial settlement**, ensuring that the United Kingdom and the EU will honour all financial obligations undertaken while the United Kingdom was a member of the Union.
- The overall **governance structure** of the Withdrawal Agreement, ensuring the effective management, implementation and enforcement of the agreement, including appropriate dispute settlement mechanisms.
- A legally operative solution that avoids a hard border on the island of **Ireland**, protects the all-island economy and the Good Friday (Belfast) Agreement in all its dimensions, and safeguards the integrity of the EU Single Market.
- A protocol on the Sovereign Base Areas (SBA) in **Cyprus**, protecting the interests of Cypriots who live and work in the Sovereign Base Areas following the United Kingdom's withdrawal from the Union.
- A Protocol on **Gibraltar**, which provides for close cooperation between Spain and the United Kingdom in respect of Gibraltar on the implementation of citizens' rights provisions of the Withdrawal Agreement, and concerns administrative cooperation between competent authorities in a number of policy areas.

## **I. What is included in the Common Provisions of the Withdrawal Agreement?**

This part sets out the necessary clauses to ensure the correct understanding, operation and interpretation of the Withdrawal Agreement. It provides the basis for the correct application of the Agreement. From the outset of the negotiations, the EU has attached great importance to the fact that the provisions of the Withdrawal Agreement must clearly have the same legal effects in the United Kingdom as in the EU and its Member States.

The Agreement explicitly includes such a requirement, meaning that both Parties should ensure, in their respective legal orders, primacy and direct effect, as well as consistent interpretation with the case law of the Court of Justice of the European Union (CJEU) handed down until the end of the transition. Direct effect is mentioned explicitly with reference to all provisions of the Withdrawal Agreement, which meet the conditions of direct effect under Union law. This basically means that concerned parties can invoke the Withdrawal Agreement directly before national courts both in the United Kingdom, as well as in the EU Member States.

It is also mandatory for the purposes of interpreting the Agreement to use the methods and general principles of interpretation applicable within the EU. This covers, for instance, the obligation to interpret the concepts or provisions of Union law referred to in the Withdrawal Agreement in a manner consistent with the Charter of Fundamental Rights.

Furthermore, United Kingdom courts must abide by the principle of consistent interpretation with the CJEU case law handed down until the end of the transition period and pay due regard to CJEU case law handed down after that date.

The Agreement specifically requires the United Kingdom to ensure compliance with the above through primary domestic legislation, specifically empowering United Kingdom judicial and administrative authorities to disapply inconsistent or incompatible national law.

This section also makes clear that references to Union law in the Withdrawal Agreement shall be understood as including amendments made until the last day of the transition period. Few exceptions are foreseen, notably for specific financial settlement provisions, to avoid imposing additional obligations on the United Kingdom, and for the transition period, during which Union law will continue

to apply dynamically to and in the United Kingdom. They shall be understood also as including the acts supplementing or implementing referenced provisions.

Finally, the Agreement provides that the United Kingdom shall be disconnected at the end of the transition period from all EU databases and networks, unless specifically provided otherwise.

## **II. What has been agreed on citizens' rights?**

The right for every EU citizen and their family members to live, work or study in any EU Member State is one of the foundations of the European Union. Many EU and United Kingdom citizens have made their life choices based on rights related to free movement under Union law. Protecting the life choices of those citizens and their family members has been the first priority from the beginning of the negotiation.

The Withdrawal Agreement safeguards the right to stay and continue their current activities for over 3 million EU citizens in the United Kingdom, and over 1 million UK nationals in EU countries.

### **Who is protected by the Withdrawal Agreement?**

The Withdrawal Agreement protects those EU citizens residing in the United Kingdom, and UK nationals residing in one of the 27 EU Member States at the end of the transition period, where such residence is in accordance with EU law on free movement.

The Withdrawal Agreement also protects the family members that are granted rights under EU law (current spouses and registered partners, parents, grandparents, children, grandchildren and a person in an existing durable relationship), who do not yet live in the same host state as the Union citizen or the UK national, to join them in the future.

Children will be protected by the Withdrawal Agreement, wherever they are born before or after the United Kingdom's withdrawal, or whether they are born inside or outside the host state where the EU citizen or the UK national resides. The only exception foreseen concerns children born after the United Kingdom's withdrawal and for which a parent not covered by the Withdrawal Agreement has sole custody under the applicable family law.

As regards social security, the Withdrawal Agreement protects all those EU citizens who, at the end of the transition period, were in a situation involving both the United Kingdom and a Member State at a time. Their family members and their survivors are also protected.

### **Which rights are protected?**

The Withdrawal Agreement enables both EU citizens and UK nationals, as well as their respective family members, to continue to exercise their rights derived from Union law in each other's territories, for the rest of their lives, where those rights are based on life choices made before the end of the transition period.

