

Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community

PART SIX

INSTITUTIONAL AND FINAL PROVISIONS

TITLE III

DISPUTE SETTLEMENT

Article 167

Cooperation

The Union and the United Kingdom shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt, through cooperation and consultations, to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

Article 168

Exclusivity

For any dispute between the Union and the United Kingdom arising under this Agreement, the Union and the United Kingdom shall only have recourse to the procedures provided for in this Agreement.

Article 169

Consultations and communications within the Joint Committee

1 The Union and the United Kingdom shall endeavour to resolve any dispute regarding the interpretation and application of the provisions of this Agreement by entering into consultations in the Joint Committee in good faith, with the aim of reaching a mutually agreed solution. A party wishing to commence consultations shall provide written notice to the Joint Committee.

2 Any communication or notification between the Union and the United Kingdom provided for in this Title shall be made within the Joint Committee.

Article 170

Initiation of the arbitration procedure

1 Without prejudice to Article 160, if no mutually agreed solution has been reached within 3 months after a written notice has been provided to the Joint Committee in accordance with Article 169(1), the Union or the United Kingdom may request the establishment of an

arbitration panel. Such request shall be made in writing to the other party and to the International Bureau of the Permanent Court of Arbitration. The request shall identify the subject matter of the dispute to be brought before the arbitration panel and a summary of the legal arguments in support of the request.

2 The Union and the United Kingdom may agree that the establishment of an arbitration panel may be requested before the expiry of the time limit laid down in paragraph 1.

Article 171

Establishment of the arbitration panel

1 The Joint Committee shall, no later than by the end of the transition period, establish a list of 25 persons who are willing and able to serve as members of an arbitration panel. To that end, the Union and the United Kingdom shall each propose ten persons. The Union and the United Kingdom shall also jointly propose five persons to act as chairperson of the arbitration panel. The Joint Committee shall ensure that the list complies with these requirements at any moment in time.

2 The list established pursuant to paragraph 1 shall only comprise persons whose independence is beyond doubt, who possess the qualifications required for appointment to the highest judicial office in their respective countries or who are jurisconsults of recognised competence, and who possess specialised knowledge or experience of Union law and public international law. That list shall not comprise persons who are members, officials or other servants of the Union institutions, of the government of a Member State, or of the government of the United Kingdom.

3 An arbitration panel shall be composed of five members.

4 Within 15 days of the date of a request in accordance with Article 170, the panel shall be established in accordance with paragraphs 5 and 6.

5 The Union and the United Kingdom shall each nominate two members from among the persons on the list established under paragraph 1. The chairperson shall be selected by consensus by the members of the panel from the persons jointly nominated by the Union and the United Kingdom to serve as a chairperson.

In the event that the members of the panel are unable to agree on the selection of the chairperson within the time limit laid down in paragraph 4, the Union or the United Kingdom may request the Secretary-General of the Permanent Court of Arbitration to select the chairperson by lot from among the persons jointly proposed by the Union and the United Kingdom to act as chairperson.

6 The Secretary-General of the Permanent Court of Arbitration shall make the selection referred to in second subparagraph of paragraph 5 within 5 days of the request referred to in paragraph 5. Representatives of the Union and of the United Kingdom shall be entitled to be present at the selection.

7 The date of establishment of the arbitration panel shall be the date on which the selection procedure is completed.

8 In the event that the list referred to in paragraph 1 has not been established by expiry of the time limit laid down in paragraph 4, the Union and the United Kingdom shall within 5 days each nominate two persons to serve as members of the panel. If persons have been proposed under paragraph 1, the nominations shall be made from among those persons. The chairperson

shall then be appointed in accordance with the procedure set out in paragraph 5. In the event that the Union and the United Kingdom have not, within a further 5 days, jointly proposed at least one person to serve as chairperson, the Secretary-General of the Permanent Court of Arbitration shall within five days, after consultation with the Union and the United Kingdom, propose a chairperson who fulfils the requirements of paragraph 2. Unless either the Union or the United Kingdom objects to that proposal within 5 days, the person proposed by the Secretary-General of the Permanent Court of Arbitration shall be appointed.

9 In the event of failure to establish an arbitration panel within 3 months from the date of the request made pursuant to Article 170, the Secretary-General of the Permanent Court of Arbitration shall, upon request by either the Union or the United Kingdom, within 15 days of such request, after consultation with the Union and the United Kingdom, appoint persons who fulfil the requirements of paragraph 2 of this Article to constitute the arbitration panel.

Article 172

Rules of procedure

Dispute settlement procedures set out in this Title shall be governed by the rules of procedure set out in Part A of Annex IX ("Rules of Procedure"), the Joint Committee shall keep the functioning of those dispute settlement procedures under constant review and may amend the Rules of Procedure.

Article 173

Time-frame of the procedure before the arbitration panel

1 The arbitration panel shall notify its ruling to the Union, the United Kingdom and the Joint Committee within 12 months from the date of establishment of the arbitration panel. Where the arbitration panel considers that it cannot comply with this time limit, its chairperson shall notify the Union and the United Kingdom in writing, stating the reasons for the delay and the date on which the panel intends to conclude its work.

