European Council

Brussels, 29 April 2017
(OR. en)

EUCO XT 20004/17

BXT 10
CO EUR 5
CONCL 2

COVER NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Special meeting of the European Council (Art. 50) (29 April 2017) - Guidelines

Delegations will find attached the guidelines adopted by the European Council[1] at the above meeting, following the United Kingdom's notification under Article 50 TEU.

1 Following the notification under Article 50 TEU, the member of the European Council representing the withdrawing Member State shall not participate in the discussions of the European Council or in decisions concerning it.

GUIDELINES FOLLOWING THE UNITED KINGDOM'S NOTIFICATION UNDER ARTICLE 50 TEU

On 29 March 2017, the European Council received the notification by the United Kingdom of its intention to withdraw from the European Union and Euratom. This allows for the opening of negotiations as foreseen by the Treaty.

European integration has brought peace and prosperity to Europe and allowed for an unprecedented level and scope of cooperation on matters of common interest in a rapidly changing world. Therefore, the Union's overall objective in these negotiations will be to preserve its interests, those of its citizens, its businesses and its Member States.

The United Kingdom's decision to leave the Union creates significant uncertainties that have the potential to cause disruption, in particular in the United Kingdom but also, to a lesser extent, in other Member States. Citizens who have built their lives on the basis of rights flowing from the British membership of the EU face the prospect of losing those rights. Businesses and other stakeholders will lose the predictability and certainty that come with EU law. It will also have an impact on public authorities. With this in mind, we must proceed according to a phased approach giving priority to an orderly withdrawal. National authorities, businesses and other stakeholders should take all necessary steps to prepare for the consequences of the United Kingdom's withdrawal.

Throughout these negotiations the Union will maintain its unity and act as one with the aim of reaching a result that is fair and equitable for all Member States and in the interest of its citizens. It will be constructive and strive to find an agreement. This is in the best interest of both sides. The Union will work hard to achieve that outcome, but it will prepare itself to be able to handle the situation also if the negotiations were to fail.

These guidelines define the framework for negotiations under Article 50 TEU and set out the overall positions and principles that the Union will pursue throughout the negotiation. In this context, the European Council welcomes the resolution of the European Parliament of 5 April 2017. The European Council will remain permanently seized of the matter, and will update these guidelines in the course of the negotiations as necessary. Negotiating directives will be adjusted accordingly.

I. CORE PRINCIPLES

1. The European Council will continue to base itself on the principles set out in the statement of Heads of State or Government and of the Presidents of the European Council and the European Commission on 29 June 2016. It reiterates its wish to have the United Kingdom as a close partner in the future. It further reiterates that any agreement with the United Kingdom will have to be based on a balance of rights and obligations, and ensure a level playing field. Preserving the integrity of the Single Market excludes participation based on a sector-by-sector approach. A non-member of the Union, that does not live up to the same obligations as a member, cannot have the same rights and enjoy the same benefits as a member. In this context, the European Council welcomes the recognition by the British Government that the four freedoms of the Single Market are indivisible and that there can be no "cherry picking". The Union will preserve its autonomy as regards its decision-making as well as the role of the Court of Justice of the European Union.

2. Negotiations under Article 50 TEU will be conducted in transparency and as a single package. In accordance with the principle that nothing is agreed until everything is agreed, individual items cannot be settled separately. The Union will approach the negotiations with unified positions, and will engage with the United Kingdom exclusively through the channels set out in these guidelines and in the negotiating directives. So as not to undercut the position of the Union, there will be no separate negotiations between individual Member States and the United Kingdom on matters pertaining to the withdrawal of the United Kingdom from the Union.

3. The core principles set out above should apply equally to the negotiations on an orderly withdrawal, to any preliminary and preparatory discussions on the framework for a future relationship, and to any form of transitional arrangements.

II. A PHASED APPROACH TO NEGOTIATIONS

4. On the date of withdrawal, the Treaties will cease to apply to the United Kingdom, to those of its overseas countries and territories currently associated to the Union, and to territories for whose external relations the United Kingdom is responsible. The main purpose of the negotiations will be to ensure the United Kingdom's orderly withdrawal so as to reduce uncertainty and, to the extent possible, minimise disruption caused by this abrupt change.

