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NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee (Art.50)
Subject: Preparing for the United Kingdom's withdrawal from the Union

With a view to Coreper (Art. 50) on 23 January 2019, delegations¹ will find below a scene-setter for a discussion on the above subject.

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1. As long as the Withdrawal Agreement has not been ratified by both the Union and the United Kingdom, preparation for all outcomes, including a no-deal scenario, must continue, duly taking into account that there are only a few weeks left before the withdrawal date. Indeed the European Council, already in its very first Guidelines of April 2017, called on national authorities, businesses and other stakeholders to take all necessary steps to prepare for the consequences of the UK's withdrawal and has regularly repeated this call.

1 Following the notification under Article 50 TEU, the member of the Council representing the withdrawing Member State shall not participate in the discussions of the Council or in decisions concerning it.

2. This call, and the shift from preparedness to contingency in response to the increased uncertainty affecting the withdrawal process, has been supported by a wide-ranging awareness and best-practice sharing effort carried out through notices to stakeholders², Commission technical seminars and preparedness seminars in the framework of the Working Party (Article 50) on all possible subjects from citizens to customs, from financial services to fisheries. The coherence and sense of direction of the work on preparedness and contingency at EU level has been further improved by three Communications³ accompanied by a series of proposals and other legal acts and setting out the following guiding principles for contingency measures:

- Contingency measures should not replicate the benefits of membership of the Union, nor the terms of any transition period, as provided for in the draft Withdrawal Agreement;
- They should be temporary in nature;
- They should be adopted unilaterally by the European Union in pursuit of its interests and should be revocable at any time;
- They should respect the division of competences provided for by the Treaties;
- National contingency measures should be compatible with EU law;
- They should not remedy delays that could have been avoided by preparedness measures and timely action by the relevant stakeholders.

2 See https://ec.europa.eu/info/brexit/brexit-preparedness/preparedness-notices_en.

3 Communication of 19 December 2018 : “Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019: Implementing the Commission’s Contingency Action Plan”(doc. 15775/18); Communication of 13 November 2018 "Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019: a Contingency Action Plan (doc. 14272/18); Communication of 19 July 2018 "Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019 (doc. 11169/1/18 REV 1).

3. As already noted at a meeting of national Brexit preparedness coordinators last December, one should pay attention to the fact that:
- a) the actual degree of preparedness seems to be quite varied across Member States and sectors, even taking into account that not all Member States and sectors are exposed to the same degree and with the same timeline to the consequences of a no deal.
 - b) the approach to be followed when designing or adopting contingency measures is not always equally shared and endorsed by stakeholders with a more sectorial perspective, notably when it comes to accepting that these time-limited measures should not amount to preserving the status quo of the Union membership or of the transition foreseen by the Withdrawal Agreement, and should focus on the most serious consequences of the withdrawal.
4. In light of the observations under point 3, it could therefore be suggested that:
- a) There is a need to impress at national and sectorial level a sense of urgency in the preparedness and contingency work and stress the validity of the guiding principles for the development of related measures. On top of the outreach visit to capitals offered this week by the Commission, the national Brexit preparedness coordinators have a particular role to play in this respect and a further meeting of coordinators could be convened to facilitate their task;
 - b) While the proposals related to contingency measures have to be handled and brought to conclusion by the *filière* at 28 until the withdrawal, there is an added-value in foreseeing an early involvement of the article 50 *filière*, starting with its working party, in order to ensure a consistent approach to all contingency/preparedness proposals which should remain in line with the overall approach to the negotiations and the above principles (temporary, no status quo, focus on the most significant disruptions, etc.): such early involvement is currently underway e.g. as regards proposals on basic road freight connectivity and basic air connectivity⁴.

4 Doc. 15843/18 and 15788/18 respectively.

The balance found in the article 50 *filière* on a given proposal should be preserved when the proposal is brought back to the *filière* at 28.

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Coreper is invited to consider the assessment outlined under point 3 above and to give its support to the approach outlined under point 4.
