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COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	Recommendation for a COUNCIL DECISION supplementing the Council Decision of 22 May 2017 authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for an agreement setting out the arrangements for its withdrawal from the European Union

Delegations will find attached document COM(2017) 830 final.

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EUROPEAN
COMMISSION

Brussels, 20.12.2017
COM(2017) 830 final

Recommendation for a

COUNCIL DECISION

supplementing the Council Decision of 22 May 2017 authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for an agreement setting out the arrangements for its withdrawal from the European Union

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

According to Article 50 of the Treaty on European Union, any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements and shall, if it so decides, notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union.

On 29 March 2017, the United Kingdom notified the European Council of its intention to withdraw from the Union and from the European Atomic Energy Community.

On 29 April 2017, the European Council adopted guidelines that define the framework for negotiations under Article 50 of the Treaty on European Union and set out the overall principles that the Union will pursue throughout the negotiation.

On 5 April 2017, the European Parliament adopted a resolution on negotiations with the United Kingdom following the notification of its intention to withdraw from the European Union.

On 22 May 2017, the Council authorised the opening of negotiations with the United Kingdom for an agreement setting out the arrangements for its withdrawal from the European Union and adopted directives for the negotiation of an agreement (the “Council Decision of 22 May 2017”).

The opening of the negotiations took place on 19 June 2017. In line with the European Council guidelines and the Council negotiating directives, the first phase of the negotiations focused on the rights of citizens, the financial settlement, the issues relating to the island of Ireland, other separation issues, and the governance of the Withdrawal Agreement.

On 3 October 2017, the European Parliament adopted a resolution on the state of play of the negotiations with the United Kingdom.

Noting the progress made so far, on 20 October 2017, the European Council called for work to continue with a view to consolidating the convergence achieved and pursuing the negotiations in order to be able to move to the second phase of the negotiations as soon as possible. The European Council thus invited the Council and the Commission as Union negotiator to start internal preparatory discussions including on possible transitional arrangements.

On 13 December 2017, the European Parliament adopted a resolution on the state of play of negotiations with the United Kingdom.

Based on:

- the recommendation made by the Commission Communication on the state of progress of the negotiations with the United Kingdom under Article 50 of the Treaty on European Union of 8 December 2017¹
- the 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 of 8 December 2017, on which the Commission's recommendation is based,

the European Council, on 15 December 2017, welcomed the progress achieved during the first phase of the negotiations and decided that it was sufficient to move to the second phase related to transition and the framework for the future relationship. The European Council called on the Commission as 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 also underlined that negotiations in the second phase could only progress as long as all commitments undertaken during the first phase were respected in full and translated faithfully into legal terms as quickly as possible.

During the second phase of the negotiations, in view of the specific nature of issues related to the island of Ireland, the work on detailed arrangements required to give effect to the principles and commitments set out in the Joint Report should continue in a distinct strand, some of which would be translated in the Withdrawal Agreement, others in the framework for the future relationship.

- **Fundamental rights**

According to Article 6 of the Treaty on European Union, the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union, which has the same legal value as the Treaties. Moreover, fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, constitute general principles of the Union's law.

These rights, freedoms and principles will continue to be fully preserved and protected in the Union, both during the process of negotiation with the United Kingdom under Article 50 of the Treaty on European Union, including any transitional arrangements, and after withdrawal of the United Kingdom from the Union.

2. LEGAL BASIS

- **Legal basis**

The United Kingdom has notified its intention to withdraw from the European Union. As a consequence, Article 50 of the Treaty on European Union constitutes the legal basis for the negotiation and conclusion of a Withdrawal Agreement. Transitional arrangements can be laid down only in the Withdrawal Agreement.

It is recalled that in accordance with Article 106(a) of the Treaty establishing the European Atomic Energy Community, Article 50 of the Treaty on European Union applies also to the European Atomic Energy Community.

¹ COM(2017) 784 final.

According to Article 218(3) of the Treaty on the Functioning of the European Union, to which Article 50 of the Treaty on European Union refers, the Commission shall submit recommendations to the Council, which shall adopt a decision authorising the opening of negotiations and nominate the Union negotiator. The Council decision supplementing the Council Decision of 22 May 2017 shall be adopted following the same procedure.

- **Choice of the instrument**

According to Article 50 of the Treaty on European Union, an agreement is to be negotiated with the United Kingdom setting out the arrangements for its withdrawal from the European Union. Article 218(3) of the Treaty on the Functioning of the European Union provides that the Commission is to submit recommendations to the Council, which shall adopt a decision nominating the Union negotiator and authorising the opening of negotiations. A Council decision is the appropriate instrument for the supplementing the Council Decision of 22 May 2017.

