



DRAFT TEXT FOR DISCUSSION: IMPLEMENTATION PERIOD

1. This document sets out the United Kingdom's approach to the legal text of the implementation period to be provided for in the Withdrawal Agreement. In order to aid swift and effective negotiation it sets out a number of proposed amendments to the European Commission's position paper of 7 February 2018, '*Transitional arrangements in the withdrawal agreement*'. It is intended to support further discussions between the parties on detailed arrangements for the implementation period ('the Period'), with the aim of reaching agreement at March European Council.
2. The UK believes this document demonstrates that there is broad alignment between the UK and EU positions, with only a small number of areas requiring discussion. This reflects the desire of both parties to provide certainty as swiftly as possible to individuals and businesses in the UK and across the EU about the arrangements that will apply from the point of the UK's withdrawal.
3. The majority of changes proposed by the UK are technical amendments to provide further detail and clarity or to present the same information in a simpler form. Specifically, Annex I provides an illustrative list of those Treaty provisions not to be incorporated into the Period, building on the provisions referenced within the Commission's original proposal. The UK believes it is more helpful to present these in one place rather than in different parts of the text. Annex II provides an illustrative list of technical adaptations to ensure the continued functioning of the Union acquis in respect of the UK as a third country. This again builds on the Commission's proposal.
4. The UK agrees with the EU that a Joint Committee should be established to supervise the Withdrawal Agreement. The Joint Committee should have specific functions in relation to the implementation period, including resolving any issues which might arise concerning the proper functioning of the Agreement, having regard to the duty of mutual good faith which should apply between the UK and the EU, for example, in relation to acts of Union law adopted during the implementation period. Arrangements will need to protect the rights and interests of both parties. The UK has proposed text here as this did not form part of the Commission's text.
5. Further proposed changes, which are in line with public statements made by the UK, are explained in the body of the text. Areas for discussion are marked in square brackets.
6. The UK agrees that the detailed provisions relating to the financial settlement aspects of the Period will be covered under the Financial Provisions of the Withdrawal Agreement. The UK also wishes to discuss the means by which Union law will apply to the UK during the Period, recognising that the UK will no longer be a Member State and its legislature will no longer be a national parliament of the EU; the UK acknowledges that the agreed approach will need to ensure the UK's domestic law reflects the Union acquis covered by this part of the agreement for the duration of the Period.

PART [...] OF THE WITHDRAWAL AGREEMENT

Article X Implementation period

Explanatory note:

- *The UK believes the Period's duration should be determined simply by how long it will take to prepare and implement the new processes and new systems that will underpin the future partnership. The UK agrees this points to a period of around two years, but wishes to discuss with the EU the assessment that supports its proposed end date.*

There shall be an implementation period (the 'Period'), which shall start on the date of entry into force of this Agreement and end on [31 December 2020].

Article XA Definitions

Explanatory note:

- *This is a new provision which reflects footnote 1 of the Commission's text, with some clarifications and the use of some further defined terms. The provisions of the Treaties which are excluded from applying to this Part have been consolidated and listed in a single annex, Annex I. This is a technical rather than substantive change for clarity and simplicity.*

For the purposes of this Part:

- (a) the term "acts" includes regulations, directives, decisions, recommendations and opinions adopted under the Treaties;
- (b) the term "Treaties" means the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community as amended or supplemented by treaties or other acts which entered into force before the date of entry into force of this Agreement;
- (c) the term "bilateral international agreement" means those international agreements concluded between the Union, or by the Union and its Member States acting jointly of the one part, and one or more Third Countries of the other part; and
- (d) the term "Union law" means:
 - (i) the provisions, annexes, protocols and declarations of the Treaties which are not listed in Annex I;
 - (ii) the general principles of Union law;
 - (iii) any acts adopted under the provisions referred to in paragraph (i) before exit day or during the Period;
 - (iv) any international agreement adopted under the Treaties;
 - (v) the agreements between Member States entered into in their capacity as Member States of the Union and/or Euratom;
 - (vi) the decisions and agreements of the representatives of the governments of the Member States meeting within the European Council or Council.

