



Communication of the European Commission on preparing for the withdrawal of the United Kingdom from the European Union

One of the main new features of the Treaty of Lisbon, specifically in Article 50 of the Treaty of the European Union (EU), is to allow Member States to decide to withdraw from the EU. Following the result of the June 2016 referendum on whether to stay in the EU, the United Kingdom has become the first Member State to exercise this option.

Following the procedure laid down for this purpose, on 29 March 2017, the UK notified the European Council of its intention to leave the EU. Since that date, both the EU and the UK have been working towards an Agreement to facilitate an orderly withdrawal.

On 19 July, the European Commission (EC) published a Communication to the European Parliament, the European Council, the Council, the European Central Bank, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank on preparing for the withdrawal of the United Kingdom from the European Union.

As indicated therein, the parties concerned are expected to agree on the final wording of the Withdrawal Agreement in October 2018, together with a political declaration on their future relationship. This is the only way for the Agreement to be ratified by the deadline established in the Treaty, which is two years after the withdrawal notification date.

However, the negotiation is proving to be particularly complex with regard to certain issues, such as the transfer of personal data, police and judicial cooperation on criminal matters, the role of the Court of Justice of the European Union, customs and the border with Ireland. This means that the Withdrawal Agreement may not be reached or may not be ratified by 30 March 2019.

At any event, as various possible future scenarios are envisaged and it is impossible to predict the result of the negotiations, in this Communication, the European Commission calls for efforts to be stepped up in order to organise an orderly withdrawal of the United Kingdom from the EU at all levels.

Main consequences according to the likely scenarios envisaged

Scenario 1: ratification of the Withdrawal Agreement by the deadline with a transition period until 31 December 2020

If the Withdrawal Agreement is ratified before 30 March 2019, one of the main consequences is that EU law will continue to apply in the United Kingdom until 1 January 2021, as it has been agreed to include a transition period to said date. However, the European Council has reiterated on several occasions that during this period, the United Kingdom would lose its Member State status, with the negotiated consequences thereof. Nevertheless, this scenario would give a greater margin to the different parties affected to be able to take the

necessary steps in order to adapt to the new situation assuming as few risks as possible.

At any event, other significant consequences for the United Kingdom in this scenario as from 30 March 2019 would be as follows:

- In its relationships with the EU, it would be treated as a third country.
- At a governance level, it would no longer participate in EU institutions, bodies or agencies or in decision making.
- EU law would apply in its territory during the transition period. In addition, EU institutions would maintain their role in the supervision and enforcement of EU law.
- Both parties would have to have signed and ratified the Agreement on the future relationship between the EU and the United Kingdom by 1 January 2021.

Scenario 2: in the event that a Withdrawal Agreement has not been reached or ratified by 30 March 2019

If this scenario were to materialise, one of the main consequences would be that EU law would cease to apply in the United Kingdom as from 30 March 2019. This situation might have important consequences for the citizens, businesses and administrations of both parties. The financial services sector will be one of the most affected sectors given the size of the City of London as an international centre for financial services and, in particular, due to its links to European markets.

Other relevant consequences for the United Kingdom in this scenario would be as follows:

- In its relations with the EU, it would be treated as a third country. The EU might be interested in starting negotiations with the UK as a third country.
- There will be no specific arrangements in place for EU citizens in the United Kingdom and vice versa.
- With regard to EU funding, UK entities would cease to be eligible for the purpose of receiving EU grants and participating in EU procurement procedures.
- Trade relations between the EU and United Kingdom would be governed by general international public law, including the rules of the World Trade Organisation.
- With regard to cross-border issues, the EU would apply its tariffs at borders with the United Kingdom, including checks and controls for customs, sanitary and phytosanitary standards.

Scenario 3

Finally, another possible alternative, provided for in Article 50 of the EU Treaty, is for the European Council, in agreement with the United Kingdom, to decide unanimously that the Treaties will cease to be applied at a later date. For the time being, however, the United Kingdom has not given any signs that it will request an extension to its EU membership.

Actions that need to be carried out

Bearing in mind the different scenarios under consideration, the EC urges citizens, businesses and Member States to prepare for the changes resulting from Brexit in order to mitigate the potential risks that may arise. It, therefore, distinguishes between preparedness measures and contingency planning.

