



Ten key points you need to understand about the Brexit negotiations

BOARDROOM BREXIT

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1. Brexit will now happen

The UK will leave the European Union (EU) at 11.00 pm on Friday 31 January 2020. The UK Government's 80-seat majority in the House of Commons (the Commons) means the Withdrawal Agreement Bill (the Bill), the legislation necessary to make the Withdrawal Agreement legally effective in the UK, will pass. The days of the commons being able to overturn Government legislation are now over. The House of Lords will not vote the Bill down because of the parliamentary convention that it does not vote down legislation promised in a manifesto.

On the EU's side, the Withdrawal Agreement has to be ratified by the European Parliament. This is expected to happen on 29 January 2020.

2. But EU rules remain in force, for eleven months

Under the Withdrawal Agreement, a transition period (in Brussels terms) or an implementation period (in Westminster terms), will come into force until 31 December 2020. During this time EU rules and regulations as they currently apply to your business will remain the same. Any new EU laws which come into force during the transition period will also apply in the UK, although UK ministers will have no role negotiating them in Brussels.

3. So, no cliff-edge Brexit on 31 January 2020

The no-deal Brexit, which would disrupt so many businesses, will not take place on 31 January 2020.

4. However, the transition period is unlikely to be extended

Clause 33 of the Bill makes clear that it would be unlawful for a UK Minister to ask for the transition period to be extended from 31 December 2020. The purpose of placing this prohibition in legislation is to legally bind the Government. Unless the clause is withdrawn before the Bill becomes law, or subsequently repealed (which is unlikely), any extension would be successfully overturned in a UK court.

5. And, this has an impact on the scope of a UK-EU trade deal

The EU will act on this deadline in good faith and limit the scope of the trade negotiations to what can be achieved in 11 months. The European Commission is working on a "basic package with a basic free trade agreement for goods linked to

conditions of level playing field, governance, external and internal security and fisheries". The trade negotiations will be led by EU Chief negotiator, Michel Barnier, who equally stressed that the negotiations have to be phased with the first stage of the talks focusing on duty-free zero-tariff trading in goods, a regulatory level playing field and access to fishing waters.

6. It also means that no deal-planning remains relevant

The more limited in scope the UK-EU trade deal, the more the no-deal plans businesses have put in place remain relevant. Commenting in *The Guardian* newspaper on 18 December 2019, DLA Piper's Brexit Director, Paul Hardy, said:

"Cementing the end of the transition in legislation is a game-changer. It shows this is not a negotiating tactic. Businesses must now expect a limited trade deal in goods with the EU on 1 January 2021, but not in services; or the possibility of no deal at all. They should keep their no-deal Brexit planning warm: it may well come in useful in a year."

7. What is the UK doing to prepare for the trade negotiations?

A Cabinet reshuffle is expected early February 2020, after Brexit takes place.

The **Department for Exiting the European Union** will be abolished.

The **Department for International Trade** may be amalgamated into a new all-powerful business department.

The **Department for International Development** may be amalgamated into the Foreign and Commonwealth office.

The Government's legislative agenda for Brexit over the next year includes important Bills on Agriculture, Fisheries, Trade, Immigration, Financial Services and the Environment.

8. What is the EU doing to prepare for the trade negotiations?

The Commission plans to hold 13 briefings in the "Article 50 Working Party" format with EU Member States between 8 January and 20 January 2020. The sessions will focus on a broad range of issues from data protection and trade (covering goods, services and investment, intellectual property and public procurement) to other areas such as financial services, transport, fisheries, law enforcement and foreign policy cooperation. EU countries are likely to be presented with the Commission's draft mandate for the trade negotiations in early February 2020, with a view to the negotiations formally starting at the beginning of March 2020.

9. What should businesses be doing to prepare for regulatory consequences of Brexit?

- a. Ensure you understand the regulatory consequences for your business of the **Withdrawal Agreement** and the **Withdrawal Agreement Bill**. While the transition period means nothing changes for 11 months, there will be change thereafter for which you can, and should, prepare. The Withdrawal Agreement lays down rules for what happens at the end of the transition period in the following areas:
 - EU citizenship rights and immigration;
 - social security coordination;
 - recognition of professional qualifications;
 - goods placed on the EU market;
 - ongoing EU customs procedures;
 - ongoing VAT and Excise Duty matters;
 - intellectual property;
 - ongoing police and judicial co-operation in criminal matters;
 - ongoing judicial co-operation in civil and commercial matters;
 - data and information processed or obtained before the end of the implementation period or on the basis of the Withdrawal Agreement;
 - ongoing public procurement and similar procedures;
 - ongoing EU legal proceedings; and

- ongoing EU administrative co-operation procedures.

DLA Piper can advise you now on these implications.

- b. Ensure you understand the regulatory effects of a UK-EU trade agreement on your business.

DLA Piper can advise you on these as the results of the negotiations become clear.

10. What should businesses be doing to influence the outcome of all this legislative change?

- a. Maintaining good lines of communication and influence with the UK Government and Devolved Administrations will be very important. A powerful Government needs to understand the impact of its policies on business. With this level of legislative change, many businesses will be seeking a:

- means of gaining early insight into the contents of draft legislation; and
- means of influencing the outcome of that legislation before it becomes law.

DLA Piper's UK Government Affairs team of policy specialists, former civil servants and former ministers can help you achieve both objectives.

- b. Maintaining good lines of communication and influence with the EU Institutions and EU Member States will be equally important. Many businesses will already be seeking to influence EU negotiating positions. It is worth remembering that each EU Member State has a right of veto over the final trade deal, as does the European Parliament.

DLA Piper's Brussels-based EU Government Affairs team of policy specialists, former EU civil servants and former EU politicians can help you achieve this.

If you would like to discuss any of the above, please contact one of the members of our team below, or your usual DLA Piper contact.

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