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Outcome of the UK Referendum – State of play

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We are talking here about an unprecedented political process, extremely complex legally with strong political, economic and social repercussions. Its consequences are undeniable and unprecedented for both the European Union and the United Kingdom. The total extension of repercussions is still largely unknown embracing both short and long term phenomena.

Some people see Brexit as a window of opportunity for the EU in terms of incentives for further reforms. But we talk here about reforms which the Union must embark upon with or without UK. It is also true that we have started the European integration process without the UK and we will carry on without them.

Negotiations will be difficult. There is a down side risk that both parties can walk away from the negotiating table. But negotiations will be a learning process which can work as an eye opener for the British public at large.

The European Parliament, like the other EU institutions, has expressed many times its regret regarding the decision taken by the United Kingdom to leave, while obviously respecting such decision. The feeling of regret has not appeased over time. However, in spite of all the complexities and consequences, we are responsible for ensuring the accomplishment of this process, and this we will do in the best interests of the Union and of its citizens.

The Treaty imposes on both parties the duty to negotiate the withdrawal while taking into account the framework of the future relationship. We are absolutely clear that withdrawal without agreement would have substantial negative economic consequences for the UK. It would also be damaging to the Union. Reducing the damage and managing the negative consequences of this process will be an important challenge to cope with.

Our responsibility is significant and the responses we give to fundamental issues at stake will impact on the lives of millions of citizens. Our duty is to ensure that the process and its results respect the values and principles on which the Union is founded. We believe in the absolute need to defend the integrity of the Union's legal order. This can only be achieved by avoiding distortions to the constitutional system as designed by the Treaties. Treaties are our boundaries. The European Parliament will act as an honest and constructive partner so long as all discussions remain within the framework and spirit of the Treaties and Charter of Fundamental Rights. In light of the resolution adopted by Parliament on 5 April on the negotiations with the UK, that view reflects largely the current position of the Parliament regarding the upcoming negotiations. These words carry a special meaning as they reflect our understanding of the constitutional nature of the European integration process. They

also reflect what for us constitutes essential parameters for ensuring the development of the Union as a fair, credible and sustainable project.

The Parliament will remain very vigilant in these respects and in ensuring that the principles and values of the EU are respected and promoted in the negotiations and beyond.

Procedure and role of the European Parliament

The UK's decision to withdraw highlights the complex relationship between the political process and the fundamental constitutional nature of European integration process. This complexity is a consequence of the exceptional character of the Union's legal order. This complexity and the confluence of legal and political elements will also provide the framework for negotiations with the UK and the subsequent process regarding the future paths for the Union.

On 22 May, the Council has adopted the decision authorising the opening of negotiations and the negotiating directives, which are publicly available. According to the Treaty, the thrust of the negotiations will be ensured mainly by the European Council, by the Council in its General Affairs configuration and by the Commission as appointed negotiator. Both the European Council and the Council will take steps to amend the guidelines (the European Council) and the directives (the Council) on substance, as negotiations progress and the positions of the UK become more precise.

It is for the Council to conclude the withdrawal agreement by means of a vote by the super-qualified majority, as specified in Article 238(3)(b) TFEU: "the qualified majority shall be defined as at least 72 % of the members of the Council representing the participating Member States, comprising at least 65 % of the population of these States". In the withdrawal procedure, the participating Member States include all but the withdrawing Member State. The withdrawal agreement will be concluded after obtaining the consent of the Parliament. This qualified majority translates into a majority of 20 out of 27 Member States. The consent of Parliament requires simple majority. The UK Members of Parliament will participate in this vote. The committee competent for the consent procedure is the Committee on Constitutional Affairs.

We are with Michel Barnier when he talks about the transparency of the Brexit negotiations. Indeed, the openness of the whole process in the Union has been until now remarkable. The demand for transparency is shared across the institutions. The Parliament has called for the negotiations to be conducted in good faith and full transparency. The Council has reiterated this principle, taking concrete action to enact specific guiding principles. What is not clear for the time being, however, is the British approach to the transparency of the whole negotiation process, to what extent it could match our commitment.

The European Parliament has been involved in the Brexit process from the very beginning. We expect that it will continue to be so throughout the forthcoming negotiations' cycle. In line with the Statement after the informal meeting of the Heads of State or Government of the 27 Member States of 15 December 2016, the

“representatives of Parliament” are invited to the preparatory meetings of the European Council. This means that the Parliament is involved at all levels (including sherpa meetings and the General Affairs Council). The President of Parliament is also invited to be heard at the beginning of the meetings of the European Council.

The deadline for the conclusion of the agreement is two years after the withdrawal notification. This means that the withdrawal should be effective from 30 March 2019. That would allow the consent procedure to be finalised in good time ahead of the 2019 European elections. But, the European Council can unanimously decide to extend the negotiations, in agreement with the UK.

