

20 January 2020

UKTF (2020) 9 – Commission to EU 27

Subject: Internal EU27 preparatory discussions on the future relationship: "Governance"

Origin: European Commission, Task Force for Relations with the United Kingdom

Remarks: These slides are for presentational and information purposes only and were presented to the Council Working Party (Article 50) on 20 January 2020. The contents are without prejudice to discussions on the future relationship.

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Internal preparatory discussions on
future relationship

Governance

AD HOC WORKING PARTY ON ARTICLE 50 (*Seminar mode*)

20/01/2020

General introduction

If UK withdraws with agreement on 31 January 2020:

Transition period of 11 months for:

- 1. adoption of negotiating directives;**
- 2. conduct of negotiations;**
- 3. signature/conclusion and entry into force of future partnership by 1 January 2021**

=> *Complex and politically sensitive negotiations*

=> *Possibility of a "cliff edge" as of 1 January 2021*

Purpose of the seminar series

- Respect established EU principles and objectives:

- 1. European Council (Art. 50) guidelines on the framework for the future EU-UK relationship, 23 March 2018;**
- 2. Revised Political Declaration agreed with the UK government on 17 October 2019, setting out the framework for the future relationship between the EU and the UK.**

- Preparing the negotiating directives

- Take into account Member States' views

- Commission will present the recommendation after UK withdrawal

→ no surprises

→ allow for swift adoption

General approach

Overall governance:

- Institutional structure
- Substantive provisions

Three components

1. Ongoing management/supervision

2. Resolving disagreements

-discussion and consultation in the Joint Committee

-dispute settlement proceedings

3. Remedies/compliance

European Council Guidelines (23 March 2018)

§15 - Considerations for overall governance design :

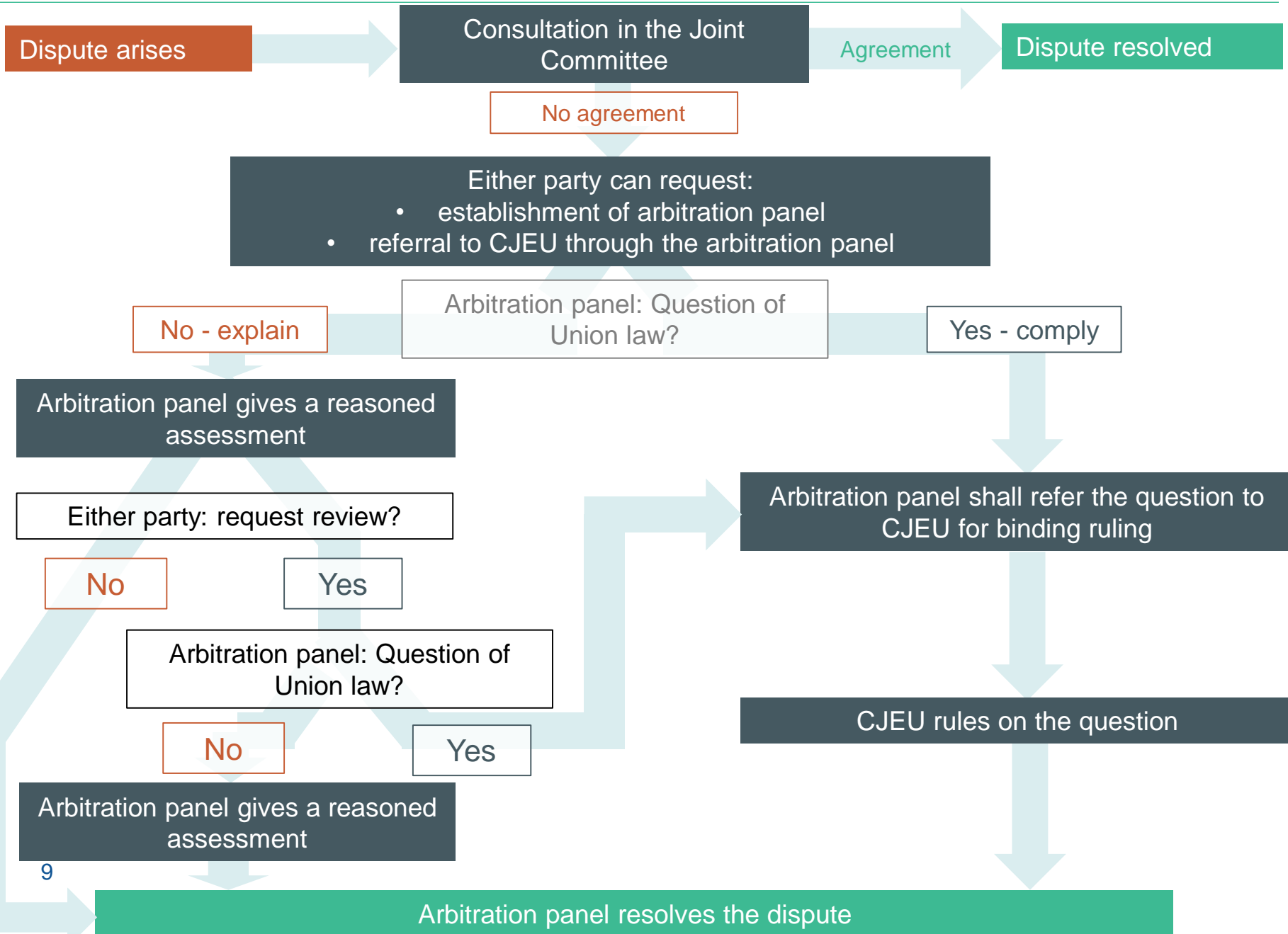
- **Content and depth of the future relationship**
- **Effectiveness and legal certainty**
- **Autonomy of the EU legal order**

Political Declaration

- **Efficient and effective arrangements for management, supervision, implementation and review (§ 122)**
- **“Consistent interpretation and application” of the future relationship (§ 128)**
- **Discussion and consultation in the Joint Committee (§ 129)**
- **Mediation possibility for certain areas, without prejudice to dispute settlement (§ 129)**
- **Dispute settlement by arbitration panel (§ 130-131)**
- **Panel must refer questions of Union law to ECJ for binding ruling (§ 131)**
- **Temporary remedies in case of non-compliance (§ 132)**

Points of reference

- **Governance provisions and dispute settlement mechanisms developed in the negotiations of the Withdrawal Agreement**
- **Other international agreements**





Panel finds infringement

Infringing party has to comply in reasonable period

Dispute about length of reasonable period: panel fixes it

At the end of the reasonable period, complainant can ask the panel to rule on compliance

Panel confirms compliance

Panel can impose lump sum or penalty payment

If infringing party does not pay within **1 month**, or pays but still fails to comply after **6 months**, complainant can suspend:

- any provision of the WA other than Part II
- parts of any other EU-UK Agreement

Dispute about compliance or proportionality of suspension: panel decides

No compliance

Panel confirms compliance

Dispute resolved

Recommendation

- **Overall governance provisions covering all areas of cooperation**
- **Governing body with specialised sub-committees**
- **Horizontal dispute settlement mechanism**
- **Tailored provisions where necessary**

Compliance

- **Dispute settlement**
- **Financial compensation**
- **Suspension of the agreement in whole or in part, including across policy areas**
- **Tailored remedies for level playing field**

Conclusions

- ***Comprehensive partnership = overarching institutional framework (§ 118 of the Political Declaration)***
- ***Overall rules on governance design***
- ***Depth and content of partnership will determine the need for and nature of effective monitoring and compliance mechanisms***
- ***Preserve the autonomy of the EU legal order***