Union citizens and UK nationals, as well as their respective family members, can continue to live, work or study in the host state as they currently do under the same substantive conditions as under Union law, benefiting in full from the application of the prohibition of any discrimination on grounds of nationality and of the right to equal treatment compared to host state nationals. The only restrictions that apply are those derived from Union law or as provided for under the Agreement. The Withdrawal Agreement does not prevent the United Kingdom or Member States from deciding to grant more generous rights.

### **Residence rights**

The substantive conditions of residence are and will remain the same as those under current EU law on free movement. In the case where the host state opted for a mandatory registration system, decisions for granting the new residence status under the Withdrawal Agreement will be made based on objective criteria (*i.e. no discretion*), and on the basis of the exact same conditions set out in the Free Movement Directive (Directive 2004/38/EC): Articles 6 and 7 confer a right of residence for up to five years to those who work or have sufficient financial resources and sickness insurance, Articles 16 – 18 confer a right of permanent residence to those who have resided legally for five years.

In essence, EU citizens and UK nationals meet these conditions if they are: workers or self-employed; or have sufficient resources and sickness insurance; or are family members of some other person who meets these conditions; or have already acquired the right of permanent residence and are therefore no longer subject to any conditions.

The Withdrawal Agreement does not require physical presence in the host state at the end of the transition period – temporary absences that do not affect the right of residence and longer absences that do not affect the right of permanent residence are accepted.

Those protected by the Withdrawal Agreement who have not yet acquired permanent residence rights

– if they have not lived in the host state for at least five years – will be fully protected by the Withdrawal Agreement, and will be able to continue residing in the host state and acquire permanent residence rights in the host state also after the United Kingdom's withdrawal.

EU citizens and UK nationals arriving in the host state during the transition period will enjoy the same rights and obligations under the Withdrawal Agreement as those who arrived in the host state before 30 March 2019. Their rights will be subject to the same restrictions and limitations, too. The persons concerned will no longer be beneficiaries of the Withdrawal Agreement if they are absent from their host state for more than five years.

### **Rights of workers and self-employed persons, and recognition of professional qualifications**

The persons covered by the Withdrawal Agreement will have the right to take up employment or to carry out an economic activity as a self-employed person. They will also keep all their workers' rights based on Union law. For example, they will maintain the right not to be discriminated against on grounds of nationality as regards employment, remuneration and other conditions of work and employment; the right to take up and pursue an activity in accordance with the rules applicable to the nationals of the host state, the right to employment assistance under the same conditions as the nationals of the host state, the right to equal treatment in respect of conditions of employment and work, the right to social and tax advantages, collective rights, and the right for their children to access education.

The Withdrawal Agreement will also protect the rights of frontier workers or frontier self-employed persons in the countries where they work.

Additionally, when a person covered by the Withdrawal Agreement 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. 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.

### **Social security**

The Withdrawal Agreement provides for rules on social security coordination in relation to the beneficiaries of the citizens' part of the Withdrawal Agreement, and to other persons who at the end of the transition period are in a situation involving both the United Kingdom and a Member State from a social security coordination perspective.

Those persons will maintain their right to healthcare, pensions and other social security benefits, and if they are entitled to a cash benefit from one country, they may continue to receive it even if they live in another country.

The social security coordination provisions of the Withdrawal Agreement will address the rights of EU citizens and UK nationals in social security cross-border situations involving the United Kingdom and (at least) one Member State at the end of the transition period.

Those provisions can be extended to cover "triangular" social security situations involving a Member State (or several Member States), the United Kingdom and an EFTA country (Iceland, Liechtenstein, Norway and Switzerland). This will allow the rights of EU citizens, UK nationals as well as EFTA country citizens who are in that type of triangular situations to be protected.

For this to be operational, three different agreements need to be applicable: an article in the Withdrawal Agreement protecting EFTA nationals, provisions protecting EU citizens in corresponding agreements between the United Kingdom and the EFTA countries, and provisions protecting UK nationals in corresponding agreements between the EU and the EFTA countries.

Only if the two latter agreements are concluded and applicable, the article in the Withdrawal Agreement protecting EFTA nationals will be applicable as well. The decision on the applicability of this article will be taken by the Joint Committee created by the Withdrawal Agreement.

### **Applicable procedures**

The Withdrawal Agreement leaves the choice up to the host state whether to require or not a mandatory application as a condition for the enjoyment of the rights under the Withdrawal Agreement. The United Kingdom has already expressed the intention to apply a mandatory registration system for beneficiaries of the Withdrawal Agreement. Those fulfilling the conditions will be issued with a residence document (which may be in a digital form).

Some EU Member States have indicated that they will also apply a mandatory registration system (so-called "constitutive system"). In other Member States, however, UK nationals complying with the

conditions set out in the Agreement will automatically become beneficiaries of the Withdrawal Agreement (so-called "declaratory system"). In the latter case, UK nationals will be entitled to request that the host state issues them a document attesting that they are beneficiaries of the Withdrawal Agreement.