Negotiations principles and priorities

The negotiating directives, as adopted by the Council last week, identify the matters that constitute a priority for the negotiations. These priorities are essentially the same as those expressed by the European Parliament in its resolution of 5 April regarding the first phase of the negotiations, i.e., regarding the exit. It is important to emphasise here that there is a united approach of the institutions on the substantial priorities and the fundamental principles to be followed in the negotiations.

These principles include:

- an orderly and duly phased withdrawal and negotiations; all the institutions agree that substantial (EP) or sufficient (EU and Council) progress must be made towards a withdrawal agreement so that talks can start regarding the following stage, including any transitional arrangements and the future relationship;
- the transitional arrangements, strictly limited both in time and in scope;
- acting in unity in the defence of the European Union’s interests and its integrity and autonomy, including regarding the role of the Court of Justice, which is for Parliament a major element of the negotiations.

The substantial priorities include protecting the rights of citizens, ensuring a single financial settlement, and addressing the unique position and the special circumstances confronting Ireland and the Good Friday Agreement.

Citizens' rights

The first and primary concern for us is the rights of citizens. This concern is shared across the Union and to a large extent also in the UK. The latter results, among others, from votes in the House of Lords on the withdrawal bill and from reports on these issues published by the House of Lords.

Citizens’ rights constitute the most pressing issue, and will be brought to intense scrutiny in the context of the negotiations, as the withdrawal will indeed strongly affect the rights and obligations of a large number of EU citizens.

As an institution representing the citizens of the Union, the Parliament first priority could only be the citizens of the Union, including of course the citizens of the UK. The legal status of the citizens of the EU living (around 3,3million - mostly active) or having lived in the United Kingdom and of UK citizens living (around 1,2 million -

mostly inactive) or having lived in other Member States are the top priority. Politically, on the side of the Union, we are clearly determined to guarantee maximum continuity and legal certainty to all the concerned categories of citizens. For this purpose, we aim at ensuring a single framework guaranteeing reciprocal, balanced and mutually enforceable protection of the rights of EU citizens in the UK and of UK citizens in the EU following the withdrawal. The negotiations between the Union and the United Kingdom on the withdrawal and on the future relationship will determine how this will be dealt with. It will be for both parties in the negotiations to ultimately agree on and determine the scope of the protection of citizens' rights, while being certain that after the withdrawal it will not be possible to keep untouched the citizenship status or even the whole set of rights associated to that status. This is a consequence of the derivative nature of EU citizenship.

Several strategies are being put forward by experts and we are thoroughly examining them. The first strategy is to protect the rights even if the citizenship status as such cannot be maintained. This would imply what experts call a "decoupling" of the rights from the citizenship, and to protect those rights even if they are no longer covered by citizenship status. These rights would include for instance the recognition of qualifications' certificates, free movement, right of establishment, social protection rights. Some experts, and politicians alike, have proposed also the possibility of maintaining EU citizenship, particularly for UK citizens residing in other Member States but also for the citizens of the UK, through an "associate citizenship". In this case, the Union would give EU citizenship to UK citizens even though the UK is no longer a Member State. Such option would however require Treaty change.

The possibility is not excluded that citizens will challenge in the future the loss of citizenship as a consequence of the withdrawal, on the basis of important case-law of the Court of Justice. This is especially the case for UK citizens residing in other Member States, who did not have the right to vote in the referendum, and are most affected by a decision in which they had no voice. It is thus important to clearly define from the outset what is the constitutional and legal framework within which we must act to address the issues at stake.

There are questions that require responses so that the political process of negotiations is correctly informed and conducted from the EU constitutional and legal point of view. The European Parliament is making considerable efforts in gathering as complete and reliable evidence as possible in order to contribute to devise the right responses to the issues at stake, including as regards issues like:

- the cut-off date for the exercise of the rights associated with EU citizenship;
- the level of protection and minimum requirements, in terms of content, in terms of personal coverage, and in terms of duration of protection, that should be complied with under European Union law for the protection of the rights of EU citizens in the context of the negotiations under Article 50 TEU;
- the feasibility or even desirability of a reciprocity based system.

In the evidence gathering work which is being carried out in the Parliament, the increasing difficulties faced by citizens in the UK in the context of the recognition and enjoyment of residence and other associated rights have been brought to our attention. The number of petitions received by Parliament regarding Brexit has

increased considerably last year and this year (10,6% of all the petitions received in 2016 came from the UK, which represents an increase from around 5 to 6% in previous years; in 2017, 16% of the petitions received so far concern Brexit). These petitions are submitted by individual citizens and businesses, directly concerned by the loss of the status of EU citizenship and/or of the rights associated to this status (free movement, access to labour market, family unity, etc).