2 Within 10 days of the establishment of the arbitration panel the Union or the United Kingdom may submit a reasoned request to the effect that the case is urgent. In that case, the arbitration panel shall give a ruling on the urgency within 15 days from the receipt of such request. If it has determined the urgency of the case, the arbitration panel shall make every effort to notify its ruling to the Union and the United Kingdom within 6 months from the date of its establishment.

Article 174

Disputes raising questions of Union law

1 Where a dispute submitted to arbitration in accordance with this Title raises a question of interpretation of a concept of Union law, a question of interpretation of a provision of Union law referred to in this Agreement or a question of whether the United Kingdom has complied with its obligations under Article 89(2), the arbitration panel shall not decide on any such question. In such case, it shall request the Court of Justice of the European Union to give a ruling on the question. The Court of Justice of the European Union shall have jurisdiction to give such a ruling which shall be binding on the arbitration panel.

The arbitration panel shall make the request referred to in the first subparagraph after having heard the parties.

2 Without prejudice to the first sentence of the first subparagraph of paragraph 1, if the Union or the United Kingdom considers that a request in accordance with paragraph 1 is to be made, it may make submissions to the arbitration panel to that effect. In such case, the arbitration panel shall submit the request in accordance with paragraph 1 unless the question raised does not concern the interpretation of a concept of Union law, interpretation of a provision of Union law referred to in this Agreement, or does not concern whether the United Kingdom has complied with its obligations under Article 89(2). The arbitration panel shall provide reasons for its assessment. Within 10 days following the assessment, either party may request the arbitration panel to review its assessment, and a hearing shall be organised within 15 days of the request for the parties to be heard on the matter. The arbitration panel shall provide reasons for its assessment.

3 In the cases referred to in paragraphs 1 and 2, the time limits laid down in Article 173 shall be suspended until the Court of Justice of the European Union has given its ruling. The arbitration panel shall not be required to give its ruling less than 60 days from the date on which the Court of Justice of the European Union has given its ruling.

4 The first subparagraph of Article 161(2) and Article 161(3) shall apply *mutatis mutandis* to the procedures brought before the Court of Justice of the European Union in accordance with this Article.

Article 175

Compliance with the arbitration panel ruling

The arbitration panel ruling shall be binding on the Union and the United Kingdom. The Union and the United Kingdom shall take any measures necessary to comply in good faith with the arbitration panel ruling and shall endeavour to agree on the period of time to comply with the ruling in accordance with the procedure in Article 176.

Article 176

Reasonable period of time for compliance

1 No later than 30 days after the notification of the arbitration panel ruling to the Union and the United Kingdom, the respondent shall, if the panel has ruled in favour of the complainant, notify the complainant of the time it considers it will require for compliance (the "reasonable period of time").

2 If there is disagreement between the Union and the United Kingdom on the reasonable period of time to comply with the arbitration panel ruling, the complainant shall, within 40 days of the notification by the respondent under paragraph 1, request the original arbitration panel in writing to determine the length of the reasonable period of time. Such request shall be notified simultaneously to the respondent. The arbitration panel shall notify its decision on the period for compliance to the Union and the United Kingdom within 40 days of the date of submission of the request.

3 In the event of the original arbitration panel, or some of its members, being unable to reconvene to consider a request under paragraph 2, a new arbitration panel shall be established

as set out in Article 171. The time limit for notifying the decision shall be 60 days from the date of establishment of the new arbitration panel.

4 The respondent shall inform the complainant in writing of its progress in complying with the arbitration panel ruling referred to in Article 173 at least 1 month before the expiry of the reasonable period of time.

5 The reasonable period of time may be extended by mutual agreement of the Union and the United Kingdom.

Article 177

Review of any measure taken to comply with the arbitration panel ruling

1 The respondent shall notify the complainant before the end of the reasonable period of time of any measure that it has taken to comply with the arbitration panel ruling.

2 If, at the end of the reasonable period, the complainant considers that the respondent has failed to comply with the arbitration panel ruling referred to in Article 173, the complainant may request the original arbitration panel in writing to rule on the matter. The arbitration panel shall notify its ruling to the Union and the United Kingdom within 90 days of the date of submission of the request.

3 In the event of the original arbitration panel, or some of its members, being unable to reconvene to consider a request under paragraph 2, a new arbitration panel shall be established as set out in Article 171. The time limit for notifying the ruling shall be 60 days from the date of establishment of the new arbitration panel.

4 Where a case referred to the arbitration panel pursuant to paragraph 2 raises a question of interpretation of a concept of Union law or a question of interpretation of a provision of Union law referred to in this Agreement, Article 174 shall apply *mutatis mutandis*.

Article 178

Temporary remedies in case of non-compliance

1 If the arbitration panel rules in accordance with Article 177(2) that the respondent has failed to comply with the arbitration panel ruling referred to in Article 173, at the request of the complainant it may impose a lump sum or penalty payment to be paid to the complainant. In determining the lump sum or penalty payment, the arbitration panel shall take into account the seriousness of the non-compliance and underlying breach of obligation, the duration of the non-compliance and underlying breach of obligation.