The EU has attached particular importance to the existence of smooth and simple administrative procedures for the citizens covered by the Agreement to exercise their rights. Only what is strictly necessary and proportionate to determine whether the criteria for lawful residence have been met, can be required, and any unnecessary administrative burdens will be avoided. These requirements are particularly relevant if the host state opts for a mandatory registration system. The costs of such applications must not exceed those imposed on nationals for issuing similar documents. Those already holding a permanent residence document will be able to exchange it for the 'special status', free of charge.

Administrative procedures for applications for the 'special status' that the United Kingdom or Member States will set up under the Withdrawal Agreement must also respect the above-mentioned requirements. Errors, involuntary omissions or non-respect of the deadline to submit the application have to be dealt with under a proportionate approach. The overall objective is to ensure that the process is as clear, simple and non-bureaucratic as possible for the citizens concerned.

### **Implementation and monitoring of the citizens' rights part of the Withdrawal Agreement**

The text of the Withdrawal Agreement on citizens' rights is very precise, so that it can be relied upon directly by EU citizens in British courts, and by UK nationals in the courts of the Member States. Any national law provisions that are not consistent with the provisions of the Withdrawal Agreement will have to be disapplied.

UK courts will be able to ask for preliminary rulings from the Court of Justice of the EU on the interpretation of the citizens' part of the Withdrawal Agreement for a period of eight years following the end of the transition period. For questions related to the application for the UK settled status, that eight-year period has started running on 30 March 2019.

The implementation and application of citizens' rights in the EU will be monitored by the Commission acting in conformity with the Union Treaties. In the United Kingdom, this role will be fulfilled by an independent national authority. This Authority will be granted equivalent powers to those of the European Commission to receive and investigate complaints from Union citizens and their family members, to conduct inquiries on its own initiative, and to bring legal actions before UK courts concerning alleged breaches by the administrative authorities of the UK of their obligations under the citizens' rights part of the Withdrawal Agreement.

The Authority and the European Commission shall inform each other annually through the Joint Committee established by the Withdrawal Agreement of the measures taken to implement and enforce the citizens' rights under the Agreement. Such information should include in particular the number and nature of complaints treated and any follow up legal action taken.

### **III. What has been agreed on separation issues?**

In agreement with the European Council (Article 50) guidelines, the Withdrawal Agreement, where needed, seeks to ensure an orderly withdrawal and provides the detailed provisions that are needed for the winding down of ongoing processes and arrangements in a number of policy areas.

#### **Goods placed on the market**

The Withdrawal Agreement provides that goods lawfully placed on the market in the EU or the United Kingdom before the end of the transition period may continue to freely circulate in and between these two markets, until they reach their end-users, without any need for product modifications or re-labelling.

This means that goods that will still be in the distribution chain at the end of the transition period can reach their end-users in the EU or the United Kingdom without having to comply with any additional product requirements. Such goods may also be put into service (where provided in the applicable provisions of Union law), and will be subject to continued oversight by the market surveillance authorities of the Member States and the United Kingdom.

By way of exception, the movement of live animals and animal products between the Union market and the UK market will, as from the end of the transition period, be subject to the applicable rules of the Parties on imports and sanitary controls at the border, regardless of whether they were placed on the market before the end of the transition period.

This is necessary in view of the high sanitary risks associated with such products, and the need for effective veterinary controls when these products, as well as live animals, enter the Union market or the UK market.

## **Minimising disruption in distribution chains at the end of the transition period**

The Withdrawal Agreement ensures that a good that has already been placed on the market can continue to be made available on the UK market and the EU Single Market after the end of the transition period. This applies to all goods within the scope of the freedom of movement of goods as set out in the Treaty on the Functioning of the European Union, such as: agricultural products, consumer products (such as toys, textiles, cosmetics), health products (pharmaceuticals, medical devices), and industrial products such as motor vehicles, marine equipment, machinery, lifts, electrical equipment, construction products, and chemicals.

However, live animals and animal products, such as animal-derived food, will, as from the end of the transition period, have to comply with the EU or the UK's rules on imports from third countries.

## **Ongoing movements of goods from a customs perspective**

For customs, VAT and excise purposes, the Withdrawal Agreement ensures that movements of goods which commence before the UK's withdrawal from the EU Customs Union should be allowed to complete their movement under the Union rules which were in place at the start of the movement. After the end of the transition period, the EU rules will continue to apply for cross-border transactions that started before the transition period in terms of VAT rights and obligations for taxable persons, such as reporting obligations, payment and refund of VAT. The same approach applies for ongoing administrative cooperation, which, together with exchanges of information that started before withdrawal, should be completed under the applicable EU rules.

## **Protection of intellectual property rights**

Under the Withdrawal Agreement, the protection afforded to existing EU unitary intellectual property rights (trademarks, registered design rights, plant variety rights etc.) on the territory of the United Kingdom will be maintained. All such protected rights will have to be protected by the United Kingdom as national intellectual property rights. The conversion of the EU right into a UK right for the purpose of protection in the United Kingdom will be automatic, without any re-examination and will be free of cost. This will ensure the respect of existing property rights in the United Kingdom and provide for the requisite certainty in respect of users and right holders.