Article X+1 Scope of the Period

Explanatory note:

- *As noted above, the provisions of the Treaties which are excluded from applying to this Part have been consolidated and listed in a single annex, Annex I. Some provisions of the Commission's text have been deleted from the main text on that basis, as they do not need to be repeated.*
- *The UK understands paragraph [1] to mean that both the rights and obligations of the UK under the Treaties will continue during the Period unless the Agreement specifically provides otherwise.*
- *The UK wishes to reach swift agreement on the future arrangements for foreign policy and defence collaboration and wants to agree the interim arrangements that will apply during the Period on that basis. Paragraph [2] has been amended to reflect that position.*
- *New paragraph [3A] deals with the aim set out in paragraph 2 of footnote 1 of the Commission's text by ensuring the uniform interpretation during the Period of the applicable Union law within the UK and the EU.*
- *In relation to paragraph [5], the UK's rights under Protocols 19 and 21 would be limited to particular circumstances. In addition, the UK would be able to participate in new Justice and Home Affairs measures and provisions of the Schengen acquis by mutual consent with the Union. The parties would be able to move to future arrangements should an agreement be reached in these areas during the Period. This is similar to the arrangements set out in Article X+1 paragraph [2] in relation to foreign policy and defence collaboration.*
- *The scope and meaning of the second half of paragraph [6] on access to sensitive information is unclear and, as currently drafted, is inconsistent with the objective of providing for mutually beneficial continuity for the UK and the EU during the Period. The UK seeks clarification of what is intended here.*

[1] Unless otherwise provided in this Part, Union law shall be binding upon and applicable in the United Kingdom during the Period.

[1A] This excludes provisions of the Treaties, acts and provisions of international agreements which, pursuant to Protocol (No 15) on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland, Protocol (No 19) on the Schengen acquis integrated into the framework of the European Union, Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, or pursuant to the provisions of the Treaties on enhanced cooperation or Protocol (No 36) on Transitional Provisions, were not binding upon and applicable in the United Kingdom before the date of entry into force of this Agreement as well as acts amending such acts.

[1B] **[Deleted as contained in Annex I]**

[2] Should an agreement between the Union and the United Kingdom governing their future relationship in the area of the Common Foreign and Security Policy and the Common Security and Defence Policy become applicable during the Period, [the arrangements during the Period] shall cease to apply to the United Kingdom from the date of entry into force of that agreement.

[3] During the Period, the Union law applicable pursuant to paragraph 1 shall deploy in respect of and in the United Kingdom the same legal effects as those which it deploys within the Union and

shall be interpreted and applied in accordance with the same methods and general principles as those applicable within the Union.

[3A] The Union law which is within the scope of this Part shall, in its implementation and application, be interpreted subject to and in conformity with all relevant rulings and decisions of the Court of Justice of the European Union and European Commission, given before the end of the Period.

[4] **[Deleted as contained in Annex I]**

[5] The United Kingdom's rights pursuant to Protocol (No 19) on the Schengen *acquis* integrated into the framework of the European Union and Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice shall be subject to the following limitations:

- (a) The rights conferred by Protocol No 19 shall be limited to cases where Article 5 of that Protocol applies.
- (b) In relation to Articles 3 and 4 of Protocol No 21, the rights conferred by those Articles shall be limited to cases where:
 - (i) the act or proposal is one to which Article 4a of that Protocol applies (recalling that Article 4a also applies to any act amending, repealing or replacing an act by which the United Kingdom is bound);
 - (ii) the act or proposal is one which relates to an international agreement in relation to which, prior to the entry into force of this Agreement, at least one of the steps described in Article 218(2) of the TFEU has been taken by the Council;
 - (iii) the act or proposal is one which supplements an act by which the United Kingdom is bound.

[5A] In relation to all other measures adopted pursuant to Title V of Part III of the TFEU after the date of entry into force of this Agreement, the United Kingdom may request to participate. Where the Union agrees to the United Kingdom's participation in the measure, the procedure provided for in Article 331(1) of the TFEU shall apply *mutatis mutandis*.

[5B] The United Kingdom may request to take part in some or all of the provisions of the Schengen *acquis*. The Union shall decide on this request.

