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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:	ANNEX to the 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
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Brussels, 20.12.2017
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ANNEX 1

ANNEX

to the

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

ANNEX

Supplementary directives for the negotiation of an agreement with the United Kingdom of Great Britain and Northern Ireland setting out the arrangements for its withdrawal from the European Union

1. In line with the European Council guidelines of 29 April 2017 and the Council negotiating directives of 22 May 2017, 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.
2. 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.
3. 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.
4. The European Council also made clear 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 in legal terms as quickly as possible. During the second phase of the negotiations, an overall understanding on the framework for the future relationship of the Union with the United Kingdom should also be reached. This will require additional European Council guidelines.
5. The present set of negotiating directives is intended for the second phase of the negotiations; it therefore supplements the first set of negotiating directives adopted on 22 May 2017. The European Council guidelines of 29 April 2017 as well as the general principles and the procedural arrangements for the conduct of the negotiations established in the Council negotiating directives of 22 May 2017 continue to apply in their entirety to this phase of the negotiations, including as regards the territorial scope of the withdrawal agreement, including its provisions on transitional arrangements, and of the future framework; these negotiating directives should therefore, as the first set of the negotiating directives, fully respect paragraphs

¹ COM(2017) 784 final.

4 and 24 of the European Council guidelines of 29 April 2017, notably as regards Gibraltar.

6. 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.

I. ISSUES RELATED TO THE ORDERLY WITHDRAWAL OF THE UNITED KINGDOM FROM THE EUROPEAN UNION

7. In line with the European Council guidelines of 15 December 2017 and with the negotiating directives annexed to the Council Decision of 22 May 2017 as supplemented by these negotiating directives, it is necessary to complete the work on all withdrawal issues, including those not yet addressed in the first phase.
8. Negotiations in the second phase should furthermore translate into legal terms the results of the negotiations, including those obtained during the first phase, which should, where appropriate, be adapted in the light of the existence of the transitional arrangements referred to below. As specified in the first set of the negotiating directives, the Withdrawal Agreement should recall that Union law ceases to apply on the withdrawal date to the overseas countries and territories having special relations with the United Kingdom² and to the European territories for whose external relations the United Kingdom is responsible, to which the Treaties apply by virtue of Article 355 of the Treaty on the Functioning of the European Union.

II. TRANSITIONAL ARRANGEMENTS

9. The European Council guidelines of 29 April 2017 set out general core principles applying to any agreement with the United Kingdom as well as to any transitional arrangements:
 - any agreement 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;
 - the four freedoms of the Single Market are indivisible and 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. According to the

² Listed in the twelve last indents of Annex II to the Treaty on the Functioning of the European Union.

European Council guidelines of 15 December 2017, this refers notably to the competence of the Court of Justice of the European Union.

10. In addition to these core principles, the European Council guidelines of 29 April 2017 set out specific conditions applicable to any possible transitional arrangements. To the extent necessary and legally possible, the negotiations may 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, precisely limited in time, and subject to effective enforcement mechanisms.
11. These supplementary negotiating directives are based on and further develop the principles and conditions laid down in the European Council guidelines of 15 December 2017.
12. In line with those guidelines, any transitional arrangements provided for in the Withdrawal Agreement should cover the whole of the Union acquis, including Euratom matters. Notwithstanding paragraph 17 of these negotiating directives, the Union acquis should apply to and in the United Kingdom as if it were a Member State. Any changes to the acquis should automatically apply to and in the United Kingdom during the transition period. For acts adopted pursuant to Title V of Part III of the Treaty on the Functioning of the European Union relating to the Area of Freedom, Security and Justice by which the United Kingdom is bound before its withdrawal, Article 4a of Protocol (No 21) annexed to the Treaties should continue to apply during the transition period. The United Kingdom should however no longer be allowed to exercise its right under Protocol (No 21) to opt-in to measures other than those referred to in Article 4a of that Protocol.
13. During the transition period, Union law covered by these transitional arrangements should deploy in the United Kingdom the same legal effects as those which it deploys within the Union.
14. In line with the European Council guidelines of 29 April 2017, it is also recalled that as from the date of its withdrawal from the Union the United Kingdom will no longer benefit from the agreements concluded by the Union, or by Member States acting on its behalf, or by the Union and its Member States acting jointly. Where it is in the interest of the Union, the Union may consider whether and how arrangements can be agreed that would maintain the effects of the agreements as regards the United Kingdom during the transition period; the United Kingdom should however no longer participate in any bodies set up by those agreements.
15. In line with the European Council guidelines of 15 December 2017, any transitional arrangements require the United Kingdom's continued participation in the Customs Union and the Single Market (with all four freedoms) during the transition. The United Kingdom should take all necessary measures to preserve the integrity of the Single Market and of the Customs Union. The United Kingdom should continue to comply with the Union trade policy. It should also in particular ensure that its customs authorities continue to act in accordance with the mission of EU customs authorities including by collecting Common Customs Tariff duties and by performing all checks required under Union law at the border vis-à-vis other third countries.

16. In line with the European Council guidelines of 29 April 2017 and the first set of negotiating directives of 22 May 2017, any time-limited prolongation of the Union acquis requires existing Union regulatory, budgetary, supervisory, judiciary and enforcement instruments and structures to apply, including the competence of the Court of Justice of the European Union.
17. In relation to the application of the Union acquis to the United Kingdom, the Withdrawal Agreement should therefore, during the transitional period, preserve the competences of the Union institutions (in particular the full jurisdiction of the Court of Justice of the European Union), bodies, offices and agencies in relation to the United Kingdom and to United Kingdom natural or legal persons. In line with the European Council guidelines of 15 December 2017, the United Kingdom should however no longer participate in or nominate or elect members of the Union institutions, nor participate in the decision-making or the governance of the Union bodies, offices and agencies.
18. Without prejudice to paragraph 17, during the transition period, the United Kingdom could be invited to attend, without voting rights, meetings of standing committees or Commission experts groups and other similar entities or of the agencies, offices or bodies where Member States are represented and:
 - where the discussion concerns individual acts to be addressed to the United Kingdom or to United Kingdom natural or legal persons; or
 - where the presence of the United Kingdom is necessary from a Union perspective for the effective implementation of the acquis during the transition period.
19. The Withdrawal Agreement should define the precise conditions and the clear framework under which such exceptional attendance should be allowed.
20. Specific procedural arrangements which are compliant with paragraphs 17 and 18 should also be found for the fixing and allocation of fishing opportunities (total allowable catches) during the transition period.
21. The transitional arrangements should apply as from the date of entry into force of the Withdrawal Agreement and should not last beyond 31 December 2020.