



## TECHNICAL NOTE: INTERNATIONAL AGREEMENTS DURING THE IMPLEMENTATION PERIOD

1. The European Union (EU) has concluded a large number of international agreements with non-EU third countries. These agreements underpin the EU's bilateral relationships with over 100 third countries that will have an interest in their continued proper functioning during the implementation period. These agreements cover a wide range of key policy areas including, for example, trade, nuclear cooperation and aviation.
2. The United Kingdom (UK) is currently bound by these third country agreements in its capacity as a Member State. Ahead of the UK's exit from the EU, action is required to clarify the application of these agreements to the UK during the implementation period.
3. The UK proposes that these third country agreements which apply to the UK in its capacity as an EU Member State (as referred to at paragraph 15 of the EU's negotiating directives of 29 January) should continue to apply to the UK in the same way for the duration of the implementation period. In other words, the UK would continue to be bound by the rights and obligations flowing from the agreements for this period. Multilateral agreements to which the EU is a party raise different considerations and are not covered by this note.
4. This proposal flows from the unique and time-limited nature of the implementation period. As the Prime Minister set out in her Florence speech, this implementation period would be based on the existing structure of EU rules and regulations. In its negotiating directives, the EU has adopted the same position. It has stated that "the Union *acquis* should apply to and in the United Kingdom [during the implementation period] as if it were a Member State". This is echoed in the Commission's paper on *Transitional Arrangements in the Withdrawal Agreement*, which states that EU law "shall be binding upon and applicable in the United Kingdom" during the implementation period.
5. Third country agreements are an important part of the EU *acquis*. This continuity in the UK-EU relationship during the implementation period therefore facilitates and confirms the UK's continued participation in EU third country agreements for the duration of this period. Moreover, the UK position is that the existing agreements are capable of operating and continuing to function both as between the EU and the UK and between the EU/UK and the third country or countries in question for the duration of the implementation period. From the perspective of each third country the agreements would continue to operate as they do now.
6. The UK will be leaving the EU in March 2019 and will no longer be a Member State from this time. However, the UK view is that the best approach would be for the parties to confirm that, for the duration of the implementation period, these agreements continue to apply to the UK and that the UK is to be treated in the same way as EU Member States for the purposes of these agreements. This would be achieved by agreement of the parties to interpret relevant terms in these international agreements, such as "European Union" or "EU Member State", to include the UK.
7. This approach is underpinned by international law and practice, including Article 31 of the Vienna Convention on the Law of Treaties (VCLT), which provides that a treaty is to be interpreted in its context, which can include a subsequent agreement between the parties regarding its interpretation or application. The form of such an agreement under Article 31 VCLT is flexible and would be a matter for discussion. It would not be necessary, for

example, to deal individually with each EU treaty. The key requirement would be the clear agreement of the parties that the underlying treaty continued to apply to the UK during the implementation period.

8. Such an approach could be used both to ensure the UK's continued participation in mixed EU third country agreements to which the UK is already a listed party, as well as the continued application to the UK of EU-only third country agreements for the duration of the implementation period. At present the UK as an EU Member State is bound by obligations, and benefits from the rights, on the EU side in the case of both EU-only and mixed agreements. It is proposed, with the agreement of relevant third countries, that those rights and obligations continue to apply to the UK on the EU side of the agreements for the duration of the implementation period.
9. We believe that such an approach has a number of advantages and would ensure an orderly transition:
  - It represents the simplest way of ensuring the continued application of these agreements during the implementation period.
  - It would ensure continuing compliance by the EU and the UK with their international obligations which flow from the agreements.
  - It preserves the integrity of the EU legal order by avoiding any problems created by replacing the underlying agreements with new bilateral agreements concluded by the UK.
  - It would avoid the risk of disruption in the application of these agreements between the EU, UK and third countries.