20.1.2020

Mr Antonio Tajani
Chair
Committee on Constitutional Affairs
BRUSSELS

Subject: Opinion on Conclusion of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (2018/0427(NLE))

Dear Chair,

It is my pleasure to inform you that, further to the decision of the Conference of Committee Chairs of 12 February 2019, as endorsed by the CoP of 14 February 2019, the LIBE Committee had decided on 26 February 2019 to request that it may submit an opinion in the form of a letter to the AFCO Committee under the procedure referred to above, pursuant to Rule 56(1) of the Rules of Procedure.

Our Committee adopted such an opinion at its meeting of 13 January 2020. At that meeting, it decided to call on the Committee on Constitutional Affairs, as the committee responsible, to include the following suggestions into its draft recommendation.

Therefore, I hereby transmit the opinion of the LIBE Committee which consists of two parts, namely part A (General observations) and part B (Thematic observations per LIBE field of competence). The opinion addresses those issues which fall within the competence of the LIBE Committee and which are essential for an orderly and appropriately prepared withdrawal process, namely the situation and rights of EU-UK citizens, protection of personal data, asylum, migration and border management, as well as security, law enforcement cooperation and judicial cooperation in criminal matters. For that purpose, it only comments on the text of the draft Withdrawal Agreement, including in the prospect of future EU-UK cooperation.
Yours sincerely,

Juan Fernando López Aguilar
A. General observations

The LIBE Committee stresses the need to ensure that the impact of the withdrawal of the UK from the EU should be as limited as possible. This is particularly important in the case of the matters falling within the remit of the LIBE Committee referred to above, as they affect fundamental aspects of people’s lives.

The LIBE Committee considers that the Withdrawal Agreement seeks to provide a framework for an orderly withdrawal that lessens the adverse effects of the departure of the United Kingdom as much as possible.

Finally, our Committee is of the view that any future international cooperation between the EU and UK should continue to reflect the shared respect for international law, human rights and the rule of law.

B. Thematic observations

1. Citizens’ rights

According to the EP resolution of 14 May 2018, it should be ensured that 'the rights of EU citizens legally residing in the UK and of UK citizens legally residing in EU-27 are not affected by Brexit', and our Committee welcomes the Withdrawal Agreement for going a long way towards making this key Parliament demand a reality. It is also positive that the obligations for the UK and the EU in this respect are based on reciprocity.

It is thus a crucial point for the LIBE Committee that, under the Withdrawal Agreement, citizens’ rights, including their judicial interpretation, will be maintained during the transition period, which also gives citizens on both sides the necessary space and time to plan their lives. ‘Life-long protection’ is also guaranteed under Article 39 of the Agreement, while the extension of the jurisdiction of the Court of Justice of the European Union (CJEU) also after the withdrawal and the binding nature of case-law handed in before the end of the transition period is also positive in that regard. Our Committee further welcomes the overall coverage of current family members and future children by the Withdrawal Agreement and the related family reunification guarantees, protection against expulsion, safeguards as to the requirements to prove the right to stay and relevant procedural rights, as well as the UK government’s related assurance that, during the transitional period, and unlike its recent practice, it will not apply the Comprehensive Sickness Insurance requirement to Union citizens who apply for pre-settled or settled status.

The Withdrawal Agreement also presents certain caveats, as, for instance, certain categories of citizens currently covered by EU law as interpreted by the CJEU will not fall under its provisions (e.g. UK nationals returning to UK with non-EU family members, people with disabilities and carers, third country nationals living in the UK that have strong legal ties with the Member States such as third country nationals born in the EU, recognised refugees and

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1 European Parliament resolution of 14 March 2018 on the framework of the future EU-UK relationship (2018/2573(RSP))
stateless persons). However, overall, the provisions of the Withdrawal Agreement set out a system that will at least provide some legal certainty and predictability, and will protect to a large extent the rights EU-UK citizens having made use of their rights derived from free movement and Union citizenship.

The LIBE Committee is concerned that citizens in Northern Ireland will enjoy different rights depending on their nationality; urges the UK authorities to ensure that there will be no diminution of rights for the citizens in Northern Ireland and to fully respect the Good Friday Agreement in all its parts.