The EU and the United Kingdom have also agreed that the stock of existing EU-approved geographical indications (GIs) will be legally protected by the Withdrawal Agreement unless and until a new agreement applying to the stock of geographical indications is concluded in the context of the future relationship. Such geographical indications are existing intellectual property rights in the United Kingdom and the EU today.

The United Kingdom will guarantee at least the same level of protection for the existing stock of geographical indications that currently applies within the EU. This protection will be enforced through domestic UK legislation.

EU-approved geographical indications bearing names of UK origin (e.g. Welsh Lamb) remain unaffected within the EU and therefore continue to be protected in the EU.

## **More than 3,000 geographical indications to remain protected in the United Kingdom**

More than 3,000 geographical indications, such as Parma ham, Champagne, Bayerisches beer, Feta cheese, Tokaj wine, Pastel de Tentúgal, Vinagre de Jerez, are today protected under EU law as *sui generis* intellectual property rights for the whole EU, including the United Kingdom. The withdrawal of the United Kingdom from the European Union will not lead to any loss of those intellectual property rights. The Agreement on geographical indications covers protected designation of origin, protected geographical indications, traditional specialities that are guaranteed and traditional terms for wine. This agreement will also benefit the geographical indications bearing a name of UK origin (e.g. Welsh lamb): they will also obtain protection under UK law in the United Kingdom and maintain the existing protection under EU law in the EU.

Geographical indications have an important value for local communities, both economically and culturally. Each indication protected in the EU represents an agricultural, food or drink product with deep local roots, whose protection under EU law has generated significant value for its producers and the local community. The quality, reputation and characteristics of the products are attributable to their geographical origin. Their protection helps maintaining the authenticity of those products, supports rural development and promotes job opportunities in production, processing and other related services.

## **Ongoing police and judicial cooperation in criminal matters**

The Withdrawal Agreement provides for rules on winding down ongoing police and judicial proceedings in criminal matters involving the United Kingdom. Any such proceedings should still be completed according to the same EU rules.

### **Examples: how will police and judicial cooperation work in practice?**

A criminal arrested by the United Kingdom on the basis of the European Arrest Warrant should be surrendered to the Member State that was searching for this person still according to the European Arrest Warrant rules.

Similarly, a joint investigation team set up by the United Kingdom and other Member States on the basis of the EU rules should continue its investigations.

In case an authority from an EU Member State receives a UK request to confiscate proceeds of crime before the end of the transition period, this should be executed according to the applicable EU rules.

### **Ongoing judicial cooperation in civil and commercial matters**

The Withdrawal Agreement provides that EU law on international jurisdiction in cross-border civil disputes will continue to apply to legal proceedings instituted before the end of the transition period, and that relevant EU law on recognition and enforcement of judgments will continue to apply in regard to judgments in these proceedings.

### **How will ongoing judicial proceedings between companies be dealt with after the end of the transition period?**

By way of example, at the end of the transition period litigation may be pending between a Dutch company and a UK company before a UK court.

The responsibility of the UK court for hearing the case is established by EU law. According to the Withdrawal Agreement, after the end of the transition period, the UK court remains competent for hearing that case on the basis of EU law.

In another example, at the end of the transition period, a company may be in legal proceedings against a UK company before a French court.

According to the Withdrawal Agreement, after the end of the transition period, EU law on the recognition and enforcement of judgements continues to apply to the recognition and enforcement, in the United Kingdom, of the judgement rendered by the French court.

### **Use of data and information exchanged before the end of the transition period**

During its EU membership, private and public bodies in the United Kingdom received personal data from companies and administrations in other Member States.

The Withdrawal Agreement provides that, after the end of the transition period, the United Kingdom has to continue applying the EU data protection rules to this "stock of personal data", until the Commission has established, by way of a formal, so-called adequacy decision, that the personal data protection regime of the United Kingdom provides data protection safeguards which are "essentially equivalent" to those in the EU.

The formal adequacy decision by the Commission has to be preceded by an assessment of the data protection regime applicable in the United Kingdom. In the case where the adequacy decision was annulled or repealed, the United Kingdom shall ensure that data received will be subject to "essentially equivalent" standard of protection to that under the EU data protection rules.

### **Ongoing public procurement**

The Withdrawal Agreement provides legal certainty on public procurement procedures pending before the end of the transition period, which should be completed in accordance with EU law, hence under the same procedural and substantive rules as the ones under which they were launched.

### **Euratom**

According to the Withdrawal Agreement and in regard of its withdrawal from Euratom and the safeguards it warrants, the United Kingdom accepted its sole responsibility for the continued performance of nuclear safeguards and its international commitment to a future regime that provides coverage and effectiveness equivalent to existing Euratom arrangements.

Euratom will transfer to the United Kingdom the ownership of equipment and other property in the United Kingdom related to safeguards for which it will be compensated at book value.

The Union also notes that the withdrawal means Euratom's international agreements will no longer apply to the United Kingdom and that the United Kingdom needs to engage with international partners in that context.

