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Brexit: The Transition Period and Next Steps

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At a Glance

The UK left the EU and EEA on 31 January 2020 but the status quo is preserved for a transition period (Implementation Period) ending 31 December 2020. After that the trading and regulatory framework will change significantly and uncertainty remains



Grandfathering of ongoing processes at the end of the Implementation Period



UK to have independent foreign policy but wants continued cooperation with EU on security and criminal matters including financial crime



UK and EU hope to negotiate a free trade agreement with zero tariffs for goods



Free movement to end after Implementation Period



More modest liberalisation plans for services but better than WTO and other free trade agreements. Broad sectoral coverage envisaged



UK to pursue trade agreements with other countries



Trade in financial services to be based on equivalence, leaving a significant gap compared to passporting



EU will demand level playing field commitments including UK maintenance of employment, environmental and personal data protection standards as part of any deal

What Should You Do?



Continue hard Brexit contingency plans as hard Brexit and cliff-edge disruption risks return at the end of 2020



Lobby UK and EU authorities to agree ambitious trading relationship for both goods and services as soon as possible after the Implementation Period (and further bilateral transition if needed)



Keep track of EU and UK legislative developments



Think about your human resource requirements and the impact of post-Brexit immigration policy



Financial services firms should get to grips with equivalence

Overview

In October 2019, the UK and the EU finalised a draft **Withdrawal Agreement and Political Declaration on the Future UK-EU Relationship**

- Theresa May’s Government negotiated a withdrawal agreement and political declaration in November 2018. However, it was not able to obtain Parliamentary support for this package
- Boris Johnson’s ‘new deal’ secured approval and was ratified enabling Brexit to take place, finally, three and a half years after the UK’s vote to leave

WITHDRAWAL AGREEMENT

LEGALLY BINDING

- An international treaty between the UK and the EU setting out the terms of the UK’s withdrawal
- Has avoided the hardest form of Brexit but the ‘cliff-edge’ risk may re-materialise in 2021, with trade between the UK and EU potentially falling back to World Trade Organisation (‘WTO’) rules at that point

POLITICAL DECLARATION

NOT LEGALLY BINDING

- Envisages an “ambitious” **free trade agreement for goods**, which would avoid falling back to WTO rules after the Implementation Period. **Services (especially financial services) likely to be subject to a harder separation**
- Leaves many details to be decided. Result could be one or more trade agreements or no deal

The **European Union (Withdrawal Agreement) Act 2020** gives effect to the Withdrawal Agreement in UK law

The Withdrawal Agreement

Key Features of the Withdrawal Agreement

IMPLEMENTATION PERIOD	<ul style="list-style-type: none">— Will run until 31 December 2020— Intended to bridge the period between Brexit and the entry into force of the UK-EU arrangements envisaged by the Political Declaration. The idea is that businesses would only have to adjust to one set of changes (but this would be the case only if the future arrangements are concluded and enter into effect by the end of the transition)
CITIZENS' RIGHTS	<ul style="list-style-type: none">— Free movement will continue until the end of the Implementation Period— UK/EU citizens living in their host state before the end of the Implementation Period will have permanent residence rights, subject to certain requirements— The UK and the EU have discretion under the agreement to require EU/UK nationals to apply for a new residency status
SEPARATION MATTERS	<ul style="list-style-type: none">— Ongoing processes and arrangements will be allowed to come to an end under current rules following the end of the Implementation Period
PROTOCOLS	<ul style="list-style-type: none">— Providing specific arrangements for Northern Ireland and Ireland, Gibraltar (which was covered by the UK's EU membership) and the Sovereign Base Areas ('SBAs') on Cyprus<ul style="list-style-type: none">• Providing for Northern Ireland and Ireland was the most complex aspect of the Brexit negotiations. The changes made by the October 2019 version of the Withdrawal Agreement primarily relate to this
FINANCIAL SETTLEMENT	<ul style="list-style-type: none">— Agreed methodology for determining the UK's and EU's financial obligations to each other— It has been estimated that the settlement will cost the UK £33 billion by the time its final payment has been made, potentially in the mid-2060s (but this figure was based on Brexit taking place on 31 October 2019)