   To that effect, the first phase of negotiations will aim to:

   – provide as much clarity and legal certainty as possible to citizens, businesses, stakeholders and international partners on the immediate effects of the United Kingdom's withdrawal from the Union;

   – settle the disentanglement of the United Kingdom from the Union and from all the rights and obligations the United Kingdom derives from commitments undertaken as Member State.

   The European Council will monitor progress closely and determine when sufficient progress has been achieved to allow negotiations to proceed to the next phase.

5. While an agreement on a future relationship between the Union and the United Kingdom as such can only be finalised and concluded once the United Kingdom has become a third country, Article 50 TEU requires to take account of the framework for its future relationship with the Union in the arrangements for withdrawal. To this end, an overall understanding on the framework for the future relationship should be identified during a second phase of the negotiations under Article 50 TEU. We stand ready to engage in preliminary and preparatory discussions to this end in the context of negotiations under Article 50 TEU, as soon as the European Council decides that sufficient progress has been made in the first phase towards reaching a satisfactory agreement on the arrangements for an orderly withdrawal.

6. To the extent necessary and legally possible, the negotiations may also seek to determine transitional arrangements which are in the interest of the Union and, as appropriate, to provide for bridges towards the foreseeable framework for the future relationship in the light of the progress made. Any such transitional arrangements must be clearly defined, limited in time, and subject to effective enforcement mechanisms. Should a time-limited prolongation of Union acquis be considered, this would require existing Union regulatory, budgetary, supervisory, judiciary and enforcement instruments and structures to apply.

7. The two year timeframe set out in Article 50 TEU ends on 29 March 2019.

III. AGREEMENT ON ARRANGEMENTS FOR AN ORDERLY WITHDRAWAL

8. The right for every EU citizen, and of his or her family members, to live, to work or to study in any EU Member State is a fundamental aspect of the European Union. Along with other rights provided under EU law, it has shaped the lives and choices of millions of people. Agreeing reciprocal guarantees to safeguard the status and rights derived from EU law at the date of withdrawal of EU and UK citizens, and their families, affected by the United Kingdom's withdrawal from the Union will be the first priority for the negotiations. Such guarantees must be effective, enforceable, non-discriminatory and comprehensive, including the right to acquire permanent residence after a continuous period of five years of legal residence. Citizens should be able to exercise their rights through smooth and simple administrative procedures.

9. Also, the United Kingdom leaving the Union will impact EU businesses trading with and operating in the United Kingdom and UK businesses trading with and operating in the Union. Similarly, it may affect those who have entered into contracts and business arrangements or take part in EU-funded programmes based on the assumption of continued British EU membership. Negotiations should seek to prevent a legal vacuum once the Treaties cease to apply to the United Kingdom and, to the extent possible, address uncertainties.

10. A single financial settlement - including issues resulting from the MFF as well as those related to the European Investment Bank (EIB), the European Development Fund (EDF) and the European Central Bank (ECB) - should ensure that the Union and the United Kingdom both respect the obligations resulting from the whole period of the UK membership in the Union. The settlement should cover all commitments as well as liabilities, including contingent liabilities.

11. The Union has consistently supported the goal of peace and reconciliation enshrined in the Good Friday Agreement in all its parts, and continuing to support and protect the achievements, benefits and commitments of the Peace Process will remain of paramount importance. In view of the unique circumstances on the island of Ireland, flexible and imaginative solutions will be required, including with the aim of avoiding a hard border, while respecting the integrity of the Union legal order. In this context, the Union should also recognise existing bilateral agreements and arrangements between the United Kingdom and Ireland which are compatible with EU law.

12. The Union should agree with the United Kingdom on arrangements as regards the Sovereign Base Areas of the United Kingdom in Cyprus and recognise in that respect bilateral agreements and arrangements between the Republic of Cyprus and the United Kingdom which are compatible with EU law, in particular as regards safeguarding rights and interests of those EU citizens resident or working in the Sovereign Base Areas.