[5C] Should any agreement between the Union and the United Kingdom governing their future relationship in the area of freedom, security and justice become applicable during the Period, Protocol No 19, Protocol No 21, acts adopted pursuant to Title V of Part III of the TFEU and provisions of international agreements concluded by the Union pursuant to that Title which are binding upon the United Kingdom and provisions of the Schengen *acquis* in which the United Kingdom takes part, in so far as they relate to matters within the scope of that agreement, shall cease to apply to the United Kingdom from the date of entry into force of that agreement.

[6] Unless otherwise provided in this Part, during the Period, any reference to Member States in the Union law applicable pursuant to paragraph 1 shall be understood as including the United Kingdom. Further horizontal adaptations are set out in Annex II.

[However, where acts of the Union provide for the participation of Member States, nationals of Member States or natural or legal person residing or established in a Member State in an information exchange, procedure or programme and where such participation would grant access to sensitive information that a third country or natural or legal person residing or established in a third country is not to have knowledge of, these references to Member States shall be understood as not including the United Kingdom.]

Article X+2 Institutional arrangements

Explanatory note:

- *In relation to paragraph [3], the UK understands that the definitions in the Agreement will confirm that references to national central banks and members of the European system of central banks in other provisions of Union law shall be read as including the Bank of England during the Period.*
- *In relation to paragraph [4], amendments have been made to allow for the UK's participation where at least one of the two conditions set out is fulfilled. Changes to the second condition would provide for the UK's participation wherever it ensures the 'effective operation and application' of Union law during the Period. These arrangements would also apply to participation in bodies set up by the EU's bilateral international agreements, as is now also referenced in paragraph [2] of Article X+3.*
- *New paragraph [4A] provides for the Union to submit proposals for new Union acts to the UK, recognising the principle of subsidiarity.*
- *The scope and meaning of paragraph [5], which relates to the UK acting as a leading authority, is unclear and, as currently drafted, is inconsistent with the objective of providing for mutually beneficial continuity for the UK and the EU during the period. The UK seeks clarification of what is intended here.*

[1] Notwithstanding Article X+1, during the Period [points (a) and (b) and (c) of Article [NN] from the Common Provisions¹] shall apply.

¹ The Withdrawal Agreement will contain, in its Part on Common Provisions, the following:

"For the purposes of this Agreement, all references to Member States and competent authorities of Member States in provisions of Union law made applicable by this Agreement shall be read as including the United Kingdom and its competent authorities, except as regards:

- (a) the nomination, appointment or election of members of the institutions, bodies, offices and agencies of the Union, as well as the participation in the adoption of acts by the institutions;
- (b) the attendance in the meetings of the committees referred to in Article 3(2) of Regulation (EU) No 182/2011 of the European Parliament and of the Council, of Commission expert groups or of other similar entities, or in the meetings of expert groups or similar entities of bodies, offices and agencies of the Union, unless otherwise provided in this Agreement;
- (c) the participation in the voting arrangements and governance of the bodies, offices and agencies of the Union; [...]"

In addition, the Withdrawal Agreement will contain further horizontal adaptations which the Union law within the scope of this Part shall be applicable in accordance with. An illustrative list of horizontal adaptations is at Annex [II].

[2] **[Deleted as contained in Annex I]**

[3] For the purposes of Articles 282 and 283 TFEU and of Protocol (No 4) on the Statute of the European system of central banks and of the European Central Bank, during the Period, the Bank of England shall not be considered to be a national central bank.

[4] During the Period, representatives or experts of the United Kingdom, or experts designated by the United Kingdom, may attend meetings or parts of meetings of the committees referred to in Article 3(2) of Regulation (EU) No 182/2011 of the European Parliament and of the Council, of Commission expert groups, of other similar entities, or of bodies, offices or agencies where and when representatives or experts of the Member States or experts designated by Member States take part, or of bodies set up by bilateral international agreements (in cases where representatives of Member States take part), provided that one of the following conditions is fulfilled:

- (a) the discussion concerns individual acts to be addressed during the Period to the United Kingdom or to natural or legal persons residing or established in the United Kingdom;
- (b) the presence of the United Kingdom will ensure the effective operation and application of Union law for the purposes of the Period.

The Commission, following consultation with the United Kingdom, will publish guidance on the application of this paragraph.