Withdrawal Agreement: Implementation Period

TIME LIMITED	— Could be extended until 31 December 2021 or 2022 if a decision is made to extend before July 2020 but the European Union (Withdrawal Agreement) Act 2020 prohibits any UK Minister from agreeing to an extension beyond 31 December 2020
EU LAW	— The UK will continue to apply EU law during the Implementation Period, with a few exceptions (<i>e.g.</i> , right of EU nationals to stand and vote in European Parliament and municipal elections in their Member State of residence) <ul style="list-style-type: none">• The UK will continue to be a part of the EU single market (with all four freedoms) and customs union• Any changes to EU law will apply to and in the UK• The primacy of EU law will be maintained
PARTICIPATION	— The UK will no longer be part of EU decision-making and it will no longer be represented in the EU institutions, agencies and bodies
INTERNATIONAL AGREEMENTS	— The UK will be treated as a Member State for the purposes of EU free trade agreements and other international treaties, which means that the UK will continue to comply with the EU's trade policy <ul style="list-style-type: none">• But third countries are not bound to respect this and reciprocate towards the UK — The UK will be able to negotiate, sign and ratify agreements which apply after the Implementation Period <ul style="list-style-type: none">• So far, the UK has signed trade agreements covering circa 50 countries or territories

Withdrawal Agreement: Citizens' Rights

RESIDENCE	EU citizens in the UK and UK citizens in the EU, lawfully resident before the end of the Implementation Period, will have the right to remain in the host state. Once resident for 5 years, EU/UK citizens and their family members will have a permanent right to reside
STATUS	In the UK, EU citizens and their family members need to apply for a new residence status through the EU Settlement Scheme . Member States have discretion whether or not to require UK nationals and their family members to apply for residence status. It's an open question whether UK nationals resident in one Member State will have freedom of onward movement to another
RECOGNITION OF QUALIFICATIONS	Professional qualifications will continue to be mutually recognised, where recognised before the end of the Implementation Period

The UK Government intends to create an Australian-style points based immigration system.

EU citizens coming to the UK after the Implementation Period would likely be subject to this system in the same way as non-EU citizens

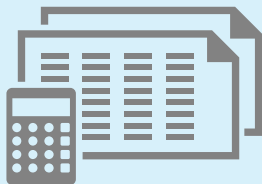
Withdrawal Agreement: Separation Matters



- **Goods that are in the EU/UK market** at the end of the Implementation Period will generally be allowed to continue to move freely between the UK and the EU after the end of Implementation Period
 - Applies to agricultural products, consumer products, health products and industrial products such as motor vehicles, marine equipment, machinery, lifts, electrical equipment, construction products, and chemicals
 - Live animals and animal products will, however, have to comply with the EU or the UK's rules on imports from third countries
- Businesses would be responsible for proving that goods were on the market before the end of Implementation Period, if they want to rely on the free circulation



- For **goods that are midway through a customs movement** at the end of the Implementation Period, ongoing customs procedures will apply
- Certain forms that were lodged before the end of the Implementation Period would continue to be valid afterwards in the UK and the EU, and certain procedures that were started can be concluded



- **VAT and excise treatments for goods** that are midway through an intra-EU customs movement at the end of the Implementation Period will continue to be treated as though they are under EU law
- Movement of goods moving between UK and EU which commenced before the end of the Implementation Period, will continue to be treated under the rules on intra-EU movements of goods set out in the VAT Directive and the EU rules on intra-EU movements of excise goods

Withdrawal Agreement: Separation Matters (cont'd)



- **EU bodies will retain competence for administrative procedures** started before the end of the Implementation Period concerning EU law compliance:
 - by the UK or UK-based citizens and businesses
 - relating to **competition** in the UK



- **GDPR** would apply in the UK in respect of the processing of personal data of data subjects outside the UK, provided that the personal data were processed under GDPR before the end of the Implementation Period or are processed in the UK after the end of the Implementation Period on the basis of the Withdrawal Agreement
- Alternatively, the Commission could make an adequacy decision in favour of the UK under GDPR. If such an adequacy decision ceased to apply, the UK would have to ensure its data processing was “essentially equivalent” to EU law