13. Following the withdrawal, the United Kingdom will no longer be covered by agreements concluded by the Union or by Member States acting on its behalf or by the Union and its Member States acting jointly. The Union will continue to have its rights and obligations in relation to international agreements. In this respect, the European Council expects the United Kingdom to honour its share of all international commitments contracted in the context of its EU membership. In such instances, a constructive dialogue with the United Kingdom on a possible common approach towards third country partners, international organisations and conventions concerned should be engaged.

14. The withdrawal agreement would also need to address potential issues arising from the withdrawal in other areas of cooperation, including judicial cooperation, law enforcement and security.

15. While the future location of the seats of EU agencies and facilities located in the United Kingdom is a matter for the 27 Member States to settle rapidly, arrangements should be found to facilitate their transfer.

16. Arrangements ensuring legal certainty and equal treatment should be found for all court procedures pending before the Court of Justice of the European Union upon the date of withdrawal that involve the United Kingdom or natural or legal persons in the United Kingdom. The Court of Justice of the European Union should remain competent to adjudicate in these procedures. Similarly, arrangements should be found for administrative procedures pending before the European Commission and Union agencies upon the date of the withdrawal that involve the United Kingdom or natural or legal persons in the United Kingdom. In addition, arrangements should be foreseen for the possibility of administrative or court proceedings to be initiated post-exit for facts that have occurred before the withdrawal date.

17. The withdrawal agreement should include appropriate dispute settlement and enforcement mechanisms regarding the application and interpretation of the withdrawal agreement, as well as duly circumscribed institutional arrangements allowing for the adoption of measures necessary to deal with situations not foreseen in the withdrawal agreement. This should be done bearing in mind the Union's interest to effectively protect its autonomy and its legal order, including the role of the Court of Justice of the European Union.

IV. PRELIMINARY AND PREPARATORY DISCUSSIONS ON A FRAMEWORK FOR THE UNION - UNITED KINGDOM FUTURE RELATIONSHIP

18. The European Council welcomes and shares the United Kingdom's desire to establish a close partnership between the Union and the United Kingdom after its departure. While a relationship between the Union and a non Member State cannot offer the same benefits as Union membership, strong and constructive ties will remain in both sides' interest and should encompass more than just trade.

19. The British government has indicated that it will not seek to remain in the Single Market, but would like to pursue an ambitious free trade agreement with the European Union. Based on the Union's interests, the European Council stands ready to initiate work towards an agreement on trade, to be finalised and concluded once the United Kingdom is no longer a Member State.

20. Any free trade agreement should be balanced, ambitious and wide-ranging. It cannot, however, amount to participation in the Single Market or parts thereof, as this would undermine its integrity and proper functioning. It must ensure a level playing field, notably in terms of competition and state aid, and in this regard encompass safeguards against unfair competitive advantages through, inter alia, tax, social, environmental and regulatory measures and practices.

21. Any future framework should safeguard financial stability in the Union and respect its regulatory and supervisory regime and standards and their application.

22. The EU stands ready to establish partnerships in areas unrelated to trade, in particular the fight against terrorism and international crime, as well as security, defence and foreign policy.

23. The future partnership must include appropriate enforcement and dispute settlement mechanisms that do not affect the Union's autonomy, in particular its decision-making procedures.

24. After the United Kingdom leaves the Union, 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.

V. PRINCIPLE OF SINCERE COOPERATION

25. Until it leaves the Union, the United Kingdom remains a full Member of the European Union, subject to all rights and obligations set out in the Treaties and under EU law, including the principle of sincere cooperation.

26. The European Council recognises the need, in the international context, to take into account the specificities of the United Kingdom as a withdrawing Member State, provided it respects its obligations and remains loyal to the Union's interests while still a Member. Similarly the Union expects the United Kingdom to recognise the need of the 27 Member States to meet and discuss matters related to the situation after the withdrawal of the United Kingdom.

27. While the United Kingdom is still a member, all ongoing EU business must continue to proceed as smoothly as possible at 28. The European Council remains committed to drive forward with ambition the priorities the Union has set itself. Negotiations with the United Kingdom will be kept separate from ongoing Union business, and shall not interfere with its progress.

VI. PROCEDURAL ARRANGEMENTS FOR NEGOTIATIONS UNDER ARTICLE 50

28. The European Council endorses the arrangements set out in the statement of 27 Heads of State or Government on 15 December 2016.