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NOTE

To:	Delegations
Subject:	Draft Decision of the Heads of State or Government, meeting within the European Council, concerning a New Settlement for the United Kingdom within the European Union

Delegations will find attached the draft Decision of the Heads of State or Government, meeting within the European Council, concerning a New Settlement for the United Kingdom within the European Union.

DRAFT

**DECISION OF THE HEADS OF STATE OR GOVERNMENT,
MEETING WITHIN THE EUROPEAN COUNCIL,
CONCERNING A NEW SETTLEMENT FOR THE UNITED KINGDOM
WITHIN THE EUROPEAN UNION**

The Heads of State or Government of the 28 Member States of the European Union, meeting within the European Council, whose Governments are signatories of the Treaties on which the Union is founded,

Desiring to settle, in conformity with the Treaties, certain issues raised by the United Kingdom in its letter of 10 November 2015,

Intending to clarify in this Decision certain questions of particular importance to the Member States so that such clarification will have to be taken into consideration as being an instrument for the interpretation of the Treaties; intending as well to agree arrangements for matters including the role of national Parliaments in the Union and managing the consequences of the establishment of the banking union and of a more integrated governance of the euro area,

Recalling the Union's objective of establishing an economic and monetary union whose currency is the euro. While nineteen Member States have already adopted the single currency, other Member States are under a derogation which applies until the Council decides that the conditions are met for its abrogation and two Member States have, pursuant to Protocols No 15 and No 16 annexed to the Treaties, respectively no obligation to adopt the euro or an exemption from doing so. Accordingly, for as long as the said derogations are not abrogated or the said protocols have not ceased to apply following notification or request from the relevant Member State, not all Member States have the euro as their currency. Recalling that the process towards the establishment of the banking union and a more integrated governance of the euro area is open to Member States that do not have the euro as their currency,

Recalling that the Treaties, together with references to the process of European integration and to the process of creating an ever closer union among the peoples of Europe, contain also specific provisions whereby some Member States are entitled not to take part in or are exempted from the application of certain provisions or chapters of the Treaties and Union law as concerns matters such as the adoption of the euro, decisions having defence implications, the exercise of border controls on persons, as well as measures in the area of freedom, security and justice. Treaty provisions also allow for the non-participation of one or more Member States in actions intended to further the objectives of the Union, notably through the establishment of enhanced cooperations. Therefore, such processes make possible different paths of integration for different Member States, allowing those that want to deepen integration to move ahead, whilst respecting the rights of those which do not want to take such a course,

Recalling in particular that the United Kingdom has already been entitled under the Treaties:

- not to adopt the euro and therefore to keep the British pound sterling as its currency (Protocol No 15),
- no to participate in the Schengen acquis (Protocol No 19),
- to keep exercising border controls on persons, and therefore not to participate in the Schengen area as regards internal and external borders (Protocol No 20),
- to choose whether or not to participate in measures in the area of freedom, security and justice (Protocol No 21),
- to cease to apply as from 1 December 2014 a large majority of Union acts and provisions in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Lisbon Treaty while choosing to continue to participate in 35 of them (Article 10(4) and (5) of Protocol No 36),

Recalling also that the Charter of Fundamental Rights has not extended the ability of the Court of Justice or any court or tribunal in the United Kingdom to rule on the consistency of the law and practice of the United Kingdom with the fundamental rights that it reaffirms (Protocol No 30),

Determined to fully exploit the potential of the single market in all its dimensions, to reinforce the global attractiveness of the Union as a place of production and investment, and to promote international trade and market access through, inter alia, the negotiation and conclusion of trade agreements, in a spirit of mutual and reciprocal benefit and transparency,

Having regard to the Statement containing the draft Decision of the Council on specific provisions relating to the effective management of the banking union and of the consequences of further integration of the euro area,

Having regard to the Conclusions of the European Council of 26 and 27 June 2014 and of [18 and 19 February 2016],

Noting the declaration of the European Council on competitiveness,

Noting the declaration of the Commission on a subsidiarity implementation mechanism and a burden reduction implementation mechanism,

Noting the declaration of the Commission on the safeguard mechanism referred to in paragraph 2(b) of Section D of the Decision,

Noting the declaration of the Commission on issues related to the abuse of the right of free movement of persons,

Have agreed on the following Decision:

SECTION A

ECONOMIC GOVERNANCE

In order to fulfil the Treaties' objective to establish an economic and monetary union whose currency is the euro, further deepening is needed. Measures, the purpose of which is to further deepen the economic and monetary union, will be voluntary for Member States whose currency is not the euro and will be open to their participation wherever feasible.

It is acknowledged that Member States not participating in the further deepening of the economic and monetary union will not create obstacles to but facilitate such further deepening while this process will, conversely, respect the rights and competences of the non-participating Member States. The Union institutions, together with the Member States, will facilitate the coexistence between different perspectives within the single institutional framework ensuring both the effective operability of Union mechanisms and the equality of Member States before the Treaties.

