
January 23, 2020

Brexit Update: What does “Brexit” really mean?

Yesterday, the Withdrawal Agreement Bill, which is necessary to implement the Withdrawal Agreement, was approved by Parliament and is expected to receive royal assent by the end of the week. The legislation and the agreement are the predicate for the withdrawal of the UK from the EU on January 31, 2020.¹ After royal assent, the last required actions ahead of the January 31 deadline are the consent of the European Parliament to the Withdrawal Agreement, which is expected January 29, signature of the Withdrawal Agreement and completion of the ratification procedures. The Withdrawal Agreement then enters into force as a treaty.

Over the course of the 43 months since the 2016 Brexit referendum and the 34 months since then Prime Minister Theresa May triggered the exit process provided for in Article 50 of the European Treaty on European Union (the “Treaty”), there has been significant uncertainty as to how the UK would terminate a complex set of relationships that have evolved in a myriad of ways over 47 years and little consensus on what should replace those relationships. Simply put, at the time of the referendum, there was little understanding of what “leaving” the EU means, and since the unexpected outcome of that referendum a consensus on what “leaving” means has proved elusive. Notwithstanding the passage of the Withdrawal Agreement Bill and entry into force of the Withdrawal Agreement (accompanied by the non-binding Political Declaration and the Protocol on Ireland/Northern Ireland), uncertainty over what Brexit really means, and the consequences of the UK’s withdrawal from the EU, is set to continue.

“Getting Brexit Done”

At midnight Central European Time, 11:00 pm Greenwich Mean Time, on January 31, based on Article 50, the UK will leave the EU. That the UK, as a matter of the Treaty, will leave the EU on January 31 does not, however, mean that the UK government has accomplished its goal (articulated repeatedly during the election campaign by the Conservative Party) of “getting Brexit done by January 31” if what it meant was for the UK to be free of all the constraints imposed by EU membership that animated the Leave campaign. In fact, while the UK (in a very technical sense) leaves the EU on January 31, it remains very much a part of the EU for the duration of the transition period (that is, for at least another 11 months). It is, as a practical matter, a misnomer to say the UK has left the EU and, in fact, the UK government appears to use the term “Brexit” to mean either January 31 or the day after the transition period, and it uses the term

¹ See our last Brexit Update, dated January 14, 2020 ([available here](#)).

interchangeably with “leaving the EU.” Yesterday, Boris Johnson announced that the UK has “crossed the Brexit finish line.” Expect confusion.

On February 1, What Changes?

Assuming that, by January 31, the Withdrawal Agreement receives the consent of the European Parliament, the UK will have taken the first step, admittedly a significant (and for many, an emotional) one, towards departure, but in reality the heavy lifting remains to be done. This outcome was pre-ordained by what many viewed as a premature triggering of Article 50 (premature in the sense that a roadmap to a new relationship had yet to be formulated). A new trade relationship, a new security relationship and a plethora of arrangements ranging from data-sharing and privacy to financial services and fisheries will all have to be agreed upon. But first, a number of internal policies questions will need to be settled, and only then can UK and EU negotiators seek to find common ground as part of the negotiation process. Thereafter, compromises will have to be acceptable to a range of interests in the UK and across the EU²⁷.

Beginning February 1 and during the transition period that ends on December 31, 2020 (unless the deadline is extended), the UK will, by and large, be subject to the same laws and regulations that applied prior to January 31,² although at this point the UK will become a so-called “rule-taker.” The UK will no longer have a seat at any table at which EU laws and regulations are drawn up, as it will no longer play any role in the EU’s political institutions and there will be no UK members of the European Parliament. Most importantly from the perspective of trade in goods and services, and movement of people and capital, the UK will continue to be in the EU customs union and the EU single market, and the four freedoms built into the single market will remain fully operative. The UK will also remain subject to the jurisdiction of the European Court of Justice.