[4A] During the Period, when transmitting proposals for new acts to the Council of the Union, the Commission [or, as the case may be, the High Representative of the Union for Foreign Affairs and Security Policy,] shall submit copies to the United Kingdom, and may seek advice from experts of the United Kingdom.

[5] [During the Period, the United Kingdom shall not act as leading authority for risk assessments, examinations, approvals and authorisation procedures provided for in Union law.]

Article X+3 **Specific arrangements relating to the Union's external action**

Explanatory note:

- *In its technical note of 8 February the UK proposed an approach whereby the parties would agree that EU bilateral third country agreements would continue to apply to the UK during the Period. Paragraphs [1] and [4] have been amended to reflect this. The note also stated that "the form of such an agreement under Article 31 VCLT is flexible and would be a matter for discussion". The UK wishes to discuss the options for giving effect to this proposal and how it should be reflected in the text of the Agreement. The UK will also make proposals regarding the UK's participation in multilateral agreements to which the EU is a party during the Period once the UK has a clearer understanding of the EU's position.*
- *Paragraph [3] has been deleted. This duty will continue to apply to the UK during the Period due to the legal effect of Article X+1(1) and so this deletion does not affect the substance of the agreement.*
- *In relation to paragraph [4], the UK understands this to mean that agreements may not enter into force without EU authorisation during the Period, subject to an exception for*

agreements concluded pursuant to paragraph [1] which are simply replications of existing agreements.

- *In relation to paragraph [5], amendments have been made to further reflect the need for the UK to be consulted by the Union (and Euratom) as regards representation in relevant international organisations. This provision should also reflect the position in Article X+1[2].*
- *The position set out in paragraph [6] is subject to the interim arrangements on foreign policy and defence collaboration that will apply during the Period, as per Article X+1[2].*

[1] Without prejudice to paragraph 2 of Article X+1, during the Period, bilateral international agreements concluded by the Union, or by the Union and its Member States acting jointly, shall continue to apply to the United Kingdom in accordance with the provisions of this Article. Any reference to Member States, the European Union, or Euratom in such a bilateral international agreement shall be understood as including the United Kingdom.

[2] The United Kingdom may participate in bodies set up under bilateral international agreements in accordance with the arrangements provided for in paragraph 4 of Article X+2.

[3] [Deleted as the duty of sincere cooperation applies throughout the Period in general, including in relation to international agreements, by virtue of Article X+1(1)]

[4] During the Period, the United Kingdom may not become bound by international agreements entered into in its own capacity in the areas of exclusive competence of the Union, unless either authorised to do so by the Union, or in order to give effect to the continuing application of the agreements referred to in paragraph 1 of Article X+3.

[5] [Without prejudice to paragraph 2 of Article X+1,] recognising the need for coordination between the Union (and Euratom) and the United Kingdom, including on sanctions policy, in respect of representation in relevant international organisations or conferences, the United Kingdom shall be consulted in good time by the Commission [or the High Representative of the Union for Foreign Affairs and Security Policy, as the case may be]. The modalities of this consultation shall be agreed between the Parties.

[6] [During the Period, the United Kingdom shall not provide commanders of civilian operations, heads of mission, operation commanders or force commanders for missions or operations conducted under Articles 42 to 44 TEU, nor shall it provide the operational headquarters for such missions or operations. During the Period, the United Kingdom shall not provide the head of any operational actions under Article 28 TEU.]

Article X+4

Specific arrangements relating to Fisheries Policy

Explanatory note:

- *The changes to paragraph [1] are to clarify the need for agreement between the UK and the EU with regards fishing opportunities during the Period, in advance of the formal processes at the December Fisheries Council, in which the UK will no longer have voting rights. The changes also reflect the consequences of the UK's status as a third country for participation in negotiations with other coastal states.*

[1] As regards the fixing and allocation of fishing opportunities within the meaning of Article 43 TFEU for any period prior to the end of the Period, the EU and the United Kingdom shall agree the fishing opportunities related to the United Kingdom prior to the decision-making process within the Council. The United Kingdom shall participate alongside the EU and other coastal States in international fisheries negotiations.

[2] The modalities relating to the above shall be agreed between the Parties.