2 If, 1 month after the arbitration panel ruling referred to in paragraph 1, the respondent has failed to pay any lump sum or penalty payment imposed on it, or if, 6 months after the arbitration panel ruling referred to in Article 177(2), the respondent persists in not complying with the arbitration panel ruling referred to in Article 173, the complainant shall be entitled, upon notification to the respondent, to suspend obligations arising from:

- a any provision of this Agreement other than those contained in Part Two; or
- b parts of any other agreement between the Union and the United Kingdom under the conditions set out in that agreement.

The notification shall specify the provisions which the complainant intends to suspend. Before deciding to suspend parts of an agreement referred to in point (b) the complainant

shall first consider whether the suspension of the provision of this Agreement in accordance with point (a) would be an appropriate response to the breach. Any suspension shall be proportionate to the breach of obligation concerned, taking into account the gravity of the breach and the rights in question and, where the suspension is based on the fact that the respondent persists in not complying with the arbitration panel ruling referred to in Article 173, whether a penalty payment has been imposed on the respondent and has been paid or is still being paid by the latter.

The complainant may implement the suspension at any moment but not earlier than 10 days after the date of the notification, unless the respondent has requested arbitration under paragraph 3.

3 If the respondent considers that the extent of the suspension set out in the notification referred to in paragraph 2 is not proportionate, it may request the original arbitration panel in writing to rule on the matter. Such request shall be notified to the complainant before the expiry of the 10-day period referred to in paragraph 2. The arbitration panel shall notify its ruling to the Union and the United Kingdom within 60 days of the date of submission of the request. Obligations shall not be suspended until the arbitration panel has notified its ruling, and any suspension shall be consistent with the arbitration panel ruling.

4 In the event of the original arbitration panel, or some of its members, being unable to reconvene to consider a request under paragraph 2, a new arbitration panel shall be established as set out in Article 171. In such cases, the period for notifying the ruling shall be 90 days from the date of establishment of the new arbitration panel.

5 The suspension of obligations shall be temporary and shall be applied only until any measure found to be inconsistent with the provisions of this Agreement has been withdrawn or amended, so as to achieve conformity with the provisions of this Agreement, or until the Union and the United Kingdom have agreed to otherwise settle the dispute.

Article 179

Review of any measure taken after temporary remedies

1 Where the complainant has suspended obligations in accordance with Article 178 or where the arbitration panel has imposed a penalty payment on the respondent in accordance with Article 178(1), the respondent shall notify the complainant of any measure it has taken to comply with the ruling of the arbitration panel and of its request for an end to the suspension of obligations applied by the complainant or to the penalty payment.

2 If the Union and the United Kingdom do not reach an agreement on whether the notified measure brings the respondent into conformity with the provisions of this Agreement within 45 days of the date of submission of the notification, either party may request the original arbitration panel in writing to rule on the matter. Such request shall be notified simultaneously to the other party. The arbitration panel ruling shall be notified to the Union and the United Kingdom and to the Joint Committee within 75 days of the date of submission of the request.

If the arbitration panel rules that the respondent has brought itself into conformity with this Agreement, or if the complainant does not, within 45 days of the submission of the notification referred to in paragraph 1, request that the original arbitration panel rule on the matter:

- a the suspension of obligations shall be terminated within 15 days of either the ruling of the arbitration panel or the end of the 45-day period;

- b the penalty payment shall be terminated on the day after either the ruling of the arbitration panel or the end of the 45-day period.

3 In the event of the original arbitration panel, or some of its members, being unable to reconvene to consider a request under paragraph 2, a new arbitration panel shall be established as set out in Article 171. The period for notifying the ruling shall in that case be 90 days from the date of establishment of the new arbitration panel.

4 Where a case referred to the arbitration panel pursuant to paragraph 2 raises a question of interpretation of a concept of Union law or a question of interpretation of a provision of Union law referred to in this Agreement, Article 174 shall apply *mutatis mutandis*.

Article 180

Arbitration panel decisions and rulings

1 The arbitration panel shall make every effort to take decisions by consensus. Where, nevertheless, a decision cannot be arrived at by consensus, the matter at issue shall be decided by majority vote. However, in no case dissenting opinions of members of an arbitration panel shall be published.

2 Any ruling of the arbitration panel shall be binding on the Union and the United Kingdom. The ruling shall set out the findings of fact, the applicability of the relevant provisions of this Agreement, and the reasoning behind any findings and conclusions. The Union and the United Kingdom shall make the arbitration panel rulings and decisions publicly available in their entirety, subject to the protection of confidential information.

Article 181

Members of an arbitration panel

1 The members of an arbitration panel shall be independent, shall serve in their individual capacity and shall not take instructions from any organisation or government, and shall comply with the Code of Conduct set out in Part B of Annex IX. The Joint Committee may amend that Code of Conduct.

2 The members of an arbitration panel shall, as from the establishment thereof, enjoy immunity from legal proceedings in the Union and the United Kingdom with respect to acts performed by them in the exercise of their functions on that arbitration panel.