- Withdrawal Agreement aims to ensure that holders of existing intellectual property rights **would not lose those rights in either the UK or the EU** at the end of the Implementation Period
- Includes provisions with respect to:
 - geographical indication guarantees
 - re-registration in the UK of existing EU rights
 - pending applications for supplementary protection certificates in the UK



- Agreements on other separation issues including public procurement, medicines, ongoing judicial cooperation in civil and commercial matters, ongoing police and judicial cooperation in criminal matters, ongoing EU judicial/administrative processes and privileges/immunities

Withdrawal Agreement: The Ireland/Northern Ireland Protocol

<p>— Arrangements to maintain an open border on the island of Ireland after the end of the Implementation Period (even if a UK-EU free trade agreement is not agreed)</p>	<p>SINGLE UK CUSTOMS TERRITORY</p>	<p>— The whole of the UK will be a single customs territory. The UK will retain control of its trade policy, including as regards Northern Ireland</p>
<p>— The October 2019 revision of the Withdrawal Agreement removed the controversial ‘backstop’ under which the UK would have remained in a customs union with the EU until future arrangements were agreed</p>	<p>ALIGNMENT</p>	<p>— Northern Ireland remains aligned with the EU on customs, goods, VAT, and the Single Electricity Market, and applies EU tariffs in Northern Ireland except for movements within the single customs territory of the UK</p> <p>— EU tariffs payable on goods moving from Great Britain to Northern Ireland if those goods are “at risk of moving into the EU”. EU administrative customs procedures apply in order to make sure that goods destined for the EU comply with the correct process</p>
	<p>CONSENT OF NORTHERN IRELAND</p>	<p>— Customs and regulatory arrangements are subject to the ongoing consent of the Northern Ireland Assembly</p>
	<p>COMMON TRAVEL AREA</p>	<p>— Continuation of the Common Travel Area (series of bilateral agreements between UK and Ireland that allows for passport and visa-free travel for British and Irish citizens between the two territories)</p>

Withdrawal Agreement: Protocols on Gibraltar and the SBAs

<ul style="list-style-type: none">— Of all the British Overseas Territories, only Gibraltar was part of the EU but it was outside the EU customs union, Common Agricultural and Fisheries Policies and VAT regime. It left the EU along with the UK	GIBRALTAR	<ul style="list-style-type: none">— The Protocol on Gibraltar sets out areas where there would be bilateral cooperation that will be underpinned by future arrangements between Spain, the UK and Gibraltar
<ul style="list-style-type: none">— The UK administers two SBAs (Dhekelia and Akrotiri) on Cyprus as military bases. Brexit has implications for the free movement of goods and people between Cyprus and the SBAs	SBAs	<ul style="list-style-type: none">— The Protocol on the SBAs largely preserves, from the end of the Implementation Period, the existing existing agreements so that the laws applicable to Cypriots in the SBAs are the same as the laws of Cyprus— The SBAs will remain in the EU customs territory and subject to EU law on customs and the Common Commercial Policy— Cyprus will be responsible for implementation and enforcement of EU law in relation to goods destined for or originating in the SBAs that enter or leave through Cyprus

The Political Declaration

Key Features of the Political Declaration

*“The Union and United Kingdom are determined to work together to safeguard the **rules-based international order, the rule of law and promotion of democracy, and high standards of free and fair trade and workers’ rights, consumer and environmental protection, and cooperation against internal and external threats to their values and interests**”*

INITIAL PROVISIONS
(UNDERLYING PRINCIPLES)

ECONOMIC
PARTNERSHIP

SECURITY
PARTNERSHIP

*“an **ambitious, broad, deep and flexible partnership across trade and economic cooperation with a comprehensive and balanced Free Trade Agreement at its core**” and “a broad, comprehensive and balanced **security partnership**”*

*“a balance of rights and obligations, taking into account the principles of each Party. This balance must ensure the autonomy of the Union’s decision making and be consistent with the Union’s principles, in particular with respect to **the integrity of the Single Market and the Customs Union and the indivisibility of the four freedoms**. It must also ensure the **sovereignty of the United Kingdom and the protection of its internal market**, while respecting the result of the 2016 referendum including with regard to the development of its independent trade policy and **the ending of free movement of people between the Union and the United Kingdom**”*