Mutual respect between Member States participating or not in the operation of the euro area will be ensured by the principles recalled in this Section, which are safeguarded notably through the Council decision referring to it.

1. Discrimination between natural or legal persons based on the official currency of the Member State, or, as the case may be, the currency that has legal tender in the Member State, where they are established is prohibited. Any difference of treatment must be based on objective reasons.

Legal acts, including intergovernmental agreements between Member States, directly linked to the functioning of the euro area shall respect the internal market or economic, social and territorial cohesion, and shall not constitute a barrier to or discrimination in trade between Member States. These acts shall respect the competences, rights and obligations of Member States whose currency is not the euro.

Member States whose currency is not the euro shall not impede the implementation of legal acts directly linked to the functioning of the euro area and shall refrain from measures which could jeopardise the attainment of the objectives of the economic and monetary union.

2. Union law on the banking union conferring upon the European Central Bank, the Single Resolution Board or Union bodies exercising similar functions, authority over credit institutions is applicable only to credit institutions located in Member States whose currency is the euro or in Member States that have concluded with the European Central Bank a close cooperation agreement on prudential supervision, in accordance with relevant EU acquis.

Substantive Union law, including the single rulebook concerning prudential requirements for credit institutions or other legislative measures to be adopted for the purpose of safeguarding financial stability, may need to be conceived in a more uniform manner when it is to be applied by the European Central Bank in the exercise of its functions of single supervisor, or by the Single Resolution Board or Union bodies exercising similar functions, than when it is to be applied by national authorities of Member States that do not take part in the banking union. To this end, different sets of Union rules may have to be adopted in secondary law, thus contributing to financial stability.

3. Emergency and crisis measures addressed to safeguarding the financial stability of the euro area will not entail budgetary responsibility for Member States whose currency is not the euro, or, as the case may be, for those not participating in the banking union.

Appropriate mechanisms to ensure full reimbursement will be established where the general budget of the Union supports costs, other than administrative costs, that derive from the emergency and crisis measures referred to in the first subparagraph.

4. The implementation of measures, including the supervision or resolution of financial institutions and markets, and macro-prudential responsibilities, to be taken in view of preserving the financial stability of Member States whose currency is not the euro is a matter for their own authorities, unless such Member States wish to join common mechanisms open to their participation.

This is without prejudice to Union mechanisms of macro-prudential oversight for the prevention and mitigation of systemic financial risks in the Union and to the existing powers of the Union institutions to take action that is necessary to respond to threats to financial stability.

5. The informal meetings of the ministers of the Member States whose currency is the euro, as referred to in Protocol (No 14) on the Euro Group, shall respect the powers of the Council as the institution upon which the Treaties confer legislative functions, as well as the institution within which Member State coordinate their economic policies.

In accordance with the Treaties, all members of the Council participate in its deliberations, even where not all members have the right to vote. Informal discussions by a group of Member States shall respect the powers of the Council, as well as the prerogatives of the other EU institutions.

6. Where an issue related to the application of this Section is to be discussed in the European Council as provided in paragraph 1 of Section E, due account will be taken of the possible urgency of the matter.

[7. The substance of this Section will be incorporated into the Treaties at the time of their next revision in accordance with the relevant provisions of the Treaties and the respective constitutional requirements of the Member States.]

SECTION B COMPETITIVENESS

The establishment of an internal market in which the free movement of goods, persons, services and capital is ensured is an essential objective of the Union. To secure this objective and to generate growth and jobs, the EU must increase efforts towards enhancing competitiveness, along the lines set out in the Declaration of the European Council on competitiveness.

To this end, the relevant EU institutions and the Member States will make all efforts to strengthen the internal market and to adapt it to keep pace with the changing environment. At the same time, the relevant EU institutions and Member States will take concrete steps towards better regulation, which is a key driver to deliver the above-mentioned objectives. This means lowering administrative burdens and compliance costs on economic operators, especially small and medium enterprises, and repealing unnecessary legislation as foreseen in the Declaration of the Commission on a subsidiarity implementation mechanism and a burden reduction implementation mechanism, while continuing to ensure high regulatory standards. And the European Union will pursue an active and ambitious policy of trade.

Progress on all these elements of a coherent policy for competitiveness will be closely monitored and reviewed as appropriate.

SECTION C

SOVEREIGNTY

1. References in the Treaties and their preambles to the process of creating an ever closer union among the peoples of Europe are primarily intended to signal that the Union's aim is to promote trust and understanding among peoples living in open and democratic societies sharing a common heritage of universal values. They are not an equivalent to the objective of political integration.

