



Council of the
European Union

Brussels, 22 January 2020
(OR. en)

XT 21010/20

BXT 11
INF 8
API 10

NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Guiding principles for transparency in negotiations on the future relationship with the United Kingdom

Delegations will find in the Annex a note setting out guiding principles for transparency in negotiations on the future relationship with the United Kingdom as endorsed by Coreper (Art. 50) on 22 January 2020.¹

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.

GUIDING PRINCIPLES FOR TRANSPARENCY
IN NEGOTIATIONS ON THE FUTURE RELATIONSHIP WITH THE UK

Building-up on the good practices established in the Article 50 negotiations on the UK withdrawal from the Union, the following note presents a set of guiding principles for transparency that will apply to the overall negotiations on a future relationship with the UK. As it has been clearly demonstrated in the Article 50 negotiations, ensuring that the negotiations are conducted in a transparent manner is key to their success and to the preservation of the unity of the 27.

In its conclusions of 13 December 2019, the European Council (Art. 50) clearly reconfirmed this objective of transparency by insisting on the need for these upcoming negotiations to continue to take place in a coherent manner and in unity and transparency with all Member States. The conclusions further specified that the negotiations will be conducted in continuous coordination and permanent dialogue with the Council and its preparatory bodies.

Against this background, a coherent EU approach to transparency arrangements for the negotiations should be carefully defined ahead of the formal start of negotiations.

This note presents a set of guiding principles for transparency for the overall course of negotiations on the future relationship with the UK. These principles aim at facilitating effective public scrutiny and providing a steady flow of public information throughout the negotiations whilst preserving the space to form EU positions and negotiate with the UK.

Principles for transparency in negotiations of the future relationship with the UK

- **The Union negotiator is invited to continue to reach out to citizens, national parliaments and stakeholders, and to provide timely and directly accessible information to the public in particular around negotiation rounds and relevant developments.** This could include regular press conferences and other information materials.

- **The European Parliament will be kept closely and regularly informed throughout the negotiations by the Union negotiator**, including through the transmission of negotiation documents through the appropriate channels and in accordance with applicable rules and practices. In addition, regular contacts between the rotating Presidency and representatives of the European Parliament will take place.
- **Member States with constitutional arrangements requiring them to transmit documents to their National Parliaments will be able to do so according to applicable Union and national rules and practices and without prejudice to the application of Union rules on public access to documents.**
- **Rules on transparency and public access to documents will apply to all Council documents in the context of negotiations.** Following a case-by-case assessment, certain documents may be released proactively to the public by the Council and its preparatory bodies. Other Council documents will in principle be marked as "LIMITE". Initial applications for access to documents will be handled by the General Secretariat of the Council and confirmatory applications by the Council and its preparatory bodies, assisted by national experts on transparency and public access to documents and in accordance with applicable rules, including exceptions, foreseen in EU law.
- **European Council conclusions and guidelines and Council negotiating directives on this matter will be made public immediately after their formal adoption by the European Council and/or the Council².** Until their formal adoption, these documents will in principle be marked as "LIMITE".
- **It is noted that negotiating documents of the Commission shared by the Union negotiator with the EU Member States / European Council / Council / European Parliament / National Parliaments / UK will be released to the public by the Union negotiator, within the limits of EU law.**

² This is without prejudice to the transparency regime applicable to other negotiations.

- **Member States will be consulted on negotiating documents to be sent to the United Kingdom**, in accordance with applicable procedural arrangements for the conduct of the negotiations. **All UK documents received by the Union negotiator, will be transmitted to the Council and its preparatory bodies in a timely manner** via the General Secretariat of the Council.
- **Documents originating from Member States may be disclosed on a case-by-case basis, subject to prior agreement of the originating Member State and in accordance with applicable rules and exceptions under EU law. Other third-party documents may be disclosed on a case-by-case basis, subject to prior consultation of the author and in accordance with applicable rules and exceptions under EU law.**

It is noted that the elements of the principles referring to the Union negotiator are also endorsed by the Commission.

Typology of documents used in the negotiations of the future relationship with the UK and corresponding transparency regime

Different types of documents will be used and discussed by the Council and its preparatory bodies in the context of negotiations with the UK. Documents will originate from different sources and will be addressed to different recipients. The following Annex establishes a typology of documents and suggests an adequate transparency regime for each of them, in accordance with the principles listed above.

• **TRANSPARENCY REGIME FOR COUNCIL DOCUMENTS**

COUNCIL DOCUMENTS			
Originator	Possible types of documents	Recipient	Disclosure
COUNCIL including GSC / ROTATING PRESIDENCY/ PREPARATORY BODIES	- European Council guidelines and conclusions - Council decision authorising the opening of negotiations and nominating Union negotiator - Council negotiating directives ³	Delegations and Union negotiator via GSC	Public from the time of formal adoption
	Coreper, GAC and European Council meeting agendas and convocations	Delegations and Union negotiator via GSC	Public
	Notes to WP/Coreper/GAC/EUCO/Documents with guidance for the Union negotiator and compromise proposals/Opinions from the Council Legal Service, etc.	Delegations and Union negotiator via GSC	Case-by-case assessment in accordance with applicable rules and exceptions under EU law

³ This is without prejudice to the transparency regime applicable to other negotiations.

TRANSPARENCY REGIME FOR DOCUMENTS ORIGINATING FROM 3rd PARTIES

DOCUMENTS ORIGINATING FROM 3rd PARTIES (OTHER INSTITUTIONS, BODIES, STAKEHOLDERS, etc.)			
Originator	Possible types of documents	Recipient	Disclosure
EU NEGOTIATOR (COMMISSION)	- Recommendation for Council Decision authorising the opening of negotiations and nominating Union negotiator - Recommendation for Council Negotiating Directives	Delegations via GSC	Made public by Union negotiator
	Negotiating documents: e.g. Agendas for negotiating rounds / EU position papers / non-papers / EU text proposals etc.	EU MS / EP / National Parliaments / UK	Made public by Union negotiator within the limits of EU law
	Background information / press material, etc.	General public	Made public by Union negotiator
MEMBER STATES	Non-papers / position papers, etc.	Delegations and Union negotiator via GSC	Case-by-case assessment subject to prior agreement of Member State on possible disclosure, in accordance with applicable rules and exceptions under EU law

DOCUMENTS ORIGINATING FROM 3rd PARTIES (OTHER INSTITUTIONS, BODIES, STAKEHOLDERS, etc.)

Originator	Possible types of documents	Recipient	Disclosure
<p>UK</p>	<p>Documents originating from the UK (positions, draft proposals, non-papers, etc)/UK draft proposals relating to the implementation of the withdrawal agreement</p>	<p>EU negotiator (shared with delegations via GSC)</p>	<p>Case-by-case assessment subject to prior consultation on possible disclosure, in accordance with applicable rules and exceptions under EU law</p>
<p>OTHER INSTITUTIONS BODIES AND STAKEHOLDERS</p>	<p>Documents originating from third parties (positions, draft proposals, non-papers, etc.)</p>	<p>EU negotiator and/or delegations via GSC</p>	<p>Case-by-case assessment subject to prior consultation with the author on possible disclosure, in accordance with applicable rules and exceptions under EU law</p>