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INSTRUMENT RELATING TO 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 Union and the United Kingdom:

Reiterate the parties' wish to establish a future partnership that is as close and strong as possible, given the global challenges they share, and underline their commitment to embark on preparations immediately after the signature of the Withdrawal Agreement to ensure that negotiations on the future relationship can start as soon as possible after the United Kingdom's withdrawal.

Recall the exchange of letters of 14 January 2019 between the Presidents of the European Council and of the European Commission, and the Prime Minister of the United Kingdom of Great Britain and Northern Ireland, and the clarifications set out therein.

Recall that the parties do not wish the backstop solution in the Protocol on Ireland/Northern Ireland to become applicable, that were it to do so it would represent a suboptimal trading arrangement for both sides, and that both parties are therefore determined to replace the backstop solution for Northern Ireland by a subsequent agreement that would ensure, on a permanent footing, the absence of a hard border on the island of Ireland, in full respect of the integrity of the Union's internal market and of the territorial integrity of the United Kingdom.

Underline that the Protocol on Ireland/Northern Ireland will be subject to regular reviews in order for the Parties to consider whether that Protocol is still necessary or could cease to apply in whole or in part.

Recall that after the end of the transition period, any dispute concerning compliance with Article 5 of the Withdrawal Agreement, Articles 2(1) and 20 of the Protocol on Ireland / Northern Ireland will be subject to the dispute settlement mechanism enshrined in Articles 167 to 181 of the Withdrawal Agreement.

Note that this instrument provides, in the sense of Article 31 of the Vienna Convention on the Law of Treaties, a clear and unambiguous statement by both parties to the Withdrawal Agreement of what they agreed in a number of provisions of the Withdrawal Agreement, including the Protocol on Ireland/Northern Ireland. Therefore, it constitutes a document of reference that will have to be made use of if any issue arises in the implementation of the Withdrawal Agreement. To this effect, it has legal force and a binding character.

A. IN RELATION TO ARTICLE 5 OF THE WITHDRAWAL AGREMENT AND ARTICLE 2(1) OF THE PROTOCOL ON IRELAND/NORTHERN IRELAND

Negotiations on the future agreement and replacement of the Protocol in whole or in part

1. The Union and the United Kingdom recall their commitment to ensure, in full mutual respect and good faith, the fulfilment of the obligations arising from the Withdrawal Agreement.

2. The preamble of the Protocol on Ireland/Northern Ireland ("the Protocol") records the "Union's and the United Kingdom's intention to replace the backstop solution on Northern Ireland by a subsequent agreement that establishes alternative arrangements for ensuring the absence of a hard border on the island of Ireland on a permanent footing", while protecting the integrity of the Union's internal market and the territorial integrity of the United Kingdom.

3. Article 2(1) of the Protocol contains the obligation for the Union and the United Kingdom to "use their best endeavours to conclude, by 31 December 2020, an agreement which supersedes this Protocol in whole or in part".

4. The Union and the United Kingdom consider that, for example, a systematic refusal to take into consideration adverse proposals or interests, would be incompatible with their obligations under Article 2(1) of the Protocol and Article 5 of the Withdrawal Agreement.

5. In light of their obligation under Article 2(1) of the Protocol, the Union and the United Kingdom will start negotiations on a subsequent agreement as soon as possible after the United Kingdom's withdrawal from the Union. Those negotiations should be conducted as a matter of priority, and efforts redoubled should the negotiations not be concluded within 1 year from the date of the United Kingdom's withdrawal.

6. In order to enable the rapid commencement of and progress in those formal negotiations, the Union and the United Kingdom commit, in line with paragraphs 141 to 143 of the political declaration agreed between them in November 2018, to embark on preparations for those negotiations immediately after signature of the Withdrawal Agreement, including by setting up their respective negotiating structures and discussing logistical arrangements. The Union and the United Kingdom are therefore committed to working speedily on a subsequent agreement that establishes by 31 December 2020 alternative arrangements, so that the backstop will not need to be triggered.

7. The Union and the United Kingdom further agree to establish, immediately following the ratification of the Withdrawal Agreement, a negotiating track for replacing the customs and regulatory alignment in goods elements of the Protocol[1] with alternative arrangements. That negotiating track, referred to in the joint statement supplementing the political declaration, will include, inter alia, consideration of comprehensive customs cooperation arrangements, facilitative arrangements and technologies. By virtue of being embedded in the overall negotiation structure, the negotiating track on alternative arrangements will be able to take account of progress made in the wider negotiations on the future relationship, in particular on goods regulations and customs.

