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Dear Secretary of State and Minister Heaton Harris

EM 11169/18 Commission Communication on Preparing for the Withdrawal of the United Kingdom from the European Union on 30 March 2019

UK Government's preparations for a 'no deal' scenario

Thank you for your Explanatory Memorandum, dated 23 August 2018, on EM 11169/18: Commission Communication on Preparing for the Withdrawal of the United Kingdom from the European Union on 30 March 2019. Thank you also for your letter, also dated 23 August 2018, drawing our attention to the technical note on the UK Government's preparations for a 'no deal' scenario. The European Union Select Committee considered these documents at its meeting on 4 September 2018. In light of the overlapping nature of the documents in setting out both sides' preparations for a no deal outcome to the Brexit negotiations, we have considered the documents together.

Overview

We agree with your statement that it is the Government's duty to prepare for all eventualities, including no deal, until the outcome of the Brexit negotiations is certain. We therefore welcome the publication of the technical note on the UK Government's preparations for a 'no deal' scenario, together with 24 accompanying policy-specific technical notices. You stated that a further two tranches of notices will follow in September. Can you provide a list of the technical notes that will be published, and confirm when they will be made available? This letter focuses in particular on the overview technical note on the UK Government's preparations for a 'no deal scenario', and we have asked our six Sub-Committees to scrutinise the policy-specific technical notes already published, and those to follow, that fall within their remits.

The Commission's technical notices

We note that the Commission has already published 68 technical notices across a range of sectors. What is your assessment of the accuracy of these notices? The Commission asserts

that “they are based exclusively on the factual and legal situation that would prevail after the withdrawal in the absence of any withdrawal agreement and do not contain any interpretation about the outcome of the negotiations or its impact on the rules in a specific sector.” Is this a reasonable assertion?

Do you anticipate that the full set of UK Government technical notices will cover the same sectors as the Commission’s documents, or will there be sectors that will be covered by one side and not the other? Are there any areas where you believe that the EU has produced technical notices unnecessarily, or areas which it has not sufficiently covered? Is there any other disparity of approach?

UK and EU coordination in no deal preparations

We share your assessment that “in a ‘no deal’ scenario there will be a number of inter-dependencies between our respective contingency plans. The UK firmly believes that it is in the EU and UK’s mutual interest to continue to discuss these, including through regulators and institutions.” To what extent have the UK and EU’s ‘no deal’ preparations been made in coordination with one another, or in isolation? Are there any plans to produce any joint technical notes?

Is it your view that the EU could do more to work with the UK on such preparations, and if so, in what specific ways would you wish to see greater coordination between the two sides? For instance, you state that you are keen to see the technical discussions taking place between the European Central Bank and the Bank of England replicated in other priority areas. In which other areas would it be beneficial for such technical discussions to take place?

You also state that “it is unclear at this time what mitigation measures the EU might choose to adopt. Clarity on what action the EU may consider taking to maintain stability for a temporary period would provide reassurance to EU and UK businesses and citizens alike.” In what specific areas is such clarification necessary?

Is the necessity of cooperation between the UK and EU on no deal preparations consistent with your assertion that “the Government would act unilaterally to provide continuity for a temporary period in a ‘no deal’ scenario to protect and minimise disruption for UK citizens and businesses, irrespective of whether the EU reciprocates”? Is it preferable that such unilateral action will not be necessary? Will it be possible for the UK and the EU to agree a mechanism for dealing with particularly urgent or sensitive cases?

Given that there is under seven months before UK withdrawal, at what stage will the focus need to shift from negotiations to contingency planning for a no deal? Has there been any discussion with the EU about how such contingency planning will be conducted?

Northern Ireland

We welcome your statement that “in a ‘no deal’ scenario we must respect our unique relationship with Ireland, with whom we share a land border and who are co-signatories of the Belfast Agreement”, as well as your commitment to continued North-South cooperation between Northern Ireland and Ireland.

You state that the Irish Government would need to discuss arrangements in the event of a no deal with the Commission and other Member States, and that you stand ready to engage constructively. In what practical ways will you seek to engage with the Irish Government, Commission and Member States in such a scenario? Can you explain what is meant by the recommendation in the technical note on *Trading with the EU if there's no Brexit deal* that “if you trade across the land border, you should consider whether you will need advice from the Irish Government about preparations you need to make”?

Given your acknowledgement of “the very significant challenges that the lack of a UK-EU legal agreement would pose in this unique and highly sensitive context”, and your statement that “we will take full account of the unique circumstances of Northern Ireland”, will any of the technical notices deal specifically with the implications of no deal for Northern Ireland?