Preparedness measures

These are measures that will have to be taken as a consequence of the withdrawal of the United Kingdom, regardless of whether or not there will be a Withdrawal Agreement.

In the field of financial services, these measures include financial institutions and market infrastructures

located in the United Kingdom requesting authorisations and certificates in any EU27 Member State to ensure continuous access to the EU market through the use of the passport as from the time that Brexit takes place. Otherwise, the provision of financial services from the United Kingdom will be subject to the third country regime of EU law or national legal regimes depending on the Member State in which they choose to operate, as the case may be.

In relation to contracts, the EC highlights that there does not appear to be an issue of a general nature linked to contract continuity. However, it recommends that each type of contract should be studied separately. In the area of securities markets, the uncertainty and disputes are concentrated around derivative contracts.

Contingency planning

This planning aims to set out possible measures to mitigate the effects of a withdrawal of the United Kingdom without an agreement and, hence, without the transition period. For example, in the area of financial services, the competent authorities are asking sector entities to submit contingency plans in anticipation of a hard Brexit, i.e., without an Agreement.

Affected parties

Private sector

Without prejudice to the actions that Brexit requires of the public sector (whether at an EU, national, regional or local level), the EC communication indicates that preparation for Brexit mainly concerns private parties, business operators and professionals. The EC therefore recommends that they should assess the possible impact of the cliff-edge scenario on their business model and take all the steps required.

Public sector

The preparedness work at an EU level includes the EC organising technical expert seminars allowing discussion of the practical aspects of the withdrawal that need to be taken into account.

Part of this work has led to the publication of several Communications by the EC on the rules applicable to relations with the United Kingdom when it becomes a third country. In the field of financial services, the Communications published have dealt with the following topics: statutory audits, credit rating agencies, asset management, post-trade services, investment services, banking and payment services, occupational retirement institutions and (re)insurance.

Other work strands on which the EC has focused include the identification of legislative changes required as a result of Brexit and the relocation process for EU agencies and bodies located in the United Kingdom. With regard to this last point, it should be noted that the European Banking Authority will move to Paris in 2019.

Another key area that the EC is working on is the disconnection and adaptation of databases and IT systems for information sharing with the United Kingdom, which is particularly important in the field of financial services.

The EC also suggests and encourages co-legislators to take into account the possible implications of the withdrawal of the United Kingdom on financial stability and to approve certain legislative proposals affecting the current supervisory arrangements. One of these is its proposal to amend the Regulation on Central Counterparties – known as EMIR, *European Market Infrastructure Regulation* – and the other relates to the revision of the European System of Financial Supervision .

With regard to the first proposal, the EC is aware that a large volume of transactions in euro-denominated derivatives is currently cleared by central counterparties located in the United Kingdom. Consequently, when the UK leaves the EU, a substantial volume of transactions denominated in this currency will no longer be

cleared in EU territory and subject to the EMIR and the supervisory structure provided for therein, which might have an impact on financial stability. In fact, the EC already highlighted these risks on 4 May 2017 in its Communication *"Responding to challenges for critical financial market infrastructures and further developing the Capital Markets Union"*. To this end, it proposes specific amendments to the EMIR and to the Regulation on the European Securities and Markets Authority, in particular to establish clear and coherent supervisory arrangements with third-country central counterparties.

Its proposal for the package on the revision of the European System of Financial Supervision also aims to strengthen the role of the European Supervisory Authorities in relation to the regime for third countries, both at the level of their participation in the equivalence decision process and in the subsequent monitoring of the legal arrangements of third countries that have been declared equivalent or the supervision performed by their national authorities.

In the scope of financial stability, a technical working group, co-chaired by the Bank of England and the European Central Bank, has been set up. This group will meet periodically to analyse the risks that might be caused by Brexit.

At the same time, the European Supervisory Authorities are working on various issues related to Brexit, particularly issuing warnings, opinions or recommendations with regard to the possible effects of a no-deal withdrawal.

Finally, Member States are also making internal adjustments as a result of Brexit, including regulatory changes.

Links of interest:

[Communication from the European Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank. Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019.](#)

[Pending and planned legislative proposals for the purposes of Brexit preparedness](#)

[EC Brexit preparedness Communications](#)