8. In accordance with paragraph 147 of the political declaration, a high level conference will be convened at least every six months from the date of the United Kingdom's withdrawal from the Union to take stock of progress and agree, as far as is possible between them, actions to move forward. In order to ensure that a subsequent agreement can enter into force by the end

[1] Articles 6 to 10 of the Protocol.

of the transition period, the Union and the United Kingdom consider it important to review the progress on alternative arrangements at every high level conference, alongside wider progress on the future relationship. In light of those considerations, the United Kingdom, in line with Article 3 of the Protocol, may request an extension of the transition period to allow further time for the future relationship and the subsequent agreement to be finalised.

9. With a view to rapidly addressing any substantive obstacles that could delay or risk progress, the Union and the United Kingdom also agree to convene immediately, upon the request of either party and at short notice, additional extraordinary high-level conferences at any moment.

10. A subsequent agreement replacing the customs and regulatory alignment in goods elements of the Protocol could stand alone or form part of a wider agreement or agreements on the future relationship, depending on the progress of the wider negotiations. Alternative arrangements, which supersede the Protocol in whole or in part, in accordance with Article 2 of the Protocol, are not required to replicate its provisions in any respect, provided that the underlying objectives continue to be met. In the event that the agreement needs to stand alone due to delays in progress on the wider negotiations, the parties will aim at establishing this agreement very rapidly after the end of the transition period in full respect of the parties' respective legal orders.

11. The Union and the United Kingdom agree that once negotiations on alternative arrangements have been completed to the satisfaction of both parties, the outcome will be transposed into a subsequent agreement. The subsequent agreement transposing the alternative arrangements will be applied as soon as possible after its signature, if necessary and appropriate by means of provisional application, in line with the applicable legal frameworks and existing practice.

Compliance and unilateral suspension

12. The Union and the United Kingdom agree that it would be inconsistent with their obligations under Article 5 of the Withdrawal Agreement and Article 2(1) of the Protocol for either party to act with the objective of applying the Protocol indefinitely. Should the Union or the United Kingdom consider the other party was acting in this way after the Protocol became applicable, it could make use of the dispute settlement mechanism enshrined in Articles 167 to 181 of the Withdrawal Agreement.

13. If a dispute arises in relation to Article 5 of the Withdrawal Agreement and Article 2(1) of the Protocol, the Union and the United Kingdom will immediately enter into consultations in the Joint Committee. They will endeavour to resolve the dispute in a timely manner, with the aim of reaching a mutually agreed solution. With a view to facilitating such a solution, each party will provide a written reasoned justification of its respective position and will respond in writing to the other.

14. Under the dispute settlement mechanism, a ruling by the arbitration panel that a party acts with the objective of applying the Protocol indefinitely would be binding on the Union and the United Kingdom. Persistent failure by a party to comply with a ruling, and thus persistent failure by that party to return to compliance with its obligations under the Withdrawal Agreement, may result in temporary remedies. Ultimately, the aggrieved party would have the right to enact a unilateral, proportionate suspension of its obligations under the Withdrawal Agreement (other than Part Two), including the Protocol. Such a suspension may remain in place unless and until the offending party has taken the necessary measures to comply with the ruling of the arbitration panel.

B. IN RELATION TO SAFEGUARDS FOR NORTHERN IRELAND

15. The Protocol does not affect or supersede the provisions of the 1998 Agreement in any way. In particular, it does not alter in any way the arrangements under Strand II of the 1998 Agreement, whereby areas of North-South cooperation in areas within their respective competences are matters for the Northern Ireland Executive and Government of Ireland to determine.

16. In accordance with Article 15(5) of the Protocol, any new Union act that falls within the scope of the Protocol, but neither amends nor replaces a Union act listed in the Annexes to the Protocol, will require the agreement of the United Kingdom in the Joint Committee in order to be added to the relevant Annex of the Protocol.

17. The Union and the United Kingdom confirm that the Protocol does not prevent the United Kingdom from facilitating, as part of its delegation, the participation of Northern Ireland Executive representatives in the Joint Committee, the Committee on issues related to the implementation of the Protocol, or the joint consultative working group, in matters pertaining directly to Northern Ireland.

C. IN RELATION TO ARTICLE 184 OF THE WITHDRAWAL AGREEMENT

18. The sole purpose of Article 184 of the Withdrawal Agreement is to create best endeavours obligations for the Union and the United Kingdom to negotiate agreements governing their future relationship and that this provision imposes no obligations regarding the territorial scope of such agreements. Therefore, there is no obligation or presumption, on the basis of this provision, for such agreements to have the same territorial scope as the one provided for in Article 3 of the Withdrawal Agreement.