The difficulties brought to our attention include onerous, too complex and too long administrative procedures. They include also very restrictive interpretations of the applicable law by the national administration of the UK. This, it should be noted, at a time where the UK is still a Member State, bound by EU law obligations. We must remain very vigilant in order to ensure that the rights of citizens are guaranteed and defended until the withdrawal and beyond. I mentioned before that the challenge for the Union as of now and for the future is to uphold and protect the principles of fundamental constitutional nature on which it is founded. These include the rule of law and the protection of individual rights.

As every learning process, the solutions found by the negotiators and their impact on the lives of citizens concerned will constitute for us important lessons regarding the evolution of the concept of EU citizenship and the protection of individuals, and how all this can be reinforced and indeed duly reflected in future reforms of the Union.

Financial settlement

The budget and the financial consequences of Brexit are an absolute priority for the Union and a major controversy for the UK. This issue has so far given rise to extreme positions and to a certain dismissive attitude in some political circles in the UK. It is indeed an issue that will be under intense scrutiny in the UK but also in the EU and has the potential to stall the negotiations.

The House of Lords, in its report on Brexit and the EU Budget (March 2017), concludes that "Article 50 TEU allows the UK to leave the EU without being liable for outstanding financial obligations under the EU budget and related financial instruments, unless a withdrawal agreement is concluded which resolves that issue". However, in that same report, the House of Lords also cautions that "the political and economic consequences of the UK leaving the EU without responding to claims under the EU budget are likely to be profound".

For the European Parliament there is no doubt that, first, the UK is a Member State until its withdrawal takes effect, with all the rights and obligations associated to membership (the only exception being the discussion and voting rights as mentioned in Article 50(4) TEU). Second, the UK must honour its legal, financial and budgetary obligations, including commitments under the current multiannual financial framework, falling due up to and after the date of its withdrawal. Also here our position is fully in agreement with that of the European Council and of the Council.

The UK has committed to support many EU projects on which money has not yet been spent. There are also obligations regarding the future pension payments to EU staff, contingent liabilities, legal commitments, other outstanding budgetary

commitments, to name a few. This should not be put in question. I believe that in the negotiations both parties will act in good faith as serious, law-abiding entities, and in line with the principle of sincere cooperation, which all Member States, including the UK are obliged to respect. A constructive, incremental dialogue will surely allow ironing out the differences.

Similarly to the issue of the rights of citizens, the negotiations on the financial settlement will constitute for the EU an opportunity to review the structure, aims, and funding of the EU budget.

The situation of Ireland and Northern Ireland

On the situation of Ireland-Northern Ireland our aim is to avoid the establishment of a "hard border". The European Parliament is especially concerned with the consequences of the United Kingdom's withdrawal from the European Union for Northern Ireland and its future relations with Ireland. It is for us crucial to safeguard peace and preserve the Good Friday Agreement, and to safeguard the interests of Ireland, which is a Member State of the Union.

There seems to be agreement between the EU and the UK that a "hard border" is not wanted, and that solutions for the Northern Ireland/Ireland border and for preserving the Common Travel Area are needed. This issue is of major economic and social relevance. Up to 30,000 workers are 'cross-border' in that they live and work on different sides of the Northern Ireland/Republic of Ireland border and would be directly inconvenienced by border checks; 7% of Northern Ireland's employees are drawn from the European Economic Area; a high number of lorries and vans cross the "border" every day - there are more than 200 crossing points on the borders, with 177.000 lorries crossing a month, 208.000 vans and 1.85m cars. The very high flow of people and of goods across Northern Ireland and Ireland crossings, and thus the substantial economic and social impact on communities on both sides, require indeed unique solutions for unique circumstances.

Both the European Council guidelines and the negotiating directives refer to "flexible and imaginative solutions". These may include very specific technological options. It is essential that such solutions be fleshed out as a matter of priority, also in order to promote political stability in the concerned areas. This is going to be, however, not an easy task.

Future relationship agreement

The content of the future relationship agreement largely depends on the position of the UK. Prime Minister's May speech and the White Paper published in January provide very little guidance about the nature of the future relationship deal the UK will be seeking. It is also rather likely that there will be several agreements needed to respond to the challenges of the future relationship. Issues related to sector will probably require a separate agreement. The same is true for security issues. And of course trade will be the main area to be covered by the future agreement.

The Prime Minister defined the deal as "not partial membership of the European Union, associate membership of the European Union, or anything that leaves us

half-in, half-out. We do not seek to adopt a model already enjoyed by other countries.” The broad lines are articulated around:

- trade: the UK will withdraw from the single market and seek a new customs arrangement and a free trade agreement with the EU.
- sovereignty: Britain will leave the jurisdiction of the European Court of Justice but seek to set up separate resolution mechanisms for trade disputes.
- security: UK will seek involvement and cooperation with the EU in security policies and fight against terrorism
- immigration: a new system to control EU migration will be introduced, and could be phased in to give businesses time to prepare.

