



Council of the
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COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	3 February 2020
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	Recommendation for a COUNCIL DECISION authorising the opening of negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland

Delegations will find attached document COM(2020) 35 final.

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Brussels, 3.2.2020
COM(2020) 35 final

Recommendation for a

COUNCIL DECISION

**authorising the opening of negotiations for a new partnership with the United Kingdom
of Great Britain and Northern Ireland**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

With this recommendation, the European Commission invites the Council of the European Union to authorise the opening of negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland, to nominate the Commission as Union negotiator and to address directives to the negotiator and designate a special committee in consultation with which the negotiations must be conducted.

2. BACKGROUND

On 1 February 2020, the United Kingdom withdrew from the European Union and from the European Atomic Energy Community (Euratom).

The arrangements for the withdrawal are set out in the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland ('the United Kingdom') from the European Union and the European Atomic Energy Community ('the Withdrawal Agreement').¹

The Withdrawal Agreement entered into force on 1 February 2020 and provides for a transition period during which Union law applies to and in the United Kingdom in accordance with that Agreement. This period will end on 31 December 2020, unless the Joint Committee established under the Withdrawal Agreement adopts, before 1 July 2020, a single decision extending the transition period for up to 1 or 2 years.

In the guidelines of 23 March 2018, the European Council restated the Union's determination to have as close as possible a partnership with the United Kingdom in the future. According to these guidelines, 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. The European Council set those guidelines with a view to the overall understanding of the framework for the future relationship that was to be elaborated in a political declaration accompanying and referred to in the Withdrawal Agreement.

The political declaration that accompanied the Withdrawal Agreement sets out the framework for the future relationship between the European Union and the United Kingdom ('Political Declaration').² It establishes the parameters of 'an ambitious, broad, deep and flexible partnership across trade and economic cooperation with a comprehensive and balanced Free Trade Agreement at its core, law enforcement and criminal justice, foreign policy, security and defence and wider areas of cooperation.'

Article 184 of the Withdrawal Agreement provides: 'The Union and the United Kingdom shall use their best endeavours, in good faith and in full respect of their respective legal orders, to take the necessary steps to negotiate expeditiously the agreements governing their future relationship referred to in the Political Declaration of 17 October 2019 and to conduct the relevant procedures for the ratification or conclusion of those agreements, with a view to ensuring that those agreements apply, to the extent possible, as from the end of the transition period.'

¹ OJ L 29, 31.1.2020, p. 7.

² OJ C 34, 31.1.2020, p. 1.

In its conclusions of 13 December 2019, the European Council reconfirmed its desire to establish as close as possible a future relationship with the United Kingdom in line with the Political Declaration and respecting the previously agreed European Council's guidelines, as well as statements and declarations, notably those of 25 November 2018. The European Council reiterated in particular that the future relationship with the United Kingdom will have to be based on a balance of rights and obligations and ensure a level playing field. The European Council invited the Commission to submit to the Council 'a draft comprehensive mandate for a future relationship with the United Kingdom immediately after its withdrawal'.

3. THE NEW PARTNERSHIP

The ambitious and comprehensive new partnership envisaged in this recommendation reflects the conclusions and guidelines of the European Council and builds on the Political Declaration.

The envisaged partnership is a single package that comprises three main components:

- general arrangements (including provisions on basic values and principles and on governance);
- economic arrangements (including provisions on trade and level playing field guarantees); and
- security arrangements (including provisions on law enforcement and judicial cooperation in criminal matters, as well as on foreign policy, security and defence).

The envisaged partnership is premised on the recognition that prosperity and security are enhanced by the rules-based international order, defending individual rights and the rule of law, high standards of protection of workers' and consumers' rights and of the environment, the fight against climate change, and free and fair trade.

The scope of the partnership envisaged in this recommendation is comprehensive, in line with the conclusions of the European Council of 13 December 2019. It includes all areas of interest outlined in the Political Declaration: trade and economic cooperation, law enforcement and judicial cooperation in criminal matters, foreign policy, security and defence, participation in Union programmes and thematic areas of cooperation. The Commission stands ready to achieve as much as possible of this during the transition period and to continue negotiations on any remaining issues after the end of the transition period.

The envisaged partnership would respect the autonomy of the Union's decision-making and its legal order, the integrity of its single market and the Customs Union and the indivisibility of the four freedoms. It should ensure the protection of the Union's financial interests and reflect the United Kingdom's status as a non-Schengen third country that cannot have the same rights and enjoy the same benefits as a member. The envisaged partnership should be based on an overall governance framework covering all areas of cooperation.

As regards the territorial scope of the envisaged partnership, it is recalled that in the statements to the minutes of the European Council meeting of 25 November 2018, the following declaration of the European Council and of the Commission has been included: 'After the United Kingdom leaves the Union, Gibraltar will not be included in the territorial scope of the agreements to be concluded between the Union and the United Kingdom. However, this does not preclude the possibility to have separate agreements between the Union and the United Kingdom in respect of Gibraltar. Without prejudice to the competences

of the Union and in full respect of the territorial integrity of its Member States as guaranteed by Article 4(2) of the Treaty on European Union, those separate agreements will require a prior agreement of the Kingdom of Spain.’