Therefore, the references to an ever closer union among the peoples of Europe do not offer a basis for extending the scope of any provision of the Treaties or of EU secondary legislation. They should not be used either to support an extensive interpretation of the competences of the Union or of the powers of its institutions as set out in the Treaties.

These references do not alter the limits of Union competence governed by the principle of conferral, or the use of the Union competence governed by the principles of subsidiarity and proportionality. They do not require that further competences be conferred upon the European Union or that the European Union must exercise its existing competences, or that competences conferred on the Union could not be reduced and thereby returned to the Member States.

The competences conferred by the Member States on the Union can be modified, whether to increase or reduce them, only through a revision of the Treaties with the agreement of all Member States. The Treaties already contain specific provisions whereby some Member States are entitled not to take part in or are exempted from the application of certain provisions of Union law. The references to an ever closer union among the peoples are therefore compatible with different paths of integration being available for different Member States and do not compel all Member States to aim for a common destination.

The Treaties allow an evolution towards a deeper degree of integration among the Member States that share such a vision of their common future, without this applying to other Member States.

It is recognized that the United Kingdom, in the light of the specific situation it has under the Treaties, is not committed to further political integration into the European Union. [The substance of this will be incorporated into the Treaties at the time of their next revision in accordance with the relevant provisions of the Treaties and the respective constitutional requirements of the Member States.]

2. The purpose of the principle of subsidiarity is to ensure that decisions are taken as closely as possible to the citizen. The choice of the right level of action therefore depends, *inter alia*, on whether the issue under consideration has transnational aspects which cannot be satisfactorily regulated by action by Member States and on whether action at Union level would produce clear benefits by reason of its scale or effects compared with actions at the level of Member States.

Reasoned opinions issued by national Parliaments in accordance with Article 7(1) of Protocol (No 2) on the application of the principles of subsidiarity and proportionality are to be duly taken into account of by all institutions involved in the decision-making process of the Union. Appropriate arrangements will be made to ensure this.

3. Where reasoned opinions on the non-compliance of a draft Union legislative act with the principle of subsidiarity, sent within 12 weeks from the transmission of that draft, represent more than 55 % of the votes allocated to the national Parliaments, the Council Presidency will include the item on the agenda of the Council for a comprehensive discussion on these opinions and on the consequences to be drawn therefrom.

Following such discussion, and while respecting the procedural requirements of the Treaties, the representatives of the Member States acting in their capacity as members of the Council will discontinue the consideration of the draft legislative act in question unless the draft is amended to accommodate the concerns expressed in the reasoned opinions.

For the purposes of this paragraph, the votes allocated to the national Parliaments are calculated in accordance with Article 7(1) of Protocol No 2. Votes from national Parliaments of Member States not participating in the adoption of the legislative act in question are not counted.

4. The rights and obligations of Member States provided for under the Protocols annexed to the Treaties must be fully recognised and given no lesser status than the other provisions of the Treaties of which such Protocols form an integral part.

In particular, a measure adopted pursuant to Title V of Part Three of the TFEU on the area of freedom, security and justice does not bind the Member States covered by Protocols 21 and 22, unless the Member State concerned, where the relevant Protocol so allows, has notified its wish to be bound by the measure.

The representatives of the Member States acting in their capacity as members of the Council will ensure that, where a Union measure, in the light of its aim and content, falls within the scope of Title V of Part Three of the TFEU, Protocols 21 and 22 will apply to it, including when this entails the splitting of the measure into two acts.

5. Article 4(2) of the Treaty on European Union confirms that national security remains the sole responsibility of each Member State. This does not constitute a derogation from Union law and should therefore not be interpreted restrictively. In exercising their powers, the Union institutions will fully respect the national security responsibility of the Member States.

SECTION D
SOCIAL BENEFITS AND FREE MOVEMENT

Free movement of workers within the Union is an integral part of the internal market which entails, among others, the right for workers of the Member States to accept offers of employment anywhere within the Union. Different levels of remuneration among the Member States make some offers of employment more attractive than others, with consequential movements that are a direct consequence of the freedom of the market. However, the social security systems of the Member States, which Union law coordinates but does not harmonise, are diversely structured and this may lead members of the workforce to be attracted to certain territories without this being a natural consequence of a well-functioning market. It is legitimate to take this situation into account and to provide, both at Union and at national level, and without creating unjustified direct or indirect discrimination, for measures avoiding or limiting flows of workers of such a scale that they have negative effects both for the Member States of origin and for the Member States of destination.

The concerns expressed by the United Kingdom in this regard are duly noted, in view of further developments of Union legislation and of relevant national law.

Interpretation of current EU rules

1. The measures referred to in the introductory paragraph should take into account that Member States have the right to define the fundamental principles of their social security systems and enjoy a broad margin of discretion to define and implement their social and employment policy, including setting the conditions for access to welfare benefits.

