

28 June 2017

Subject: Position paper transmitted to EU27 on **Ongoing Union Judicial and Administrative Procedures**

Origin: European Commission, Task Force for the Preparation and Conduct of the Negotiations with the United Kingdom under Article 50 TEU

Objective: For discussion at the Council Working party (Art. 50) of 29 June 2017

Remarks: The attached position paper on **Ongoing Union Judicial and Administrative Procedures** contains the main principles of the EU position in this regard, to be presented to the UK in the context of negotiations under Art. 50

Essential Principles on Ongoing Union Judicial and Administrative Procedures

The Withdrawal Agreement should provide for arrangements relating to proceedings before the Court of Justice involving the United Kingdom, and/or United Kingdom residents/legal persons (I(1)), and administrative procedures before Union institutions, bodies, offices and agencies concerning the United Kingdom, and/or United Kingdom residents/legal persons (II(1)), which are ongoing on the withdrawal date, as well as for arrangements relating to judicial proceedings and administrative procedures initiated after the withdrawal date and relating to facts that occurred before the withdrawal date (I(2); II(2)).¹

I. Proceedings before the Court of Justice

The Withdrawal Agreement should ensure that:

- (1) The United Kingdom's withdrawal as such does not deprive the Court of Justice of its competence to adjudicate in proceedings which are pending on the withdrawal date. This applies for example to infringement procedures against the United Kingdom, instituted by the Commission or a Member State (in particular Articles 258-260 TFEU), review of legality of Union acts instituted by the United Kingdom (Article 263 TFEU), actions for failure to act brought by the United Kingdom (Article 265 TFEU), requests for preliminary rulings submitted by courts in the United Kingdom (Article 267 TFEU), proceedings instituted pursuant to an arbitration clause contained in a contract concluded by or on behalf of the Union involving the United Kingdom (Article 272 TFEU), and proceedings instituted to settle a dispute between the United Kingdom and a Member State which relates to the subject matter of the Treaties submitted under a special agreement (Article 273 TFEU).
- (2) The Court of Justice is competent to adjudicate in preliminary references submitted by courts in the United Kingdom after the withdrawal date relating to facts that occurred before the withdrawal date, as well as for infringement procedures relating to such facts, instituted by the Commission or a Member State (in particular Articles 258-260 TFEU) against the United Kingdom after the withdrawal date.
- (3) Judgements of the Court of Justice given before the withdrawal date as well as judgements given in proceedings mentioned under (1) and (2) have binding force in the United Kingdom after the withdrawal date and are enforceable there under the same conditions as those laid down in Article 299 TFEU.

II. Administrative procedures before the Union institutions, bodies, offices and agencies

The Withdrawal Agreement should ensure that:

- (1) The United Kingdom's withdrawal as such does not deprive Union institutions, bodies, offices and agencies of their competence to conduct administrative procedures pending before them on the withdrawal date concerning compliance with Union law by the United Kingdom,

¹ The arrangements dealt with in this paper are without prejudice to the possibility, e.g., for the Court of Justice to consider, on a case by case basis, that a preliminary question addressed to it by a court in the United Kingdom can no longer be adjudicated by the Court of Justice for lack of substantive Union law applicable to the case after the United Kingdom's withdrawal.

and/or United Kingdom residents/legal persons. Such procedures include, for example, state aid investigations by the Commission concerning the United Kingdom, or procedures initiated by the European Supervisory Authorities.

- (2) The Union institutions, bodies, offices and agencies are competent under the same conditions as before the withdrawal date to start and conduct, after the withdrawal date, administrative procedures concerning compliance with Union law by the United Kingdom, and/or United Kingdom natural/legal persons, relating to facts that occurred before the withdrawal date.
- (3) All the procedural rules provided for by Union law, as for example Council Regulation (EU) 2015/1589, continue to apply for the conduct of procedures referred to in points (1) or (2) above.
- (4) All acts adopted by Union institutions, bodies, offices and agencies in procedures under (1) and (2) produce the same legal consequences in the United Kingdom as comparable acts produce under Union law in the Union on the date of withdrawal.
- (5) Administrative Union acts imposing pecuniary obligations, adopted before the withdrawal date and those adopted in procedures under (1) and (2), are enforceable in the United Kingdom after the withdrawal date under the same conditions as those laid down in Article 299 TFEU.
- (6) The validity and enforceability of Union acts covered by points (4) and (5) may be reviewed only in accordance with the applicable provisions of Union law or the Withdrawal Agreement.
- (7) Technical examinations conducted by United Kingdom Examination Offices in cooperation with the Community Plant Variety Office pursuant to the rules set out inter alia in Council Regulation (EC) 2100/94 and Commission Regulation (EC) 874/2009, which are ongoing on the date of withdrawal, will continue and be concluded in compliance with the aforementioned Regulations.