

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 THREE

SEPARATION PROVISIONS

TITLE X

UNION JUDICIAL AND ADMINISTRATIVE PROCEDURES

Chapter 1

JUDICIAL PROCEDURES

Article 86

Pending cases before the Court of Justice of the European Union

1 The Court of Justice of the European Union shall continue to have jurisdiction in any proceedings brought by or against the United Kingdom before the end of the transition period. Such jurisdiction shall apply to all stages of proceedings, including appeal proceedings before the Court of Justice and proceedings before the General Court where the case is referred back to the General Court.

2 The Court of Justice of the European Union shall continue to have jurisdiction to give preliminary rulings on requests from courts and tribunals of the United Kingdom made before the end of the transition period.

3 For the purposes of this Chapter, proceedings shall be considered as having been brought before the Court of Justice of the European Union, and requests for preliminary rulings shall be considered as having been made, at the moment at which the document initiating the proceedings has been registered by the registry of the Court of Justice or the General Court, as the case may be.

Article 87

New cases before the Court of Justice

1 If the European Commission considers that the United Kingdom has failed to fulfil an obligation under the Treaties or under Part Four of this Agreement before the end of the transition period, the European Commission may, within 4 years after the end of the transition period, bring the matter before the Court of Justice of the European Union in accordance with the requirements laid down in Article 258 TFEU or the second subparagraph of Article 108(2) TFEU, as the case may be. The Court of Justice of the European Union shall have jurisdiction over such cases.

2 If the United Kingdom does not comply with a decision referred to in Article 95(1) of this Agreement, or fails to give legal effect in the United Kingdom's legal order to a decision, as referred to in that provision, that was addressed to a natural or legal person residing or established in the United Kingdom, the European Commission may, within 4 years from the date of the decision concerned, bring the matter to the Court of Justice of the European Union in accordance with the requirements laid down in Article 258 TFEU or the second subparagraph of Article 108(2) TFEU, as the case may be. The Court of Justice of the European Union shall have jurisdiction over such cases.

3 In deciding to bring matters under this Article, the European Commission shall apply the same principles in respect of the United Kingdom as in respect of any Member State.

Article 88

Procedural rules

The provisions of Union law governing the procedure before the Court of Justice of the European Union shall apply in respect of the proceedings and requests for preliminary rulings referred to in this Title.

Article 89

Binding force and enforceability of judgments and orders

1 Judgments and orders of the Court of Justice of the European Union handed down before the end of the transition period, as well as such judgments and orders handed down after the end of the transition period in proceedings referred to in Articles 86 and 87, shall have binding force in their entirety on and in the United Kingdom.

2 If, in a judgment referred to in paragraph 1, the Court of Justice of the European Union finds that the United Kingdom has failed to fulfil an obligation under the Treaties or this Agreement, the United Kingdom shall take the necessary measures to comply with that judgment.

3 Articles 280 and 299 TFEU shall apply in the United Kingdom in respect of the enforcement of the judgments and orders of the Court of Justice of the European Union referred to in paragraph 1 of this Article.

Article 90

Right to intervene and participate in the procedure

Until the judgments and orders of the Court of Justice of the European Union in all proceedings and requests for preliminary rulings referred to in Article 86 have become final, the United Kingdom may intervene in the same way as a Member State or, in the cases brought before the Court of Justice of the European Union in accordance with Article 267 TFEU, participate in the procedure before the Court of Justice of the European Union in the same way as a Member State. During that period, the Registrar of the Court of Justice of the European Union shall notify the United Kingdom, at the same time and in the same manner as the Member States, of any case referred to the Court of Justice of the European Union for a preliminary ruling by a court or tribunal of a Member State.