All this then means, for example, that as of February 1 (and until at least December 31, 2020 (or longer if the transition period deadline is extended)):

- British citizens travelling to the EU will not need visas. Beginning in 2021, British citizens, like Americans and other non-EU citizens, will need to apply for a visa waiver under the European Travel Information and Authorization System (ETIAS) when travelling to the EU’s Schengen area.
- Valid UK passports will continue to be accepted for visa-free entry into the EU, and EU citizens travelling to the UK will be able to use EU passports as well as national ID cards for visa-free access.
- The European Health Insurance Card (EHIC) scheme will remain valid for travel in EU countries.

² The EU (Withdrawal) Act 2018 repeals the European Communities Act 1972 on “exit day,” but the Withdrawal Agreement Bill continues to give the European Communities Act 1972 (and therefore EU law and EU treaties) legal effect in the UK during the transition period. It also gives government ministers the power in certain policy areas, including issues covered by the Protocol on Ireland/Northern Ireland, to change the law through secondary legislation without a vote of Parliament.

- Flights, ferries, cruise ships and trains will continue to operate as usual.
- EU data roaming for mobile phones will continue to apply to phones registered in the UK.
- Financial services will remain unaffected, and the various passporting regimes will remain available to those in the UK accessing EU financial and credit markets and vice versa.
- The EU General Data Protection Regulation (GDPR) will continue to apply in the UK.
- Supply chains will continue to operate as usual as goods will continue to move into and out of the UK as they have before.
- There will be no changes to the border between Northern Ireland and Ireland. The Northern Ireland protocol, like the discredited Irish “backstop” that it replaced, springs into life only in the event there is a no-deal exit at the end of the transition period.
- The EU Erasmus scheme that makes it possible for EU students to study in other EU countries will continue unchanged.
- Horizon 2020 research program funding will continue to remain open to British applicants.

Looking Ahead

As virtually every aspect of life – business and personal – in the UK is impacted by a complex web of laws, regulations and rules that were drafted in Brussels, the key transition date will be the end of the transition period, be it December 30, 2020 or later, if extended. Whether or not that transition is seamless or chaotic will depend on the progress made by negotiators and ultimately governments over the course of the next 11 months. While the UK government has held out hope that much will be agreed by December 31, 2020, starting with a free trade agreement and covering sectors over and above trade in goods, there is a significant risk that that will not be the case, and there is also the risk that no free trade agreement will be reached with the EU by that date.

In short, much depends on whether the transition deadline is extended and whether there is agreement by the UK on maintaining a level playing field regarding labor, tax, environmental and state aid rules. The more divergence (which currently is the UK government’s preferred outcome), the greater the challenge and the greater the risks posed to the timetable. Last weekend, the Chancellor warned in an interview with the *Financial Times* that the UK would not be “aligned” with EU rules following the transition period, which could undermine frictionless cross-border trade, with consequences for the UK economy, investment and hiring. This warning, following similar statements by the Prime Minister, prompted business leaders once again (as they have for many months leading up to this point) to call for clarity.³

³ In a widely quoted press release issued two days ago, the Institute of Directors (“IoD”) cited a survey of their members that shows that 55% of the respondents said they could only make planning and investment decisions with certainty once they

No matter the outcome, for every sector imaginable, guidance will be needed as to what new regimes govern, what remains the same and what changes as soon as the transition period ends. In the meantime, there will be increasing pressure on the UK government to provide the clarity needed for businesses and others to prepare for the end of the transition period, and there will be no end to headlines warning of potential headwinds.

* * *

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

Mark S. Bergman
+44-20-7367-1601
mbergman@paulweiss.com

David K. Lakhdhir
+44-20-7367-1602
dlakhdhir@paulweiss.com

understood the future relationship between the UK and the EU. The release quotes the IoD Head of Europe and Trade Policy: “To give businesses any chance of being ready for the new relationship by the end of 2020, the Government needs to be as clear as possible about what its intended destination is. With directors clear that negotiations with the EU are the priority right now, clarity is crucial for so many companies. Just calling it a free trade agreement gives no indication of the balance between alignment and divergence, which is essential for firms to do any kind of advance planning. Directors need to know what the Government’s priorities for market access are for the EU.”