

Brexit: Transition Deal Breakthrough

By Fiona Cain | March 23, 2018

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It is one year since the United Kingdom (UK) triggered Article 50 of the Treaty on European Union (EU) by notifying the European Council of its intention to withdraw from the EU. This means that we are now half way through the two year negotiation period during which the terms of the UK's withdrawal from the EU are due to be concluded. It is therefore fitting that this week it was announced by the EU and UK negotiators that they have reached agreement on the legal text for the transition period and were also in a position to publish a draft of the entire withdrawal agreement highlighting the areas of agreement, which are considerable. The announcement is important, as it not only indicates that the negotiations remain on track, but it also provides clarity on the transition arrangements.

The transition period (or implementation period as it is referred to by the UK government), which will follow the UK's withdrawal from the EU next March, has now been set at 20 months, from March 29, 2019 to December 31, 2020. During the transition period, the following transition arrangements will apply:

1. The majority of EU law will continue to apply to the UK, and the UK will remain under the supervisory, judiciary and enforcement mechanisms of the EU and subject to the jurisdiction of the Court of Justice of the EU.
2. The UK will remain within the EU's single market and customs union and will continue to benefit from existing EU trade deals with other countries.
3. The UK will no longer be able to participate in EU decision making but may, in exceptional circumstances, be invited to attend EU meetings without voting rights.
4. The UK will be able to negotiate, sign and ratify international agreements on trade in its own capacity with non-EU countries, but, unless authorized by the EU, such deals can only come into force at the end of the transition period.

This agreement was described as a “*decisive step*” in the Brexit negotiations by Mr. Michel Barnier, the EU negotiator, and has been hailed in the British press as a critical milestone for businesses. There had been concerns that businesses would be falling off a regulatory cliff edge next March when the UK withdrew from the EU and, as a result, businesses were faced with uncertainty as to the future, making business planning difficult. The transition agreement, and in particular the length of the transition period, will reassure businesses that there will not be significant changes to the regulatory landscape and trading relationships in March 2019 when the UK withdraws from the EU, and that the current position will continue until the end of 2020.

Mr. David Davis MP, the negotiator on behalf of the UK government, called this an important milestone and said “*businesses need not delay investment decisions, or rush through contingency plans based on guesses about the future deal. Instead they now have certainty about the terms that will apply immediately after our withdrawal.*”

The transition agreement is contained in the draft withdrawal agreement that was published on Monday. The draft withdrawal agreement is to form a treaty between the EU, the European Atomic Energy Community (Euratom), and the UK, setting out the arrangements for the UK's withdrawal from the EU and from Euratom. The draft withdrawal agreement will be discussed by EU leaders at an EU summit this weekend. While it is likely that it will be approved, it will remain conditional on the UK and the EU resolving outstanding issues over the coming months. The finalized treaty is scheduled to be produced in the fall, when it will be subject to a vote by both the European and UK parliaments.

Alongside finalizing the draft withdrawal agreement, the negotiators will now move to discuss the EU/UK future relationship agreement; however, discussion of the current proposals by the UK and the EU are outside the scope of this alert.

We will continue to keep you informed of developments regarding Brexit.