It seems therefore that the UK is aiming at concluding a sui generis extensive trade agreement. The original UK assertion that this agreement will be concluded in time to provide for a smooth transition from the withdrawal agreement is nowadays commonly seen as unrealistic. Modern FTAs such as the CETA are complex trade instruments, which usually require a number of years for negotiation as well as ratification at national level, as they are likely to be concluded as mixed agreement. In spite of degree of regulatory convergence between EU and Canada, CETA was a very lengthy (1600 pages long), very complex and time-consuming process (it took about seven years just to conclude it). Although the UK at the time of withdrawing from the EU will be in almost complete regulatory compliance, the more ambitious will be the deal, the more detailed and lengthy will be the process for ensuring the continuity of such compliance, in particular in fields such as services. The Parliament sees the future relationship as balanced and comprehensive, which could take the form of an association with the UK, in line with Article 8 TEU and Article 217 TFEU. Some redlines for Parliament include the impossibility to accept trade-offs between internal and external security including defence cooperation, on the one hand, and the future economic relationship, on the other hand. We have also warned against piecemeal or sectorial provisions, including with respect to financial services, which would provide United Kingdom-based undertakings with preferential access to the internal market and/or the customs union. Being outside the European Union should not imply the same or a more advantageous status than membership.

Brexit and the 2019 European elections

Two issues of major importance for the European Parliament, and which will be impacted by the withdrawal of the UK are those related to the participation of the UK in the European elections of 2019 and of the composition of the European Parliament.

For the moment, the withdrawal effective date is set for 30 March 2019. This would allow for the European elections to be organised without the participation of the UK. However, it is still not possible to determine with certainty that this will indeed be the withdrawal date. Article 50 TEU allows for an extension of the two-year negotiations’ period. Until the withdrawal takes effect, the rights and obligations of the UK regarding the election and the seats allocation in Parliament remain unmodified. Likewise, for now and up until the entry into force of the withdrawal agreement or the end of the two-year period of negotiations, the 73 Members of the European

Parliament elected in the UK continue exercising in full their parliamentary mandate, with no restriction whatsoever.

According to the Electoral Law in force (Act of September of 1976, as last amended by Decision 2002/772/CE), Members of the European Parliament have to be elected in each Member State. In this case, as long as it remains a Member State, the UK will have to comply with the applicable law, and participate in and organise the European elections. This is so until the withdrawal takes effect.

The Parliament is currently reflecting on all the possibilities, including a specific instrument separate to the withdrawal agreement on the non-participation of the UK in the next elections; or, should the UK not have withdrawn from the EU in time for the European elections in 2019, the possibility to allow for the European Parliament to constitute itself without distributing the UK's seats

The complexities around the withdrawal of the UK and the composition of Parliament result also from the need to revise the European Council Decision establishing the composition of the European Parliament (Decision of the European Council 2013/312/EU of 28 June 2013, to which the Parliament gave its consent). According to that Decision (Article 4), it should be revised "sufficiently far in advance of the beginning of the 2019-2024 parliamentary term" (in some Member States, electoral legislation may not be modified from a certain time onwards before the elections). The content of the decision will depend on whether the UK would be expected to still carry on being a member of the EU by the date of the next European elections or not.

The Committee on Constitutional Affairs (AFCO) of the European Parliament is going to draw up a legislative initiative report on "The Composition of Parliament" in accordance with Article 14 (2) of the Treaty on European Union under the Rapporteurship of Pedro Silva Pereira (S&D) and myself. In this context, we will strive to propose to Plenary a permanent method for the distribution of seats in Parliament.

This is a very complex and sensitive subject politically. Moreover, we need to finalise it in time for the Member States to be able to apply it for the 2019 elections, thus giving AFCO and the Parliament a very tight timeline. The European Council Decision on the composition of Parliament should be adopted by the end of August 2018 in order to permit Member States to apply its provisions in their preparations for the 2109 European elections. The negotiations on the withdrawal agreement will most probably not be finalised at that time. This raises some important and complex legal questions linked to the uncertainty as to the exact timing of UK's withdrawal from the Union and its impact on the future composition of Parliament.

Let me conclude by informing you how we are organized in the European Parliament to cope effectively with the Brexit challenge. We are involved through both political groups channel and committees. The Constitutional Affairs Committee is the one in charge of the consent procedure. Other committees contribute to the areas of their sectorial competences. We have shown since September 2015 openness to debates on - at that time consequences of potential - Brexit, since the referendum to debates on Brexit and its real consequences. We organize hearings, commission expert studies, exchange information with the British Parliament. We have exchanges with

national parliaments. Many of them have established special task forces. I would like to offer to all of you our full openness to joint reflection.