As the situation currently stands, UK nationals will not have any more free movement rights, from the Member State where they used to reside to another Member State, after the end of the transition period, and, to further enjoy free movement, would only be able to apply for citizenship of a Member State under relevant national law or long-term resident status under Union law. It is the view of this Committee that the future international agreement should contain the full continuation of the citizens’ rights guaranteed under the Withdrawal Agreement for both EU and UK citizens also after the end of the transition period. Additionally, it is important for the LIBE Committee that further concretisation of citizens’ rights - including free movement for UK nationals in the EU based on a reciprocal approach - represents the cornerstone and indivisible part of the text of a future international agreement between the EU and the UK. It is also essential that EU 27 Member States clarify the framework to be applied by each of them on UK citizens wishing to obtain a resident status. Such measures should be user friendly and transparent, in order to facilitate the process, as well as free of charge.

Moreover, the LIBE Committee is concerned with the current EU Settlement Scheme put in place by the UK authorities, allowing Union citizens and their family members to apply for settled and pre-settled status in the UK. In particular the following aspects should be addressed as soon as possible, and at the latest by the end of the transitional period:

i) Ensure that problems arising in link with the electronic nature of the application (difficulties of certain categories of Union citizens to access the application, wrong automatic attribution of pre-settled status instead of settled status, impossibility to submit paper versions of different documents), as well as other challenges of accessing the application, should be addressed by UK authorities through specific measures;

ii) Ensure the full independence of the Independent Monitoring Authority reviewing and overseeing the functioning of the system and act rapidly on complaints from Union citizens and their family members;

iii) Ensure that measures are taken to reach vulnerable citizens and address their situation before and after the deadline, and mitigate the consequences for those Union citizens who, out of no fault of their own, fail to apply to the EU Settlement Scheme before the application deadline; criminalisation, discrimination, detention and deportations of citizens who would normally be entitled to residence must be avoided.
2. **Data protection**

Regarding data protection, the LIBE Committee shares the objective of the Withdrawal Agreement of ensuring the continuity of the protection afforded to individuals in the Union whose personal data will be processed in the United Kingdom after the date of the withdrawal. Articles 70-71 of the Agreement provides a framework that would meet this objective, during the transitional period and beyond it. It is therefore essential that the assessment of the adequacy of UK data protection legal framework by the Commission begin without delay.

While the provisions of the Agreement clearly set out this obligation of ensuring the protection of EU individuals after the Brexit, it is however necessary that the practical modalities that will be implemented fully respect this objective. The LIBE Committee stresses the need to conduct a careful and in depth analysis of UK data protection legal framework in order to demonstrate that all the conditions required by Union data protection law, particularly Regulations (EU) 2016/679 and 2018/1725 and Directive (EU) 2016/680, and the case-law of the CJEU are fulfilled in order to ensure a level of protection essentially equivalent to that afforded by the European Union. The LIBE Committee acknowledges that the UK has implemented into its national law the EU data protection package. It would be the basis for the assessment of the adequacy. The LIBE Committee considers that particular attention should be paid to the legal framework in place in the UK in the fields of national security or processing of personal data by law enforcement authorities or for migration related matters. It recalls that mass surveillance programmes such as Tempora might not be equivalent with EU data protection rules and strongly encourages taking into consideration case law in this field such as the *Schrems* case.\(^2\)

Should the UK data protection legal framework not be qualified for an adequacy decision, then the European Union should stress the need to respect data protection rules on international transfers in order to ensure the required continuity of the protection set forth by Union data protection law.

The LIBE Committee also calls on the Member States data protection authorities to proactively follow the whole withdrawal process in order to contribute to a successful and orderly withdrawal without hindrance of data subjects’ rights.

3. **Security, law enforcement and judicial cooperation in criminal matters**

In the area of judicial cooperation in criminal matters, the Withdrawal Agreement provides for clear and detailed arrangements for all pending criminal proceedings. The existence of a transitional period during which the respective, clearly indicated Union law will continue applying will allow for the completion of those proceedings in line with the principle of legal certainty - an overarching principle in criminal law and procedure.

