European Council

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NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	European Council (Art. 50) (23 March 2018) - Guidelines

Delegations[1] will find attached the guidelines adopted by the European Council (Art. 50) at the above meeting.

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[1] Following a 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 agreement reached by the negotiators 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. The European Council recalls that other issues still require agreement and negotiations can only progress as long as all commitments undertaken so far are respected in full, and welcomes in this respect Prime Minister May's written assurances notably regarding Ireland/Northern Ireland. The European Council calls for intensified efforts on the remaining withdrawal issues as well as issues related to the territorial application of the Withdrawal Agreement, notably as regards Gibraltar, and reiterates that nothing is agreed until everything is agreed.

2. The European Council recalls and reconfirms its guidelines of 29 April and 15 December 2017, which continue to apply in full and whose principles will have to be respected by the future relationship with the UK. The European Council takes note of the European Parliament resolution of 14 March 2018 on the framework of the future EU-UK relationship.

3. The European Council restates the Union's determination to have as close as possible a partnership with the UK in the future. Such a partnership should cover trade and economic cooperation as well as other areas, in particular the fight against terrorism and international crime, as well as security, defence and foreign policy.

4. At the same time, the European Council has to take into account the repeatedly stated positions of the UK, which limit the depth of such a future partnership. Being outside the Customs Union and the Single Market will inevitably lead to frictions in trade. Divergence in external tariffs and internal rules as well as absence of common institutions and a shared legal system, necessitates checks and controls to uphold the integrity of the EU Single Market as well as of the UK market. This unfortunately will have negative economic consequences, in particular in the United Kingdom.

5. Against this background, the European Council sets out the following guidelines with a view to the opening of negotiations on the overall understanding of the framework for the future relationship, that will be elaborated in a political declaration accompanying and referred to in the Withdrawal Agreement.

6. The approach outlined below reflects the level of rights and obligations compatible with the positions stated by the UK. If these positions were to evolve, the Union will be prepared to reconsider its offer in accordance with the principles stated in the guidelines of 29 April and of 15 December 2017 as well as in the present guidelines.

7. In this context, the European Council reiterates in particular 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. 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.

   The European Council recalls that the four freedoms are indivisible and that there can be no "cherry picking" through participation in the Single Market based on a sector-by-sector approach, which would undermine the integrity and proper functioning of the Single Market.

   The European Council further reiterates that the Union will preserve its autonomy as regards its decision-making, which excludes participation of the United Kingdom as a third-country in the Union Institutions and participation in the decision-making of the Union bodies, offices and agencies. The role of the Court of Justice of the European Union will also be fully respected.

8. As regards the core of the economic relationship, the European Council confirms its readiness to initiate work towards a balanced, ambitious and wide-ranging free trade agreement (FTA) insofar as there are sufficient guarantees for a level playing field. This agreement will be finalised and concluded once the UK is no longer a Member State. Such an agreement cannot however offer the same benefits as Membership and cannot amount to participation in the Single Market or parts thereof. This agreement would address:

i) trade in goods, with the aim of covering all sectors and seeking to maintain zero tariffs and no quantitative restrictions with appropriate accompanying rules of origin.

In the overall context of the FTA, existing reciprocal access to fishing waters and resources should be maintained;

ii) appropriate customs cooperation, preserving the regulatory and jurisdictional autonomy of the parties and the integrity of the EU Customs Union;

iii) disciplines on technical barriers to trade (TBT) and sanitary and phytosanitary (SPS) measures;

iv) a framework for voluntary regulatory cooperation;

v) trade in services, with the aim of allowing market access to provide services under host state rules, including as regards right of establishment for providers, to an extent consistent with the fact that the UK will become a third country and the Union and the UK will no longer share a common regulatory, supervisory, enforcement and judiciary framework;

vi) access to public procurement markets, investments and protection of intellectual property rights, including geographical indications, and other areas of interest to the Union.

9. The future partnership should address global challenges, in particular in the areas of climate change and sustainable development, as well as cross-border pollution, where the Union and the UK should continue close cooperation.

10. The future partnership should include ambitious provisions on movement of natural persons, based on full reciprocity and non-discrimination among Member States, 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, taking into account that the UK will be a third country outside Schengen and that such cooperation would require strong safeguards to ensure full respect of fundamental rights.

11. In terms of socio-economic cooperation, the following could be envisaged:

    i) regarding transport services, the aim should be to ensure continued connectivity between the UK and the EU after the UK withdrawal. This could be achieved, *inter alia*, through an air transport agreement, combined with aviation safety and security agreements, as well as agreements on other modes of transport, while ensuring a strong level playing field in highly competitive sectors;

    ii) regarding certain Union programmes, e.g. in the fields of research and innovation and of education and culture, any participation of the UK should be subject to the relevant conditions for the participation of third countries to be established in the corresponding programmes.

12. Given the UK's geographic proximity and economic interdependence with the EU27, the future relationship will only deliver in a mutually satisfactory way if it includes robust guarantees which ensure a level playing field. The aim should be to prevent unfair competitive advantage that the UK could enjoy through undercutting of levels of protection with respect to, *inter alia*, competition and state aid, tax, social, environment and regulatory measures and practices. This will require a combination of substantive rules aligned with EU and international standards, adequate mechanisms to ensure effective implementation domestically, enforcement and dispute settlement mechanisms in the agreement as well as Union autonomous remedies, that are all commensurate with the depth and breadth of the EU-UK economic connectedness.

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

13. In other areas than trade and economic cooperation, where the Union has already signalled its readiness to establish specific partnerships, the European Council considers that:

    i) law enforcement and judicial cooperation in criminal matters should constitute an important element of the future EU-UK relationship in the light of the geographic proximity and shared threats faced by the Union and the UK, taking into account that the UK will be a third country outside Schengen. The future partnership should cover effective exchanges of information, support for operational cooperation between law enforcement authorities and judicial cooperation in criminal matters. Strong safeguards will need to be established that ensure full respect of fundamental rights and effective enforcement and dispute settlement mechanisms;

    ii) in view of our shared values and common challenges, there should be a strong EU-UK cooperation in the fields of foreign, security and defence policy. A future partnership should respect the autonomy of the Union's decision-making, taking into account that the UK will be a third country, and foresee appropriate dialogue, consultation, coordination, exchange of information, and cooperation mechanisms. As a pre-requisite for the exchange of information in the framework of such cooperation a Security of Information Agreement would have to be put in place.

14. In the light of the importance of data flows in several components of the future relationship, it should include rules on data. As regards personal data, protection should be governed by Union rules on adequacy with a view to ensuring a level of protection essentially equivalent to that of the Union.

15. The governance of our future relationship with the UK will have to address management and supervision, dispute settlement and enforcement, including sanctions and cross-retaliation mechanisms. Designing the overall governance of the future relationship will require to take into account:

    i) the content and depth of the future relationship;

    ii) the necessity to ensure effectiveness and legal certainty;

    iii) the requirements of the autonomy of the EU legal order, including the role of the Court of Justice of the European Union, notably as developed in the jurisprudence.

16. The European Council, with the support of the Council, will continue to follow the negotiations closely, in all their aspects, and will return in particular to the remaining withdrawal issues and to the framework for the future relationship at its June meeting. In the meantime, the European Council calls upon the Commission, the High Representative of the Union for Foreign Affairs and Security Policy and the Member States to continue the work on preparedness at all levels for the consequences of the UK withdrawal, taking into account all possible outcomes.