The right of property of Special Fissile Material held in the United Kingdom by UK entities will be transferred from Euratom to the United Kingdom. Regarding Special Fissile Material held in the United Kingdom by EU27 undertakings, the United Kingdom has accepted that Euratom rights should continue (e.g. right to approve future sale or transfer of these materials). Both sides agree that ultimate



responsibility for spent fuel and radioactive waste remains with the State where it was produced, in line with international conventions and European Atomic Energy Community legislation.

### **Ongoing Union judicial and administrative procedures**

Under the Withdrawal Agreement, the Court of Justice of the European Union (CJEU) will remain competent for judicial procedures concerning the United Kingdom registered at the CJEU before the end of the transition period, and those procedures should continue until a final binding judgment is given in accordance with Union rules. All stages of proceedings are concerned, including appeals or referrals back to the General Court. This allows for pending cases to reach completion in an orderly way.

While the above solves the issue of pending cases, it will also be possible to bring certain cases concerning the United Kingdom before the CJEU for a resolution according to Union rules after the end of the transition period.

The Agreement provides that, within four years from the end of the transition period, the Commission may bring before the CJEU new infringement cases against the United Kingdom, concerning breaches of Union law which occurred before the end of the transition period.

Within the same period, the United Kingdom may also be brought before the CJEU for non-compliance with an administrative decision of a Union institution or body taken before the end of the transition period or, for certain procedures specifically identified in the Agreement, after the end of the transition period.

The CJEU jurisdiction for these new cases is consistent with the principle that the termination of a Treaty shall not affect any right, obligation or legal situation of the parties created prior to its termination. This ensures legal certainty and a level playing field between the EU Member States and the United Kingdom, with respect to situations occurring when the United Kingdom was under Union law obligations.

For what concerns administrative procedures, the Withdrawal Agreement provides that pending procedures shall continue to be handled according to Union rules. This concerns procedures on issues such as competition and state aid, which were initiated before the end of the transition period by institutions, offices and agencies of the Union, and which concern the United Kingdom or UK natural or legal persons.

In respect of aid granted before the end of the transition period, for a period of four years after the end of the transition period, the European Commission shall be competent to initiate new administrative procedures on State aid concerning the United Kingdom. The Commission shall be competent after the end of that four year period for procedures initiated before the end of that period.

The European Anti-Fraud Office (OLAF) shall be competent to initiate new investigations for a period of four years after the end of transition period for facts that occurred before the end of the transition, or for customs debt arising after the end of the transition period. The possibility to launch such new administrative procedures is consistent with the idea that the United Kingdom remains fully bound by Union law until the end of the transition period and therefore compliance and a level playing field with the other Member States should be ensured throughout the whole period.

### **Functioning of the Union's institutions, agencies and bodies**

According to the Withdrawal Agreement, the current Union privileges and immunities should remain in application for activities that took place before the end of the transition period. Both parties will continue to ensure compliance with obligations of professional secrecy. Classified information and other documents obtained whilst the United Kingdom was a Member State should retain the same level of protection as before the end of the transition period.

### **V. What has been agreed regarding the financial settlement?**

The European Council guidelines of 29 April 2017 requested a single financial settlement covering the EU budget, the termination of the United Kingdom's membership of all bodies or institutions established by the Treaties and the participation of the United Kingdom in specific funds and facilities related to the Union policies. The financial settlement agreed covers all these points and settles the accounts.

According to the Withdrawal Agreement, the United Kingdom will honour its share of financing all the obligations undertaken while it was a member of the Union, in relation to the EU budget (and in particular the Multiannual Financial Framework 2014-2020, including for the payments that will happen after the end of the transition period in relation to the closure of the programmes), the European Investment Bank, the European Central Bank, the Facility for Refugees in Turkey, EU Trust Funds, Council agencies and also the European Development Fund.

Against this backdrop, the Commission and the United Kingdom negotiators have agreed on a fair methodology to calculate the United Kingdom's obligations in the context of its withdrawal.

The principles underlying the agreed methodology are that:

- no Member State should pay more or receive less because of the United Kingdom's withdrawal from the Union;
- the United Kingdom should pay its share of the commitments taken during its membership; and
- the United Kingdom should neither pay more nor earlier than if it had remained a Member State. This implies in particular that the United Kingdom should pay based on the actual outcome of the budget, i.e. adjusted to implementation.

### **How much will the United Kingdom pay?**

The objective of the negotiations was to settle all obligations that will exist on the date of the United Kingdom's withdrawal from the European Union. Therefore, the agreement is not about the amount of the United Kingdom's financial obligation, but about the methodology for calculating it.

Both sides agreed on an objective methodology which allows honouring all joint commitments vis-à-vis the Union budget (2014-2020), including outstanding commitments at the end of 2020 ("Reste à liquider") and liabilities which are not matched by assets.

The United Kingdom will also continue to guarantee the loans made by the Union before its withdrawal and will receive back its share of any unused guarantees and subsequent recoveries following the triggering of the guarantees for such loans.