The United Kingdom may also intervene or participate in the procedure before the Court of Justice of the European Union in the same way as a Member State:

- (a) in relation to cases which concern a failure to fulfil obligations under the Treaties, where the United Kingdom was subject to the same obligations before the end of the transition period, and where such cases are brought before the Court of Justice of the European Union in accordance with Articles 258 TFEU before the end of the period referred to in Article 87(1) or, as the case may be, until the moment, after the end of that period, at which the last judgment or order rendered by the Court of Justice of the European Union on the basis of Article 87(1) has become final;
- (b) in relation to cases which concern acts or provisions of Union law which were applicable before the end of the transition period to and in the United Kingdom and which are brought before Court of Justice of the European Union in accordance with Article 267 TFEU before the end of the period referred to in Article 87(1) or, as the case may be, until the moment, after the end of that period, at which the last judgment or order rendered by the Court of Justice on the basis of Article 87(1) has become final; and
- (c) in relation to the cases referred to in Article 95(3).

Article 91

Representation before the Court

1 Without prejudice to Article 88, where, before the end of the transition period, a lawyer authorised to practise before the courts or tribunals of the United Kingdom represented or assisted a party in proceedings before the Court of Justice of the European Union or in relation to requests for preliminary rulings made before the end of the transition period, that lawyer may continue to represent or assist that party in those proceedings or in relation to those requests. This right shall apply to all stages of proceedings, including appeal proceedings before the Court of Justice and proceedings before the General Court after a case has been referred back to it.

2 Without prejudice to Article 88, lawyers authorised to practise before the courts or tribunals of the United Kingdom may represent or assist a party before the Court of Justice of the European Union in the cases referred to in Article 87 and Article 95(3). Lawyers authorised to practise before the courts or tribunals of the United Kingdom may also represent or assist the United Kingdom in the proceedings covered by Article 90 in which the United Kingdom has decided to intervene or participate.

3 When representing or assisting a party before the Court of Justice of the European Union in the cases referred to in paragraphs 1 and 2, lawyers authorised to practise before the courts or tribunals of the United Kingdom shall in every respect be treated as lawyers authorised to practise before courts or tribunals of Member States representing or assisting a party before the Court of Justice of the European Union.

Chapter 2

ADMINISTRATIVE PROCEDURES

Article 92

Ongoing administrative procedures

1 The institutions, bodies, offices and agencies of the Union shall continue to be competent for administrative procedures which were initiated before the end of the transition period concerning:

- a compliance with Union law by the United Kingdom, or by natural or legal persons residing or established in the United Kingdom; or
- b compliance with Union law relating to competition in the United Kingdom.

2 Without prejudice to paragraph 3, for the purposes of this Chapter an administrative procedure shall be considered as having been initiated at the moment at which it has been formally registered with the Union institution, body, office or agency.

3 For the purposes of this Chapter:

- a an administrative procedure on State aid governed by Council Regulation (EU) 2015/1589⁽¹⁾ shall be considered as having been initiated at the moment at which the procedure has been allocated a case number;
- b proceedings for the application of Article 101 or 102 TFEU conducted by the European Commission under Council Regulation (EC) No 1/2003⁽²⁾ shall be considered as having been initiated at the moment at which the European Commission has decided to initiate proceedings in accordance with Article 2(1) of Commission Regulation (EC) No 773/2004⁽³⁾;
- c proceedings in connection with the control of concentrations between undertakings governed by Council Regulation (EC) No 139/2004⁽⁴⁾ shall be considered as having been initiated at the moment at which:
 - (i) a concentration of Union dimension has been notified to the European Commission in accordance with Articles 1, 3 and 4 of Regulation (EC) No 139/2004;
 - (ii) the time limit of 15 working days referred to in Article 4(5) of Regulation (EC) No 139/2004 has expired without any of the Member States competent to examine the concentration under their national competition law having expressed its disagreement as regards the request to refer the case to the European Commission; or
 - (iii) the European Commission has decided, or is deemed to have decided, to examine the concentration in accordance with Article 22(3) of Regulation (EC) No 139/2004;
- d an investigation by the European Securities and Markets Authority of an alleged infringement listed in Annex III to Regulation (EC) No 1060/2009 of the European Parliament and of the Council⁽⁵⁾ or Annex I to Regulation (EU) No 648/2012 of the European Parliament and of the Council⁽⁶⁾ shall be considered as having been initiated at the moment at which that Authority has appointed an independent investigating officer in accordance with Article 23e(1) of Regulation (EC) No 1060/2009 or Article 64(1) of Regulation (EU) No 648/2012.