Article X+5 Supervision and enforcement²

Explanatory note:

- *The UK proposes that a Joint Committee, which will be established for the purposes of the Withdrawal Agreement in general, should be given certain functions concerned with ensuring the proper functioning of the Period, including protecting the rights and interests of both parties. An illustrative basis, intended to inform discussions between the UK and the EU, is set out in footnote 2. The UK believes it would be helpful for this to be supplemented by an article of good faith, applying to the Withdrawal Agreement in general.*
- *The second sentence of this Article has been deleted because it is unnecessary, as the Court of Justice of the European Union is an “institution” of the EU, and so is covered by the first sentence as well as the legal effect of Article X+1.*

During the Period, the institutions, bodies, offices and agencies of the Union shall have the powers conferred upon them by Union law also in relation to the United Kingdom and natural and legal persons residing or established in the United Kingdom.

Article X+6 European Schools

The United Kingdom shall be bound by the Convention defining the Statute of the European Schools until the end of the school year that is ongoing at the end of the Period.

² The functions of a Joint Committee, established for the purposes of the Withdrawal Agreement in general, should include specific arrangements to ensure the effective operation of this Part (Implementation Period). These arrangements will need to be discussed between the UK and the EU, but an illustrative basis could be as follows:

[1] To consider (at the request of one or both of the parties) and if necessary take a decision concerning any of the following matters:

- (a) determining whether new acts are within the scope of this Part;
- (b) determining whether any further adaptations to new acts are necessary;
- (c) resolving any other issues concerning the proper functioning of this Part.

[2] In relation to (c) above, if the matter cannot be resolved, the Joint Committee should be tasked with examining all further possibilities to maintain the proper functioning of this Part and taking any decision necessary to this effect (within a specified period of time).

In addition, an article of good faith should be included in the Withdrawal Agreement in general.

[ILLUSTRATIVE] ANNEX I

List of provisions not incorporated into this Part

Treaty on European Union

Article 10(2)
Article 11(4)
Article 12, except for paragraph (a)
Article 20

Treaty on the Functioning of the European Union

Article 20(2)(b)
Article 22
Article 24(1)
Article 69
Article 223
Articles 293 to 297
Articles 326 to 334, except Article 331 in relation to its application to Protocol 21
Article 353
Article 354
Protocol (No 1) on the role of national parliaments in the EU, except for Articles 1 and 2

Treaty establishing the European Atomic Energy Community

Article 106a only to the extent it applies Articles 48 to 50 of the Treaty on European Union and Articles 223 and 293 to 297 of the Treaty on the Functioning of the European Union
Article 189
Article 208
Protocol on the role of national Parliaments in the EU, except for Articles 1 and 2
Protocol on Transitional Provisions

[ILLUSTRATIVE] ANNEX II

Horizontal adaptations

1. General

The provisions and acts within the scope of this Part shall be applicable in accordance with the provisions of this Part and this Annex.

2. Introductory parts of the acts

The preambles of the acts specified are not adapted for the purposes of this Part. They are relevant to the extent necessary for the proper interpretation and application, within the framework of this Part, of the provisions contained in such acts.

3. Specific terminology of the acts

Unless specified in this Part or the context otherwise requires, the following terms used by the provisions and acts within the scope of this Part shall read as follows:

- a. the term “European Community”, “Community”, “European Union”, “Union” and [*other terms*] shall read “EU and United Kingdom”;
- b. the terms “European Atomic Energy Community” or “Euratom” shall read “Euratom and United Kingdom”.

4. References to Member State

Unless otherwise specified in this Part or the context otherwise requires, whenever the provisions or acts are within the scope of this Part contain references to "Member State(s)", the references shall be understood to include, apart from the Member States of the European Union, also the United Kingdom. Accordingly, whenever the provisions specified in this Part contain references to “third country’ or “third countries”, the references shall be interpreted as excluding the United Kingdom;

5. References to territories

Whenever the provisions or acts within the scope of this Part contain references to the territory or Customs territory of the “Community”, “European Union”, "common market", “domestic market” “internal market”, or [*other terms*] the references shall for the purposes of this Part be understood to be references to the territories of the parties as defined in the Treaties.