



Council of the
European Union

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NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee (Art.50)
Subject: European Council (Art.50) (23 March 2018)
- Draft guidelines

In accordance with Article 3(1) of the Rules of Procedure of the European Council, delegations¹ will find attached the draft guidelines prepared by the President of the European Council, in close cooperation with the member of the European Council representing the Member State holding the six-monthly Presidency of the Council and with the President of the Commission.

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

1. [The European Council welcomes / notes the progress achieved in negotiations on an orderly withdrawal and transition, including on the consolidation of the text of the Withdrawal Agreement.] The European Council recalls that negotiations can only progress as long as all commitments undertaken so far are respected in full, and calls for intensified efforts on the remaining withdrawal issues. The European Council 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.
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. 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.
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. 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 of the Single Market are indivisible and that there can be no “cherry picking” through participation based on a sector-by-sector approach, that 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 to EU Institutions, agencies or bodies. The role of the Court of Justice of the European Union will also be fully respected.

7. As regards the core of the economic relationship, the European Council confirms its readiness to initiate work towards a free trade agreement (FTA), to be finalised and concluded once the UK is no longer a Member State. Such an agreement cannot 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, which should be subject to zero tariffs and no quantitative restrictions with appropriate accompanying rules of origin. In this context, 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 standards (SPS) as well as a framework for voluntary regulatory cooperation.
- iv) 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. The FTA should include ambitious provisions on movement of natural persons as well as a framework for the recognition of professional qualifications.
- v) other areas of interest to the Union, for example access to public procurement markets, investments and protection of intellectual property rights, including geographical indications.

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

- i) regarding aviation, the aim should be to ensure connectivity between the UK and the EU after the UK withdrawal. This would require an air transport agreement, combined with an aviation safety agreement, while ensuring a strong level playing field in a highly competitive sector.
- 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 in the next Multiannual Financial Framework.

9. 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 current levels of protection with respect to 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.
10. 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) police 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 the fields of security, defence and foreign policy there should be no gap in the EU-UK cooperation as a consequence of the UK withdrawal from the Union. A future partnership should respect the autonomy of the Union's decision-making and foresee appropriate dialogue, consultation, exchange of information, and cooperation mechanisms. As a pre-requisite for such cooperation a Security of Information Agreement would have to be put in place.

11. In the light of the importance of data flows in several components of the future relationship, 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.
12. 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.
13. The above approach 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.
14. 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 framework for the future relationship at its June meeting.