4 The Union shall provide the United Kingdom with a list of all individual ongoing administrative procedures that fall within the scope of paragraph 1 within 3 months after the end of the transition period. By way of derogation from the first sentence, in the case of individual ongoing administrative procedures of the European Banking Authority, the European Securities and Markets Authority, and the European Insurance and Occupational Pensions Authority, the Union shall provide the United Kingdom with a list of such ongoing administrative procedures within 1 month after the end of the transition period.

5 In an administrative procedure on State aid governed by Regulation (EU) 2015/1589, the European Commission shall be bound in relation to the United Kingdom by the applicable case law and best practices, as if the United Kingdom were still a Member State. In particular, the European Commission shall, within a reasonable period of time, adopt one of the following decisions:

- a a decision finding that the measure does not constitute aid pursuant to Article 4(2) of Regulation (EU) 2015/1589;
- b a decision not to raise objections pursuant to Article 4(3) of Regulation (EU) 2015/1589;
- c a decision to initiate formal investigation proceedings pursuant to Article 4(4) of Regulation (EU) 2015/1589.

Article 93

New State aid and European Anti-Fraud Office procedures

1 In respect of aid granted before the end of the transition period, for a period of 4 years after the end of the transition period, the European Commission shall be competent to initiate new administrative procedures on State aid governed by Regulation (EU) 2015/1589 concerning the United Kingdom.

The European Commission shall continue to be competent after the end of the 4-year period for procedures initiated before the end of that period.

Article 92(5) of this Agreement shall apply *mutatis mutandis*.

The European Commission shall inform the United Kingdom of any new administrative proceedings on State aid initiated under the first subparagraph of this paragraph within 3 months of initiating it.

2 Without prejudice to Articles 136 and 138 of this Agreement, for a period of 4 years after the end of the transition period, the European Anti-Fraud Office (OLAF) shall be competent to initiate new investigations governed by Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council⁽⁷⁾ in respect of:

- a facts that occurred before the end of the transition period; or
- b any customs debt arising after the end of the transition period from the discharge procedures referred to in Article 49(1) of this Agreement.

OLAF shall continue to be competent after the end of the 4-year period for procedures initiated before the end of that period.

OLAF shall inform the United Kingdom of any new investigation initiated under the first subparagraph of this paragraph within 3 months of initiating that investigation.

Article 94

Procedural rules

1 The provisions of Union law governing the different types of administrative procedures covered by this Chapter shall apply to the procedures referred to in Articles 92, 93 and 96.

2 When representing or assisting a party in relation to the administrative procedures referred to in Articles 92 and 93, the lawyers authorised to practise before the courts or tribunals of the United Kingdom shall in every respect be treated as lawyers authorised to practise before courts or tribunals of Member States who represent or assist a party in relation to such administrative procedures.

3 Article 128(5) shall apply to the extent necessary for any procedures referred to in Articles 92 and 93 after the end of the transition period.

Article 95

Binding force and enforceability of decisions

1 Decisions adopted by institutions, bodies, offices and agencies of the Union before the end of the transition period, or adopted in the procedures referred to in Articles 92 and 93 after the end of the transition period, and addressed to the United Kingdom or to natural and legal persons residing or established in the United Kingdom, shall be binding on and in the United Kingdom.

