HM Government

Privileges and Immunities

POSITION PAPER

Position Paper by the United Kingdom

Privileges and immunities

This paper outlines the United Kingdom's (UK) position on privileges and immunities as it negotiates the UK's exit from, and new partnership with, the European Union (EU).

General principles on privileges and immunities

1. The UK's ambition is to form a new, deep and special partnership with the EU. This relationship will be of strategic importance to both sides. It will be important to have in place a legally acceptable framework of privileges and immunities that allows for the smooth conduct of relations between the UK and the EU.

2. At present, the EU, its institutions, agencies, bodies and representatives enjoy the same range of privileges and immunities across all Member States, by virtue of Protocol 7 to the Treaty on the Functioning of the European Union (TFEU) and related agreements. Once the UK ceases to be a Member State, the EU will no longer automatically enjoy as a matter of international law, in the UK, the privileges and immunities set out in that Protocol.

Privileges and immunities for the purposes of withdrawal

3. The general policy of the UK in regard to privileges and immunities of international organisations is that they should be granted primarily on the grounds of functional need. This is in accordance with the generally recognised basis for privileges and immunities in international law, as also recognised in the Preamble to Protocol 7 itself.

4. As the EU has acknowledged, it may have property, funds, assets and operations in the UK after the withdrawal date. The UK recognises the need, in the context of an overall settlement on withdrawal, for certain privileges and immunities to apply for a limited period after exit, in order to permit the EU a reasonable time in which to wind up its current operations in the UK. The scope and duration of such a transitional period may be different for different types of asset or agency. The UK stands ready to give specific consideration to the rights enjoyed by the European Investment Bank under Protocol 5 to facilitate the conduct of its operations, as part of an overall settlement on the Bank.

5. It is therefore important to make appropriate transitional arrangements. For the purposes of withdrawal, any agreement on privileges and immunities following withdrawal would be limited to:

    - such express arrangements, if any, as may be required to preserve privileges and immunities in respect of activities done while the UK was a Member State - this should be reciprocal, covering activity of the UK within the EU as well as of the EU in the UK; and

- such transitional arrangements as may be required for a reasonable period to enable the EU to wind down any operations in the UK post withdrawal that it no longer wishes to retain permanently after exit.

Future arrangements

6. As part of the deep and special partnership between the EU and the UK, and based on a functional approach to the granting of privileges and immunities, the UK stands ready to agree a comprehensive set of privileges and immunities to facilitate that partnership, taking into account the continued presence the EU expects to have in the UK, including for example an EU delegation. These privileges and immunities should reflect the extent of the UK's continued involvement in any EU programmes, agencies or other activities.

7. The discussions around withdrawal and the UK's future relationship with the EU are therefore inextricably linked, and the UK is eager to begin the latter at the earliest possible opportunity. The UK believes that it is the interests of both parties to do so in order to facilitate the smooth conduct of relations as the UK moves from a Member State to a third country.