Political Declaration: Initial Provisions

The future relationship should be underpinned by a set of **core values and rights, data protection arrangements and other areas of shared interest**



- **Shared values** including respect for human rights, democracy and the rule of law
 - UK continued commitment to the European Convention on Human Rights
 - EU continued commitment to the Charter of Fundamental Rights



- Commitment to ensuring a **high level of personal data protection** to facilitate data flows and exchanges
 - Commitment from the EU to provide an assessment of the UK's data protection standards through GDPR adequacy decision framework by the end of 2020, and comparable facilitation provided by the UK
 - Agreement for cooperation between regulators



- Agreement to set the terms and conditions for potential **UK participation in EU programmes**, including in areas such as science and innovation, youth, culture and education, development, defence capabilities, civil protection and space

Political Declaration: Economic Partnership (Goods)

A **free trade agreement** for goods underpinned by provisions ensuring a **level playing field** for open and fair competition



- **No tariffs**, fees, charges or quantitative restrictions across all sectors, with appropriate and modern accompanying rules of origin



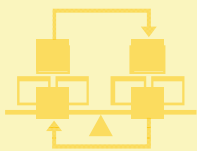
- **Regulatory autonomy**
- Disciplines on technical barriers to trade and sanitary and phytosanitary measures should build on and **go beyond the respective WTO agreements**
- UK may cooperate with EU agencies including with respect to chemicals, medicines and aviation



- **Mutual recognition of trusted traders' programmes**, administrative cooperation in customs and VAT matters and mutual assistance
- Use of **facilitations and technologies** in ensuring the absence of a hard border on the island of Ireland

Political Declaration: Economic Partnership (Services and Investment, and Digital)

Liberalisation in trade in services aimed at substantial sectoral coverage (including professional and business services, telecommunications services, courier and postal services, distribution services, environmental services, financial services, transport services), covering all modes of supply



Ambitious, comprehensive and balanced **services and investment** relationship that goes well beyond WTO commitments, and builds on recent EU FTAs



Provisions on **market access and national treatment** for service providers and investors, as well as addressing performance requirements imposed on investors, **non-discrimination** and **transparent regulatory approaches**



Provisions to enable **free movement of capital and payments**



Appropriate arrangements to **recognise professional qualifications**



Provisions to facilitate **electronic commerce** and **cross-border data flows**, including by addressing unjustified barriers to trade by electronic means and data localisation requirements

Political Declaration: Economic Partnership (Financial Services)

Trade in financial services to be based on **equivalence**. This means the **end of passporting**

PRINCIPLES



- High-level commitments to **preserving financial stability, market integrity, investor and consumer protection and fair competition**, while respecting the **parties' regulatory and decision-making autonomy**

EQUIVALENCE



- Aim to conclude **equivalence assessments before the end of June 2020**. The parties will keep their respective equivalence frameworks under review but no commitment to “enhanced equivalence” (and nothing preventing UK from being more liberal *e.g.*, retaining ‘overseas persons exclusion’ for some investment services)
- Transparency and appropriate consultation in the process of adoption, suspension and withdrawal of equivalence decisions, information exchange and consultation on regulatory initiatives

COOPERATION



- Close **cooperation on regulatory and supervisory** matters including in international bodies

Political Declaration: Economic Partnership

(Transport, Fisheries and Energy)



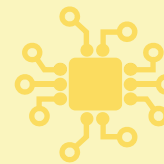
Comprehensive air transport agreement



A new fisheries agreement on access to waters and quota shares



Comparable market access for freight and passenger road transport operators



Technical cooperation between electricity and gas operators and organisations and efficient trade over interconnectors



Bilateral arrangements for cross-border rail services



Consideration of cooperation on carbon pricing



Arrangements on market access for international maritime transport services and cooperation on maritime safety and security



Nuclear Cooperation Agreement between the UK and Euratom

Political Declaration: Economic Partnership (Other Aspects)

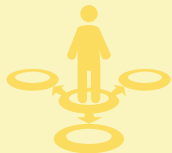
Other aspects of economic cooperation related to global cooperation, intellectual property, public procurement, and mobility



— **Cooperation in international fora** in areas such as **climate change, sustainable development**, public health and consumer protection, trade protectionism and financial stability.