2 Unless otherwise agreed between the European Commission and the designated national competition authority of the United Kingdom, the European Commission shall continue to be competent to monitor and enforce commitments given or remedies imposed in, or in relation to, the United Kingdom in connection with any proceedings for the application of Articles 101 or 102 TFEU conducted by the European Commission under Regulation (EC) No 1/2003 or proceedings conducted by the European Commission under Regulation (EC) No 139/2004 in connection with the control of concentrations between undertakings. If so agreed between the European Commission and the designated national competition authority of the United Kingdom, the European Commission shall transfer the monitoring and enforcement of such commitments or remedies in the United Kingdom to the designated national competition authority of the United Kingdom.

3 The legality of a decision referred to in paragraph 1 of this Article shall be reviewed exclusively by the Court of Justice of the European Union in accordance with Article 263 TFEU.

4 Article 299 TFEU shall apply in the United Kingdom in respect of the enforcement of decisions referred to in paragraph 1 of this Article that impose pecuniary obligations on natural and legal persons residing or established in the United Kingdom.

Article 96

Other ongoing procedures and reporting obligations

1 Technical examinations conducted by United Kingdom Examination Offices in cooperation with the Community Plant Variety Office pursuant to Regulation (EC) No 2100/94

which were ongoing on the day before the date of entry into force of this Agreement shall continue and be concluded in compliance with that Regulation.

2 Article 12(2a) and (3) and Articles 14, 15 and 16 of Directive 2003/87/EC of the European Parliament and of the Council⁽⁸⁾ shall apply to and in the United Kingdom in respect of greenhouse gases emitted during the last year of the transition period.

3 Article 19 of Regulation (EU) No 517/2014 of the European Parliament and of the Council⁽⁹⁾ and Articles 26 and 27 of Regulation (EC) No 1005/2009 of the European Parliament and of the Council⁽¹⁰⁾ shall apply to and in the United Kingdom in respect of data reporting for the last year of the transition period.

4 Article 8(1), (2), (3) and (7) of Regulation (EC) 443/2009 of the European Parliament and of the Council⁽¹¹⁾, and Annex II to that Regulation, and Article 8(1), (2), (3), (8) and (10) of Regulation (EU) 510/2011 of the European Parliament and of the Council⁽¹²⁾, and Annex II to that Regulation, as well as Articles 2 to 5, 7 and 8(2) and (3) of Commission Regulation (EU) No 1014/2010 and Articles 3 to 6 and 8 and Article 9(2) and (3) of Commission Implementing Regulation (EU) No 293/2012⁽¹³⁾ shall apply to and in the United Kingdom in respect of the monitoring and reporting of relevant vehicle carbon dioxide emissions during the last year of the transition period.

5 Articles 5, 7, 9 and 10, Article 11(3), points (a) and (d) of Article 17(1), and Articles 19, 22 and 23 of Regulation (EU) No 525/2013 of the European Parliament and of the Council⁽¹⁴⁾ and Articles 3, 7 and 11 of Decision No 406/2009/EC of the European Parliament and of the Council⁽¹⁵⁾ shall apply to the United Kingdom in respect of greenhouse gases emitted during 2019 and 2020, and Article 5 of Commission Regulation (EU) No 389/2013⁽¹⁶⁾ shall apply to the United Kingdom until the closure of the second commitment period of the Kyoto Protocol.

6 By way of derogation from Article 8 of this Agreement:

- a to the extent necessary to comply with paragraphs 2, 4 and 5 of this Article, the United Kingdom and operators in the United Kingdom shall have access to:
 - (i) the Union Registry and the United Kingdom's Kyoto Protocol Registry established by Regulation (EU) No 389/2013; and
 - (ii) the Central Data Repository of the European Environment Agency as provided for by Regulation (EU) No 1014/2010, Implementing Regulation (EU) No 293/2012 and Commission Implementing Regulation (EU) No 749/2014⁽¹⁷⁾;
- b to the extent necessary to comply with paragraph 3 of this Article undertakings in the United Kingdom shall have access to:
 - (i) the reporting tool based on the format set out in the Annex to Commission Implementing Regulation (EU) No 1191/2014⁽¹⁸⁾ for the purposes of managing and reporting on fluorinated greenhouse gases; and
 - (ii) the Business Data Repository used for reporting by undertakings under Article 27 of Regulation (EC) No 1005/2009.