In addition, the United Kingdom agreed to honour all outstanding commitments of the EU Trust Funds and the Facility for Refugees in Turkey. The United Kingdom will remain party to the European Development Fund and will continue to contribute to the payments necessary to honour all commitments related to the current 11th EDF as well as the previous Funds.

The United Kingdom's paid-in capital in the European Central Bank will be reimbursed to the Bank of England and the Bank of England will cease to be a member of the European System of Central Banks (ESCB)\*. In relation to the European Investment Bank, the UK paid-in capital will be reimbursed in twelve annual instalments but will be replaced by a (additional) callable guarantee. The United Kingdom will maintain a guarantee of the stock of outstanding EIB's operations from the date of withdrawal until the end of their amortisation.

The United Kingdom will also maintain the EIB privileges and immunities (protocol 5 and 7 of the Treaty) for the stock of operations existing at the date of withdrawal.

### **What does this mean for EU projects & programmes?**

All EU projects and programmes under the current Multiannual Financial Framework (2014-2020) will be financed as foreseen. This provides certainty to all beneficiaries of EU programmes, including UK beneficiaries, who will continue to benefit from EU programmes until their closure, but not from financial instruments approved after withdrawal.

### **How do you calculate the United Kingdom's share?**

The United Kingdom will contribute to 2019 and 2020 budget and its share will be a percentage calculated as if it had remained a Member State. For the obligations post-2020 the share will be established as a ratio between the own resources provided by the United Kingdom in the period 2014-2020 and the own resources provided by all Member States (including the United Kingdom) in the same period. This means that the British rebate is included in the United Kingdom's share.

### **What is the United Kingdom's share in EU wealth (assets – buildings and cash)?**

EU assets belong to the EU as the EU has its own legal personality and no Member State has any rights to EU assets. However, the United Kingdom part of the EU liabilities will be reduced by corresponding assets, because there is no need for financing liabilities which are covered by assets, so there is no need for the United Kingdom to finance them.

### **How long will the United Kingdom be paying for?**

The United Kingdom will be paying until the last long-term liability has been paid. The United Kingdom will not be required to pay sooner than if it had remained a member of the EU.

### **Will the United Kingdom pay the pension liabilities of the EU civil service?**

The United Kingdom will pay its share of the financing of pensions and other employee benefits accumulated by end-2020. This payment will be made when it falls due as it is the case for the remaining Member States.

## **What would be the financial implications of an extension of the transition period?**

During any extension of the transition period, the United Kingdom will be treated as a third country for the purposes of the future Multiannual Financial Framework as of 2021. However, extending the transition period will require a financial contribution from the United Kingdom to the EU budget which will have to be decided by the Joint Committee established for the governance of the Withdrawal Agreement. This reflects the fact that an extension of the transition period means that the United Kingdom continues to participate fully in the Single Market with all its benefits.

## **VI. What has been agreed on the governance of the Withdrawal Agreement?**

The Withdrawal Agreement includes the institutional arrangements to ensure the effective management, implementation and enforcement of the agreement, including appropriate dispute settlement mechanisms.

The EU and the United Kingdom have agreed on the direct effect and the supremacy of the entire Withdrawal Agreement under the same conditions as those applicable in Union law, as well as the fact that the Court of Justice of the European Union (CJEU) is the ultimate arbiter for matters related to EU law or Union law concepts. This is a necessary guarantee to make sure that Union law is applied in a consistent manner.

Important parts of the Withdrawal Agreement are built on Union law, which is used to make sure that the withdrawal happens in an orderly manner. Therefore, it is all the more important that the same legal effects, methods and principles of interpretation as for Union law apply.

In the event of a dispute on the interpretation of the Withdrawal Agreement, an initial political consultation would take place in a Joint Committee. If no solution is found, either party can refer the dispute to binding arbitration. In those cases where the dispute involves a question of EU law, the arbitration panel has an obligation to refer the question to the CJEU for a binding ruling. In addition, each party may request that the panel refers a question to the CJEU. In such cases, the arbitration panel must refer the question to the CJEU, unless it considers that the dispute in reality does not touch on EU law. It must give the reasons for its assessment and the parties may ask for a review of its assessment.

The decision of the arbitration panel will be binding on the Union and the United Kingdom. In case of non-compliance, the arbitration panel may impose a lump sum or penalty payment to be paid to the aggrieved party.

Finally, if compliance is still not restored, the Agreement allows parties to suspend proportionately the application of the Withdrawal Agreement itself, except for citizens' rights, or parts of other agreements between the Union and the United Kingdom. Such suspension is subject to review by the arbitration panel.

## **VII. Protocol on Ireland / Northern Ireland**

The Protocol on Ireland / Northern Ireland is a fully legally operative solution that that avoids a hard border on the island of Ireland, protects the all-island economy and the Good Friday (Belfast) Agreement in all its dimensions, and safeguards the integrity of the Single Market. It will become applicable at the end of the transition period.