(a) Whereas the free movement of workers under Article 45 TFEU entails the abolition of any discrimination based on nationality as regards employment, remuneration and other conditions of work and employment, this right may be subject to limitations on grounds of public policy, public security or public health. In addition, if overriding reasons of public interest, such as encouraging recruitment, reducing unemployment, protecting vulnerable workers, averting the risk of seriously undermining the sustainability of social security systems, make it necessary, free movement of workers may be restricted by measures proportionate to the legitimate aim pursued.

Based on objective considerations independent of the nationality of the persons concerned and proportionate to the legitimate aim pursued, conditions may be imposed in relation to certain benefits to ensure that there is a real and effective degree of connection between the person concerned and the labour market of the host Member State.

(b) Free movement of EU citizens under Article 21 TFEU is to be exercised subject to the limitations and conditions laid down in the Treaties and measures adopted to give them effect.

The right of economically non active persons to reside in the host Member State depends under EU law on such persons having sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State and have comprehensive sickness insurance.

Member States have the possibility of refusing to grant social benefits to persons who exercise their right to freedom of movement solely in order to obtain Member States' social assistance although they do not have sufficient resources to claim a right of residence.

Member States may reject claims for social assistance where EU citizens from other Member States do not enjoy a right of residence or are entitled to reside on their territory solely because of their job-search. This includes claims by EU citizens from other Member States for benefits whose predominant function is to cover the minimum subsistence costs, even if such benefits are also intended to facilitate access to the labour market of the host Member States.

(c) Those enjoying the right to free movement shall abide by the laws of the host Member State.

In accordance with Union law, Member States are able to take action to prevent abuse of rights or fraud, such as the presentation of forged documents, and address cases of contracting or maintaining of marriages of convenience with third country nationals for the purpose of making use of free movement as a route for regularising unlawful stay in a Member State or for bypassing national immigration rules applying to third country nationals.

Host Member States may also take the necessary restrictive measures to protect themselves against individuals whose personal conduct is likely to represent a genuine and serious threat to public policy or security. In determining whether the conduct of an individual poses a present threat to public policy or security, Member States may take into account past conduct of the individual concerned and the threat may not always need to be imminent. Even in the absence of a previous criminal conviction, Member States may act on preventative grounds, so long as they are specific to the individual concerned.

Further exchange of information and administrative cooperation between Member States will be developed together with the Commission in order to more effectively fight against such abuse of rights and fraud.

2. It is noted that, following the taking effect of this Decision, the Commission will submit proposals for amending existing EU secondary legislation as follows:

- (a) a proposal to amend Regulation 883/2004 on the coordination of social security systems in order to give Member States, with regard to the exportation of child benefits to a Member State other than that where the worker resides, an option to index such benefits to the standard of living in the Member State where the child resides;
- (b) in order to take account of a pull factor arising from a Member State's in-work benefits regime, a proposal to amend Regulation (EC) No 492/2011 on freedom of movement for workers within the Union which will provide for an alert and safeguard mechanism that responds to situations of inflow of workers from other Member States of an exceptional magnitude over an extended period of time. A Member State wishing to avail itself of the mechanism would notify the Commission and the Council that such an exceptional situation exists on a scale that affects essential aspects of its social security system, including the primary purpose of its in-work benefits system, or which leads to difficulties which are serious and liable to persist in its employment market or are putting an excessive pressure on the proper functioning of its public services. On a proposal from the Commission having examined the notification, the Council could, by means of an implementing act, authorise the Member State concerned to restrict access to in-work welfare benefits to the extent necessary. The implementing act would authorise the Member State to limit the access of Union workers newly entering its labour market to in-work benefits for a total period of up to four years from the commencement of employment. The limitation should be graduated, from an initial complete exclusion but gradually increasing access to such benefits to take account of the growing connection of the worker with the labour market of the host Member State. The Council implementing act would have a limited duration and apply to EU workers newly entering its labour market during a period of [X] years, extendable for two successive periods of [Y] years and [Z] years.

The representatives of the Member States, acting in their capacity as members of the Council, will proceed with work on these legislative proposals as a matter of priority and do all within their power to ensure their rapid adoption.

Changes to EU primary law

3. With regard to future enlargements of the European Union, it is noted that appropriate transitional measures concerning free movement of persons will be provided for in the relevant Acts of Accession to be agreed by all Member States, in accordance with the Treaties. In this context, the position expressed by the United Kingdom in favour of such transitional measures is noted.

SECTION E
APPLICATION AND FINAL PROVISIONS

1. Any Member State may ask the President of the European Council that an issue related to the application of this Decision be discussed in the European Council.

2. This Decision shall take effect on the same date as the Government of the United Kingdom informs the Secretary-General of the Council that the United Kingdom has decided to remain a member of the European Union.