With regard to law enforcement and internal security, in accordance with the Withdrawal Agreement, after withdrawal the UK will cease to have access to any Union information systems, the most important being the Schengen Information System which contains

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\(^2\) Judgment of the Court of Justice of 6 October 2015 in Case C-362/14, Maximillian Schrems v Data Protection Commissioner
information on both third countries and EU nationals. The Withdrawal Agreement sets out rules for measures during the transitional period that will allow the UK to continue exchanging information through the systems until the end of that transitional period. As regards several important systems, such as SIS and SIENA, the Agreement provides for the possibility, under certain conditions, for operational information to be exchanged for a limited time beyond the end of the transitional period to ensure that the operational value of information contained in the systems at the end of the transitional period will not be lost. These arrangements in the Agreement should lessen the impact of an abrupt disconnection from the Union information systems. It is worth noting that for some of the EU systems such as PNR it will allow the necessary time to negotiate the future arrangements on exchange of PNR data between the UK and the EU, which should also be assessed by the CJEU.

As regards the future relationship with the UK, the Parliament recalls that the Political declaration setting out the framework for the future relationship between the European Union and the United Kingdom refers to a broad, comprehensive and balanced security partnership that will provide for reciprocal arrangements for timely, effective and efficient exchanges of Passenger Name Record (PNR) data and for the results of processing of such data to be stored in respective national PNR processing systems, and for the processing of DNA, fingerprints and vehicle registration data (Prüm), as well as operational cooperation via Europol and Eurojust. However, it must be recalled that, although the United Kingdom, had no longer been obliged to participate in Union instruments in the field of police and judicial cooperation in criminal matters means of an opt out, mechanism provided for in the Lisbon Treaty, it nevertheless opted into legislative measures on a case-by-case basis, and despite the vote in 2016 to leave the Union, it seems that the UK still wants to be part of certain parts of police and judicial cooperation in criminal matters after leaving the Union. There must be a clear and permanent framework for the UK participation in police and judicial cooperation in criminal matters, rather than ad hoc decisions. Meaningful respect of the fundamental rights of individuals, including continued adherence and giving effect to the ECHR, and adequate protection of personal data, and effective legal safeguards, are essential prerequisites for allowing this cooperation. The LIBE committee considers that this cooperation must be fully conditional on respect for these principles. The Parliament recalls that the UK authorities made copies of personal data processed in the Schengen Information system in serious breach of Union data protection law and that until now this breach has not been settled; therefore, in line with the above-mentioned prerequisites, the Parliament calls on the Council and the Commission to remedy this serious breach and other serious violations prior to any negotiation on the modalities of cooperation following a swift and detailed evaluation of the situation and relevant reporting to the Parliament.

4. Asylum, migration and border management

As a general comment, the future cooperation in the area of asylum, migration and border management is hardly mentioned in the withdrawal agreement.

In that frame, it would be necessary to clarify to what extent the UK would like to continue to cooperate with the EU with regard to the Common European Asylum System, notably Dublin, as the UK participates currently in several instruments. Similarly, in the field of migration, including international cooperation, relevant clarifications on the future EU-UK cooperation would be needed. Depending on a continued participation in Union programmes,
arrangements should also be included in the future agreement with regard to the Asylum, Migration and Integration Fund as the UK is presently receiving the highest amount (for measures in the area of return).

As far as border management is concerned, currently UK is not allowed to become a full member of Frontex on the grounds that it did not opt-in to related parts of the Schengen acquis. However, it collaborates with Frontex in a range of ways, including operational support in the fields of return and border management and representation as an observer on the Management Board. It would be important to clarify Frontex relations with UK as a third country in the future. The same conclusion is relevant for the need to determine the future relations between EU and UK for information exchange and the use of large-scale information systems for border management, notably to clarify the new modalities in terms of governance and legal certainty.

The LIBE Committee thus calls on the AFCO Committee, as the committee responsible, to recommend that Parliament gives its consent to the draft Council decision on the conclusion of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (2018/0427(NLE)).