### **CUSTOMS AND REGULATIONS**

#### **Does this mean that Northern Ireland will remain in the EU's Single Market for goods?**

Northern Ireland will remain aligned to a limited set of rules related to the EU's Single Market in order to avoid a hard border: legislation on goods, sanitary rules for veterinary controls ("SPS rules"), rules on agricultural production/marketing, VAT and excise in respect of goods, and state aid rules.

#### **How can Northern Ireland leave the EU's Customs Union and still avoid a customs border on the island of Ireland?**

Northern Ireland remains part of the customs territory of the United Kingdom. It will therefore be able to benefit from future Free Trade Agreements (FTAs) that the United Kingdom may conclude with third countries, provided that this does not prejudice the application of the Protocol. Future UK FTAs may provide that goods produced in Northern Ireland have access to third countries on the exact same conditions as goods produced in other parts of the United Kingdom.

The Union's Customs Code will apply to all goods entering Northern Ireland. This avoids any customs checks and controls on the island of Ireland.

As far as customs duties are concerned, EU customs duties will apply to goods entering Northern Ireland if those goods risk entering the EU's Single Market. No customs duties will be payable, however, if goods entering Northern Ireland from the rest of the United Kingdom are not at risk of

entering the EU's Single Market.

This applies to all goods that are not subject to further processing and that meet the criteria that the Joint Committee will establish in order to determine the risk of the onward movement of that good, taking into account the specific circumstances in Northern Ireland. For goods from third countries not considered to be at risk, the customs duties applicable in Northern Ireland will be the same as in the other parts of the United Kingdom.

The Joint Committee will establish, by the end of the transition period, the criteria for the above risk assessments and may amend the criteria during their application. Such criteria shall take into consideration issues such as the final destination of goods and value or risks of smuggling.

The United Kingdom may reimburse duties levied according to Union law in case the UK duty is lower, subject to EU state aid rules.

No duties will be payable for a number of specific cases, such as moving personal property, consignments of negligible value or sent by one individual to another.

### **Does this protect the EU's Single Market?**

The Protocol on Ireland / Northern Ireland is a fully legally operative solution that avoids a hard border on the island of Ireland, protects the all-island economy and the Good Friday (Belfast) Agreement in all its dimensions, and safeguards the integrity of the Single Market. Northern Ireland will continue to apply the Union's Customs Code and will remain aligned to relevant rules of the Single Market needed to avoid a hard border on the island of Ireland.

The necessary checks and controls will take place on goods entering Northern Ireland from the rest of the United Kingdom, including for example, Border Inspection Posts to ensure that the necessary sanitary and phyto-sanitary ("SPS") controls are carried out.

UK authorities will implement and apply the provisions of Union law that the Protocol makes applicable in the United Kingdom in respect of Northern Ireland. Therefore, all checks will be carried out by UK authorities, with appropriate supervisory and enforcement mechanisms for the EU.

### **Will Northern Ireland be able to benefit from future UK FTAs?**

Northern Ireland will remain part of the customs territory of the United Kingdom. Nothing in the Protocol on Ireland / Northern Ireland prevents the United Kingdom from including Northern Ireland in the territorial scope of any of its possible future Free Trade Agreements, provided that those agreements do not prejudice the application of the Protocol.

This means that Northern Ireland would continue to be able to benefit from future UK FTAs in, for example, services and investment but also the access of its goods to third country markets. Northern Ireland will be able to benefit from the import of goods that are not at risk of entering the EU's Single Market either as goods by themselves or after having been subject to commercial processing.

### **What about VAT?**

In order to avoid a hard border on the island of Ireland, while protecting the integrity of the Single Market, the EU's VAT rules for goods will continue to apply in Northern Ireland.

The UK government's Revenue and Customs department (HMRC) will remain responsible for applying VAT legislation, including the collection of VAT, and the setting of VAT rates. The United Kingdom will keep revenues accruing from this tax. In addition, VAT exemptions and reduced rates applied in Ireland may also be applied in Northern Ireland

### **What is the consent mechanism?**

The EU and the United Kingdom have agreed to create a new mechanism on "consent", which will give the Northern Ireland Assembly a decisive voice on the long-term application of relevant EU law in Northern Ireland, based on intense discussions between Ireland and the United Kingdom. The Commission has been in constant and close contact with the Irish government on this point.

This consent mechanism concerns the substantive issues of regulatory alignment on goods and customs, the Single Electricity Market, VAT and state aid.

In practice, this means that four years after the end of the transition period, the Assembly can by simple majority give consent to the continued application of relevant Union law, or vote to discontinue its application, in which case the United Kingdom would notify the EU. In such a case, the Protocol will cease to apply two years later.

Every four years thereafter, the Assembly can vote on the continued application of relevant Union law. In case a vote of the Assembly gathers cross-community support for the continued application of relevant Union law, the next vote can only take place 8 years thereafter.

## **How will an agreement on the future relationship relate to the Protocol?**

Unlike earlier versions, the Protocol agreed in October 2019 and which now forms part of the Withdrawal Agreement is not a backstop. It was conceived as a stable and lasting solution. It must therefore be expected that the Protocol will apply alongside any agreement on the future relationship.