3. BUDGETARY IMPLICATIONS

The present Recommendation is not expected to have immediate budgetary implications, in so far as the negotiating process is concerned. It is recalled that the budgetary implications of the agreement under Article 50 of the Treaty on European Union will be outlined when the relevant proposals on signature and conclusion of the Withdrawal Agreement are presented.

4. OTHER ELEMENTS

- **Detailed explanation of the specific provisions of the proposal**

Article 1 of the recommended Council Decision supplements the Council Decision of 22 May 2017 in order to authorise the Commission to negotiate, within the framework of the negotiations on an agreement with the United Kingdom setting out the arrangements for its withdrawal from the European Union, any remaining issues relating to the orderly withdrawal of the United Kingdom and any necessary transitional arrangements.

- **Publication of the Decision and of the Negotiating Directives set out in the Annex**

As for the previous negotiating directives, the Commission proposes to the Council to make public the Decision supplementing the Council Decision of 22 May 2017 authorising the Commission to open negotiations on an agreement with the United Kingdom of Great Britain and Northern Ireland setting out the arrangements for its withdrawal from the European Union, as well as the supplementary negotiating directives set out in its Annex.

Recommendation for a

COUNCIL DECISION

supplementing the Council Decision of 22 May 2017 authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for an agreement setting out the arrangements for its withdrawal from the European Union

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaties, and in particular Article 50 of the Treaty on European Union, in conjunction with Article 218(3) of the Treaty on the Functioning of the European Union,

Having regard to the guidelines of the European Council,

Having regard to the Recommendation from the European Commission,

Whereas:

- (1) On 29 April 2017, the European Council adopted guidelines that define the framework for negotiations under Article 50 of the Treaty on European Union and set out the overall principles that the Union will pursue throughout the negotiation.
- (2) On 22 May 2017, the Council authorised the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for an agreement setting out the arrangements for its withdrawal from the European Union and adopted directives for the negotiation of such agreement.
- (3) The opening of the negotiations took place on 19 June 2017.
- (4) On 3 October 2017, the European Parliament adopted a resolution on the state of play of the negotiations with the United Kingdom.
- (5) Noting the progress made so far, on 20 October 2017, the European Council called for work to continue with a view to consolidating the convergence achieved and pursuing negotiations in order to be able to move to the second phase of the negotiations as soon as possible. The European Council thus invited the Council and the Commission as Union negotiator to start internal preparatory discussions, including on possible transitional arrangements.
- (6) On 8 December 2017, in its Communication on the state of progress of the negotiations with the United Kingdom under Article 50 of the Treaty on European Union the Commission recommended to the European Council to conclude that sufficient progress had been made in the first phase of the negotiations on the orderly withdrawal of the United Kingdom from the European Union, allowing the negotiations to proceed to their second phase. The Commission also stated that it stood ready to begin work immediately on transitional arrangements, should the European Council so decide.
- (7) The Commission's recommendation was based on the 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 of 8 December 2017.

- (8) On 13 December 2017, the European Parliament adopted a resolution on the state of play of negotiations with the United Kingdom.
- (9) In its guidelines of 15 December 2017, the European Council welcomed the progress achieved during the first phase of the negotiations and decided that it was sufficient to move to the second phase related to transition and the framework for the future relationship. The European Council called on the Commission as 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, and to consolidate the results obtained in particular by drafting the relevant parts of the Withdrawal Agreement. The European Council called on the Commission to put forward appropriate recommendations to this effect, and on the Council to adopt additional negotiating directives on transitional arrangements.
- (10) It is therefore necessary to supplement the negotiating directives set out in the Annex to the Council Decision of 22 May 2017.
- (11) In accordance with Article 106(a) of the Treaty establishing the European Atomic Energy Community, Article 50 of the Treaty on European Union applies to the European Atomic Energy Community.

HAS ADOPTED THIS DECISION:

Article 1

The Commission shall conduct the negotiations, on behalf of the Union, for an agreement with the United Kingdom of Great Britain and Northern Ireland setting out the arrangements for its withdrawal from the European Union and from the European Atomic Energy Community, taking account of the framework for its future relationship with the Union, in the light of the guidelines adopted by the European Council and in line with the negotiating directives set out in the Annex to the Council Decision of 22 May 2017, as supplemented by the negotiating directives set out in the Annex to this Decision.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*