We welcome your assertion in evidence to us on 29 August that “in the event of a no deal scenario, we would not return to a hard border”. Nevertheless, given the Commission’s assertion that “no progress has been made in agreeing on a ‘backstop’ to avoid a hard border on the island of Ireland”, how can this be avoided? What is the status of the Government’s commitment to a backstop in the event of a no deal? What does a commitment to no hard border mean in practice in such an event? Does it extend to the movement of goods and services as well as the movement of people? Given the current uncertainty over the outcome of negotiations, do you share our concern about the lack of time to make adequate preparations for a no deal outcome in Northern Ireland?

The costs and benefits of no deal

While you state that a no deal outcome would be regrettable, you also state that “a balanced appraisal should recognise that there would also be some countervailing opportunities”, including the immediate recovery of full legislative and regulatory control, the unfettered ability to lower tariffs, and a swifter end to financial contributions to the EU. To enable such a balanced appraisal to be undertaken, will the Government publish a full impact assessment and cost-benefit analysis of a no deal outcome?

Updated technical notices

We welcome your invitation to stakeholders to stay engaged with the Government on the detail of the technical notices. The Commission states that “should the legal situation change further to the conclusion of a withdrawal agreement with the United Kingdom or due to a change of the legislation concerned”, its own notices “will be adapted or be withdrawn if they are no longer relevant.” Can you make a reciprocal commitment to update the UK’s technical notices as the outcome of the Brexit negotiations becomes clear?

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

Do you accept the Commission Communication’s analysis of the consequences of the two scenarios outlined: a Withdrawal Agreement and a transition period; and a no deal outcome with no Withdrawal Agreement? Is there anything in the Commission’s analysis that you would demur from?

Do you agree with the Commission's distinction between preparedness measures and contingency planning? Do you accept the examples of legislative changes listed by the Commission as necessary as a result of UK withdrawal? Ahead of UK withdrawal, how will the UK engage, if at all, with the legislative steps proposed by the Commission to ensure that EU rules continue to function effectively after the EU's exit?

National, regional and local preparedness

The Commission acknowledges that "contingency measures would not necessarily involve legislative actions at EU level and could fall within the responsibility of Member States, depending on the area of competence", and that preparedness is a "joint effort at EU, national, regional and local levels". In what areas do you anticipate that preparations will need to be undertaken at Member State, regional or local level? How will the UK seek to engage bilaterally with Member States, and with their regional and local levels, in relation to such matters?

On the UK side, you acknowledge that the implications of a no deal outcome would be significant across a number of devolved areas, and that the Government is intensifying its work with the Devolved Administrations on these issues. What specific work are you undertaking on no deal preparedness with the Devolved Administrations, and also with the Overseas Territories (including Gibraltar) and the Crown Dependencies, including consideration of whether they have sufficient time and resources to make such preparations?

Stakeholder engagement

Do you share the Commission's assessment that industry associations, both at EU level and at national/regional level, have a crucial role to play in relaying preparedness information to their members, in particular to small and medium-sized companies? If so, what steps are you taking to liaise with equivalent bodies in the UK and to encourage them to engage with EU counterparts? The Commission also notes that reaching out to those companies with no experience of trade outside the Single Market is particularly important as they will need to engage in procedures that they are not used to, but which are mandatory for trade with third countries. What steps is the Government taking to support those UK-based companies, in particular SMEs, who will be faced with a similar situation?

Other issues

The Commission asserts that "many companies are relocating to EU27 or expanding their business in EU27." What is your assessment of the accuracy of this statement? In the context of financial services firms in particular, what is your assessment of the number of licences and authorisations granted in EU Member States to UK-based businesses?

Does the Commission provide an accurate portrayal of the relocation process for EU agencies and bodies? How is the UK contributing to this process?

How is the UK liaising with the EU regarding notification to international partners of the withdrawal of the UK in relation to the consequences of withdrawal for international agreements?

We note that the Commission Representation in the UK will close, and a Delegation of the European Union in the UK will be opened on 30 March 2019. What update can you give us on the parallel work to prepare the UK Representation to the EU for UK withdrawal?

Conclusion

We would be grateful for a response to this letter by 19 September 2018. In the meantime, we will retain EM 11169/18 under scrutiny.

Yours sincerely,

Tim Boswell

Lord Boswell of Aynho
Chairman of the European Union Committee