Nevertheless, it is clear that the terms of the future trading relationship between the EU and the United Kingdom – in terms of the shared ambition to have zero customs duties and quotas between the EU and the United Kingdom – will have some bearing on the practical application of the Protocol.

## **VIII. What has been agreed regarding the Sovereign Base Areas in Cyprus?**

As outlined in the Joint Statement of 19 June 2018, both the EU and the United Kingdom committed to establishing appropriate arrangements for the Sovereign Base Areas (SBAs), "in particular with the aim to protect the interests of Cypriots who live and work in the SBAs following the UK's withdrawal from the Union, in full respect of the rights and obligations under the Treaty of Establishment."

The EU and the United Kingdom have agreed on the terms of a Protocol which will give effect to this and which is annexed to the Withdrawal Agreement.

The aim of the Protocol is to ensure that EU law, in the areas stipulated in Protocol 3 to Cyprus's Act of Accession, will continue to apply in the Sovereign Base Areas, with no disruption or loss of rights especially for the approximately 11,000 Cypriot civilians living and working in the areas of the SBAs. This applies to a number of policy areas such as taxation, goods, agriculture, fisheries and veterinary and phytosanitary rules.

The Protocol confers responsibility on the Republic of Cyprus for the implementation and enforcement of Union law in relation to most of the areas covered, with the exception of security and military affairs.

A specialised committee is also being established to oversee the application of this Protocol.

## **IX. What has been agreed regarding Gibraltar?**

The European Council guidelines of 29 April 2017 set out that "*no agreement between the EU and the United Kingdom may apply to the territory of Gibraltar without the agreement between the Kingdom of Spain and the United Kingdom.*"

Bilateral negotiations between Spain and the United Kingdom have now concluded. A Protocol referring to these bilateral arrangements is annexed to the Withdrawal Agreement.

The Protocol forms a package with bilateral memoranda of understanding between Spain and United Kingdom in respect of Gibraltar. This concerns bilateral cooperation on citizens' rights, tobacco and other products, environment, police and customs matters, as well as a bilateral agreement in relation to taxation and the protection of financial interests.

On citizens' rights, the Protocol establishes the basis for administrative cooperation between the competent authorities for the implementation of the Withdrawal in relation to people living in the Gibraltar area, and in particular frontier workers.

On air transport law, it establishes the possibility, in case of an agreement between Spain and United Kingdom on the use of the Gibraltar airport, to make applicable to Gibraltar during the transition the EU legislation previously not applicable there.

On fiscal matters and protection of financial interests, the Protocol establishes the basis for administrative cooperation between the competent authorities for achieving full transparency in tax matters, fighting against fraud, smuggling, and money laundering. The United Kingdom also commits that international standards in this area are complied with in Gibraltar. In relation to tobacco, the United Kingdom commits to ratify certain conventions in respect of Gibraltar and to put in place before 30 June 2020 a system of traceability and security measures on cigarettes. In respect of alcohol and petrol, the United Kingdom commits to ensure that a tax system which aims at preventing fraud is in force in Gibraltar.

On environment protection and fishing and cooperation in police and customs matters, the Protocol establishes the basis for administrative cooperation between the competent authorities.

A specialised committee is also established for overseeing the application of this Protocol.

As regards the territorial scope of the future partnership, it is recalled that in the statements to the minutes of the European Council meeting of 25 November 2018, a declaration of the European Council and of the Commission has been included.\*\*

## **What is in the Political Declaration?**

The Political Declaration accompanies the Withdrawal Agreement, and sets out the framework for the

future relationship between the European Union and the United Kingdom.

It establishes the parameters of an ambitious, broad, deep and flexible partnership across trade and economic cooperation with a comprehensive and balanced Free Trade Agreement at its core, law enforcement and criminal justice, foreign policy, security and defence and wider areas of cooperation.

The Declaration also states that safeguards on a level playing field should ensure a future relationship based on open and fair competition.

The precise nature of commitments will be commensurate with the ambition of the future relationship and take into account the economic connectedness and geographic proximity of the United Kingdom. This necessitates safeguards to ensure a level playing field that upholds the common high standards applicable at the end of the transition period in the areas of state aid, competition, social and employment standards, environment, climate change and relevant tax matters, in order to avoid unfair competitive advantages to either the EU or the United Kingdom.

There will have to be appropriate mechanisms for enforcement domestically as well as for dispute settlement between the EU and the United Kingdom.

### **For more information**

[Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community and Political declaration setting out the framework for the future relationship between the European Union and the United Kingdom \(12 November 2019\)](#)

More information is available on [our website](#)

[1] With regard to the European Arrest Warrant, a Member State may refuse to surrender its own nationals to the United Kingdom in view of fundamental principles of its national law (Art.185 of the Withdrawal Agreement).

\* corr. 27/01/2020 at 17:25

\*\* corr. 27/01/2020 at 17:25

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