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BREXIT – EVOLVING SHAPE OF TRANSITIONAL ARRANGEMENTS

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TRANSITION – THE COUNCIL GUIDELINES

The EU's position was set out in the Council's December 2017 negotiating guidelines...

“3. As regards transition, the European Council notes the proposal put forward by the United Kingdom for a transition period of around two years, and agrees to negotiate a transition period covering the whole of the EU acquis, while the United Kingdom, as a third country, will no longer participate in or nominate or elect members of the EU institutions, nor participate in the decision-making of the Union bodies, offices and agencies.

4. Such transitional arrangements, which will be part of the Withdrawal Agreement, must be in the interest of the Union, **clearly defined** and **precisely limited in time**. In order to ensure a level playing field based on the same rules applying throughout the Single Market, **changes to the acquis adopted by EU institutions, bodies, offices and agencies will have to apply both in the United Kingdom and the EU. All existing Union regulatory, budgetary, supervisory, judiciary and enforcement instruments and structures will also apply, including the competence of the Court of Justice of the European Union**. As the United Kingdom will continue to participate in the Customs Union and the Single Market (with all four freedoms) during the transition, it will have to continue to comply with EU trade policy, to apply EU customs tariff and collect EU customs duties, and to ensure all EU checks are being performed on the border vis-à-vis other third countries.

5. **The European Council calls on the Commission to put forward appropriate recommendations to this effect, and on the Council to adopt additional negotiating directives on transitional arrangements in January 2018.**”

...In short, a full extension of the status quo (with the exceptions of the UK's political rights) for a specified period

NEGOTIATIONS ON TRANSITION BEGIN

Both parties have now set out their objectives for a transitional arrangement and can now engage

EU27

General Affairs Council approved supplementary negotiating directives on 29 January

UK

The UK government has set out more detail on its position

- 19 January: Brexit Secretary, David Davis evidence to the House of Commons Brexit Committee
- 26 January: David Davis' Teesport Speech: Implementation Period – A bridge to the future partnership between the UK & EU
- 26 January: Chancellor, Brexit Secretary and Business Secretary open letter to business on implementation period.

Negotiation process

There is limited time to reach agreement

- UK aims to reach agreement for approval at European Council on 22-23 March
- But nothing is agreed on Withdrawal Agreement until everything is agreed
- Separate arrangements will need to be negotiated with the EEA EFTA states and Turkey.

FIVE AREAS FOR DISPUTE

Both parties aim for a full status quo transition (with the UK losing its voting and other institutional rights) but....

1.

Duration of transitional period

- The EU aims for 21 month transition – the UK may want longer.

2.

Citizens' rights

- The EU wants citizens moving to the UK during the transition to have the same rights as those who moved before exit day.

3.

New EU laws

- The UK will seek some mechanism to protect it against new adverse EU rules being adopted and coming into force during the transition (e.g., tax rules).

4.

Third country arrangements

- The UK will want clarity on its freedom to negotiate and sign trade details with 3rd countries plus support on extending the benefit of existing 3rd country agreements to the UK during the transition.

5.

What happens at the end of the period?

- The parties' proposals delay the 'cliff-edge' but do not provide mechanisms to reduce the impact of a sudden switch to third country status for the UK
- They do not contemplate any extension of the transitional period (and there may be uncertainty as to whether the parties can subsequently amend the agreement),

EVOLVING SHAPE OF THE TRANSITION

Topic	EU negotiating directives	UK Government position
Name	Transitional period	Implementation period
Article 50 TEU as legal basis	Yes	Yes
Duration	Until 31 December 2020 (expiry of multiannual financial framework)	About two years ("21 months to 27 months", e.g., link to expiry of UK grace period for EU citizens in March 2021)
UK ceases to participate in EU institutions	Yes	Yes
CJEU jurisdiction applies	Yes	Yes
UK participates in the customs union and all sectors of single market (with four freedoms)	Yes	Yes, but UK will require registration of EU citizens coming to UK
Treatment of citizens' rights under Withdrawal Agreement	'Specified date' should be end of transition period (i.e., citizens relying on freedom of movement during the period protected in same way as those at exit day)	No position stated
UK must apply existing and new EU law as if a Member State	Yes with specific provision to deal with UK opt outs under Freedom, Security and Justice Chapter	Yes but each side should commit not to undermine the other and there should be a mechanism to resolve UK concerns
Consultation of UK on new legislation	UK to cease to participate in consultation mechanisms (except in exceptional circumstances)	To be negotiated
Existing EU third country agreements	UK bound by obligations but UK cannot participate in bodies created under agreements (no specific arrangement for UK to benefit from rights under agreements)	Existing agreements should continue to apply (all parties should agree that UK treated as a party until new arrangements made)
UK able to conclude third country trade agreements	UK can only become bound by new agreements with EU authorisation	UK free to negotiate and sign third country trade agreements (with entry into force at end of period)
Adaptation arrangements at end of period, e.g., contract continuity	No position stated	No position stated
Possibility of extending period	No position stated	No position stated

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