4. THE NEGOTIATIONS

The Commission will conduct the negotiations in accordance with the negotiating directives set out in the annex to the decision and in consultation with a special committee appointed by the Council.

The Commission will conduct the negotiations in continuous coordination with the Council and its preparatory bodies and will in a timely manner consult and report to the preparatory bodies of the Council and will provide in a timely manner all necessary information and documents relating to the negotiations.

The Commission will, in a timely manner, keep the European Parliament fully informed of the negotiations.

The Commission will conduct negotiations in cooperation with the High Representative of the Union for Foreign Affairs and Security Policy and in agreement with him for Common Foreign and Security Policy matters.

5. LEGAL BASIS

The procedural legal basis for a decision authorising the opening of negotiations and addressing directives to the negotiator is Article 218(3) and (4) TFEU. At this stage, because of the comprehensive scope of the envisaged partnership and the ambitious and long-term relationship that it seeks to establish, the appropriate substantive legal basis for the decision authorising the opening of negotiations and addressing directives to the negotiator is Article 217 TFEU. In addition, insofar as the annex to the decision contains negotiating directives regarding matters falling under the Euratom Treaty, the legal basis of the decision should include Article 101 EAEC. The legal basis of the recommended decision should therefore be Articles 218(3) and (4) TFEU and Article 101 EAEC. The substantive legal basis for the signature and conclusion of the new partnership can only be determined at the end of the negotiations.

Recommendation for a

COUNCIL DECISION

authorising the opening of negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, in particular Article 217, in conjunction with Article 218(3) and (4) thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, in particular Article 101 thereof,

Having regard to the recommendation from the European Commission,

Whereas:

- (1) On 1 February 2020, the United Kingdom of Great Britain and Northern Ireland ('the United Kingdom') withdrew from the European Union.
- (2) The arrangements for the withdrawal are set out in the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community ('the Withdrawal Agreement') negotiated and concluded in accordance with Article 50 of the Treaty on European Union.³
- (3) The Withdrawal Agreement entered into force on 1 February 2020 and provides for a transition period during which Union law applies to and in the United Kingdom in accordance with that Agreement. This period will end on 31 December 2020, unless the Joint Committee established under the Withdrawal Agreement adopts, before 1 July 2020, a single decision extending the transition period for up to 1 or 2 years.
- (4) In the guidelines of 23 March 2018, the European Council restated the Union's determination to have as close as possible a partnership with the United Kingdom in the future. According to these guidelines, 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. The European Council set those guidelines with a view to the overall understanding of the framework for the future relationship that was to be elaborated in a political declaration accompanying and referred to in the Withdrawal Agreement.
- (5) The political declaration that accompanied the Withdrawal Agreement sets out the framework for the future relationship between the European Union and the United Kingdom ('Political Declaration').⁴ It establishes the parameters of an ambitious, broad, deep and flexible partnership across trade and economic cooperation with a

³ OJ L 29, 31.1.2020, p. 7.

⁴ OJ C 34, 31.1.2020, p. 1.

comprehensive and balanced Free Trade Agreement at its core, law enforcement and criminal justice, foreign policy, security and defence and wider areas of cooperation.

- (6) Article 184 of the Withdrawal Agreement provides that the Union and the United Kingdom shall use their best endeavours, in good faith and in full respect of their respective legal orders, to take the necessary steps to negotiate expeditiously the agreements governing their future relationship referred to in the Political Declaration and to conduct the relevant procedures for the ratification or conclusion of those agreements, with a view to ensuring that those agreements apply, to the extent possible, as from the end of the transition period.
- (7) In its conclusions of 13 December 2019, the European Council reconfirmed its desire to establish as close as possible a future relationship with the United Kingdom in line with the Political Declaration and respecting the previously agreed European Council's guidelines, as well as statements and declarations, notably those of 25 November 2018. The European Council reiterated in particular that the future relationship with the United Kingdom will have to be based on a balance of rights and obligations and ensure a level playing field. The European Council invited the Commission to submit to the Council 'a draft comprehensive mandate for a future relationship with the United Kingdom immediately after its withdrawal'. The European Council stated that it would follow the negotiations closely and provide further general political directions as necessary.
- (8) Negotiations should therefore be opened with a view to establishing a new partnership with the United Kingdom of Great Britain and Northern Ireland. The Commission should be nominated as the Union negotiator. For Common Foreign and Security Policy matters, the Commission should conduct negotiations in agreement with the High Representative of the Union for Foreign Affairs and Security Policy.

HAS ADOPTED THIS DECISION:

Article 1

The Commission is hereby authorised to open negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland.

Article 2

The Commission is hereby nominated as the Union negotiator.

Article 3

The Commission shall conduct the negotiations in consultation with the [name of the special committee] and on the basis of the directives contained in the annex.

Article 4

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*