European Council

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COVER NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	European Council (Art. 50) meeting (15 December 2017) - Guidelines

Delegations will find attached the guidelines adopted by the European Council[1] at the above meeting.

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[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.

1. The European Council welcomes the progress achieved during the first phase of negotiations as reflected in the Communication from the Commission[1] and the Joint Report[2] and decides that it is sufficient to move to the second phase related to transition and the framework for the future relationship. It calls on the Union negotiator and the United Kingdom to complete the work on all withdrawal issues, including those not yet addressed in the first phase, in conformity with the European Council guidelines of 29 April 2017, to consolidate the results obtained, and to start drafting the relevant parts of the Withdrawal Agreement. It underlines that negotiations in the second phase can only progress as long as all commitments undertaken during the first phase are respected in full and translated faithfully into legal terms as quickly as possible.

2. In the negotiations during the second phase addressing transitional arrangements as well as the overall understanding on the framework for the future relationship the European Council guidelines of 29 April 2017 continue to apply in their entirety and must be respected.

3. As regards transition, the European Council notes the proposal put forward by the United Kingdom for a transition period of around two years, and agrees to negotiate a transition period covering the whole of the EU acquis, while the United Kingdom, as a third country, will no longer participate in or nominate or elect members of the EU institutions, nor participate in the decision-making of the Union bodies, offices and agencies.

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[1] Communication from the Commission to the European Council (Article 50) on the state of progress of the negotiations with the United Kingdom under Article 50 of the Treaty on European Union, COM(2017) 784 final.

[2] Joint report from the negotiators of the European Union and the United Kingdom Government on progress during phase 1 of negotiations under Article 50 TEU on the United Kingdom's orderly withdrawal from the European Union.

4. Such transitional arrangements, which will be part of the Withdrawal Agreement, must be in the interest of the Union, clearly defined and precisely limited in time. In order to ensure a level playing field based on the same rules applying throughout the Single Market, changes to the acquis adopted by EU institutions, bodies, offices and agencies will have to apply both in the United Kingdom and the EU. All existing Union regulatory, budgetary, supervisory, judiciary and enforcement instruments and structures will also apply, including the competence of the Court of Justice of the European Union. As the United Kingdom will continue to participate in the Customs Union and the Single Market (with all four freedoms) during the transition, it will have to continue to comply with EU trade policy, to apply EU customs tariff and collect EU customs duties, and to ensure all EU checks are being performed on the border vis-à-vis other third countries.

5. The European Council calls on the Commission to put forward appropriate recommendations to this effect, and on the Council to adopt additional negotiating directives on transitional arrangements in January 2018.

6. The European Council reconfirms its desire to establish a close partnership between the Union and the United Kingdom. While an agreement on a future relationship can only be finalised and concluded once the United Kingdom has become a third country, the Union will be ready to engage in preliminary and preparatory discussions with the aim of identifying an overall understanding of the framework for the future relationship, once additional guidelines have been adopted to this effect. Such an understanding should be elaborated in a political declaration accompanying and referred to in the Withdrawal Agreement.

7. The Union takes note that the United Kingdom has stated its intention to no longer participate in the Customs Union and the Single Market after the end of the transition period, and the European Council will calibrate its approach as regards trade and economic cooperation in the light of this position so as to ensure a balance of rights and obligations, preserve a level playing field, avoid upsetting existing relations with other third countries, and to respect all other principles set out in its guidelines of 29 April 2017, in particular the need to preserve the integrity and proper functioning of the Single Market.

8. The European Council reconfirms its readiness to establish partnerships in areas unrelated to trade and economic cooperation, in particular the fight against terrorism and international crime, as well as security, defence and foreign policy.

9. The European Council will continue to follow the negotiations closely and will adopt additional guidelines in March 2018, in particular as regards the framework for the future relationship. It calls on the United Kingdom to provide further clarity on its position on the framework for the future relationship. The European Council invites the Council (Art. 50) together with the Union negotiator to continue internal preparatory discussions, including on the scope of the framework for the future relationship.