— Protection and enforcement of **intellectual property** rights beyond WTO treaties. Mutual opportunities in **public procurement** markets beyond commitments under the WTO



— Arrangements on **temporary entry and stay of natural persons for business purposes** and **mobility provisions** based on non-discrimination between EU Member States and reciprocity, including **visa free travel for short-term visits**

Political Declaration: Economic Partnership

(Level Playing Field)

Future trading relationship dependent on sufficient guarantees for **open and fair competition**



- Geographic proximity and economic interdependence distinguishes the EU-UK relationship from any other trading relationship of the EU
- Precise nature of commitments should be commensurate with the scope and depth of the future relationship and economic connectedness



- Commitments should prevent distortions of trade and unfair competitive advantages
 - A robust and comprehensive framework for **competition and state aid control**
 - Maintain **environmental, social and employment standards** at the current high levels
 - Adherence to and effective implementation of internationally agreed principles and rules, including the Paris Agreement
 - Good governance with respect to **tax** and to the curbing of harmful tax practices

Political Declaration: Security Partnership

Independent foreign policy, with arrangements for consultation and cooperation



Cooperation on law enforcement, judicial matters, **AML/CTF** and external action



Consultation on **sanctions** and possibility to adopt mutually reinforcing sanctions



Consultation and regular thematic dialogue, possibility for UK participation in informal Council meetings



Case-by-case participation in missions and operations



Cooperation in third countries and international organisations, possibility for shared statements, demarches and positions



Thematic cooperation in relation to **cybersecurity, health security, civil protection and illegal immigration** (among other areas)

Next Steps

Next Steps

- 1 The UK and EU will **agree a programme for the negotiation of the future relationship** including the structure, format, schedule and logistics of the negotiation rounds, with the aim of concluding agreements giving effect to the future relationship by the end of 2020. Relevant aspects may apply on a provisional basis, in line with the applicable legal frameworks and existing practice
- 2 Under the Withdrawal Agreement Act, the UK would **onshore EU law into ‘retained EU law’ at the end of the Implementation Period. New secondary legislation will likely be enacted to fix deficiencies** arising both from Brexit and the termination or any other effect of the Implementation Period or the Withdrawal Agreement (as contingency for a hard separation at the end of the Implementation Period)
- 3 The UK will develop its post-Brexit domestic and foreign policies. The Queen’s Speech of December 2019 outlined a “radical” programme for new regimes for fisheries, agriculture and trade (amongst other things) and the Government has promised a “*thorough and careful review of the UK’s place in the world*”. The EU is also likely to have to revamp and recalibrate its rules in some areas – *e.g.*, financial services

Legislative Programme of the New UK Parliament

The post-election **Queen's Speech** indicated the post-Brexit priorities of the UK Government

1 Trade Bill	<ul style="list-style-type: none">— Government ambition to cover 80 % of total UK external trade with free trade agreements by 2022— Up to 10 new free ports	5 Private International Law Bill	<ul style="list-style-type: none">— Domestic implementation of private international law treaties including the 2005 Hague Convention on Choice of Court Agreements
2 Immigration and Social Security Co-ordination (EU Withdrawal) Bill	<ul style="list-style-type: none">— Australian style points based immigration— EU nationals arriving from 2021 to be subject to UK immigration controls	6 Employment and Workers	<ul style="list-style-type: none">— Subject to consultation, new legislation will make flexible working the default unless employers have good reason not to
3 Financial Services Legislation	<ul style="list-style-type: none">— Simplify process for selling overseas investment funds in the UK— Implement Basel standards for banking— Preserve UK-Gibraltar passporting	7 Environment and Climate Change	<ul style="list-style-type: none">— Enshrine in law environmental principles and legally-binding targets, including for air quality
4 National Security and Investment Bill	<ul style="list-style-type: none">— Notification system for transactions with potential security concerns to the Government for screening	8 Other Matters	<ul style="list-style-type: none">— Bills and proposals on agriculture, fisheries, medicines and medical devices and justice (amongst other things)



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