Upon a request from the United Kingdom, for a period ending one year after the end of the transition period, the Union shall provide the necessary information for the United Kingdom to:

- a comply with its reporting obligations under Article 7 of the Montreal Protocol on Substances that Deplete the Ozone Layer; and
- b apply penalties in accordance with Article 25 of Regulation (EU) No 517/2014 and Article 29 of Regulation (EC) No 1005/2009.

*Article 97***Representation in ongoing proceedings before
the European Union Intellectual Property Office**

Where, before the end of the transition period, a person who is authorised to represent a natural or legal person before the European Union Intellectual Property Office in accordance with Union law was representing a party in a procedure brought before that Office, that representative may continue to represent that party in that procedure. This right shall apply to all stages of the procedure before that Office.

When representing a party before the European Union Intellectual Property Office in the proceedings referred to in the first subparagraph, such representative shall in every respect be treated as a professional representative authorised to represent a natural or legal person before the European Union Intellectual Property Office in accordance with Union law.

- (1) Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9).
- (2) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1).
- (3) Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (OJ L 123, 27.4.2004, p. 18).
- (4) Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ L 24, 29.1.2004, p. 1).
- (5) Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (OJ L 302, 17.11.2009, p. 1).
- (6) Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).
- (7) Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).
- (8) Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).
- (9) Regulation (EU) No 517/2014 of the European Parliament and of the Council of 16 April 2014 on fluorinated greenhouse gases and repealing Regulation (EC) No 842/2006 (OJ L 150, 20.5.2014, p. 195).
- (10) Regulation (EC) No 1005/2009 of the European Parliament and of the Council of 16 September 2009 on substances that deplete the ozone layer (OJ L 286, 31.10.2009, p. 1).
- (11) Regulation (EC) No 443/2009 of the European Parliament and of the Council of 23 April 2009 setting emission performance standards for new passenger cars as part of the Community's integrated approach to reduce CO₂ emissions from light-duty vehicles (OJ L 140, 5.6.2009, p. 1).
- (12) Regulation (EU) No 510/2011 of the European Parliament and of the Council of 11 May 2011 setting emission performance standards for new light commercial vehicles as part of the Union's integrated approach to reduce CO₂ emissions from light-duty vehicles (OJ L 145, 31.5.2011, p. 1).
- (13) Commission Implementing Regulation (EU) No 293/2012 of 3 April 2012 on monitoring and reporting of data on the registration of new light commercial vehicles pursuant to Regulation (EU) No 510/2011 of the European Parliament and of the Council (OJ L 98, 4.4.2012, p. 1).
- (14) Regulation (EU) No 525/2013 of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No 280/2004/EC (OJ L 165, 18.6.2013, p. 13).
- (15) Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020 (OJ L 140, 5.6.2009, p. 136).
- (16) Commission Regulation (EU) No 389/2013 of 2 May 2013 establishing a Union Registry pursuant to Directive 2003/87/EC of the European Parliament and of the Council, Decisions No 280/2004/EC and No 406/2009/EC of the European Parliament and of the Council and repealing Commission Regulations (EU) No 920/2010 and No 1193/2011 (OJ L 122, 3.5.2013, p. 1).
- (17) Commission Implementing Regulation (EU) No 749/2014 of 30 June 2014 on structure, format, submission processes and review of information reported by Member States pursuant to Regulation (EU) No 525/2013 of the European Parliament and of the Council (OJ L 203, 11.7.2014, p. 23).
- (18) Commission Implementing Regulation (EU) No 1191/2014 of 30 October 2014 determining the format and means for submitting the report referred to in Article 19 of Regulation (EU) No 517/2014 of the European Parliament and of the Council on fluorinated greenhouse gases (OJ L 318, 5.11.2014, p. 5).