

Alert | Brexit



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UK to Formally Leave EU on Friday 31 January 2020

On Friday 24 January, UK Prime Minister Boris Johnson signed, on behalf of the UK, the Withdrawal Agreement – the agreement setting out the terms of the UK’s exit from the European Union (“Brexit”). This followed the successful passing of the UK domestic legislation necessary to implement the Withdrawal Agreement, the *European Union (Withdrawal Agreement) Act 2020*, on 23 January.

All that now remains is for the Withdrawal Agreement to be ratified by the European Parliament (expected to occur on Wednesday 29 January) and for the European Council, which represents the governments of the EU’s member states, to approve the agreement (expected to occur on Thursday 30 January).

On the assumption that the Withdrawal Agreement will be ratified and take full effect this week, the UK will leave the EU at 2300 GMT (midnight Brussels time) on Friday 31 January.

The terms of the UK’s withdrawal include an 11-month transition period to allow the UK and EU to adjust to their eventual new relationship. In practice, therefore, not much will change on 31 January, as EU law will continue to apply in the UK and to UK businesses and citizens until the end of the transition period on 31 December 2020.

The Withdrawal Agreement allows the UK and the EU to agree to extend the transition period by up to two years. The length of any such extension must be agreed before 1 July 2020. The UK has legislated to

provide that no member of the government is permitted to request such an extension, although this could be reversed by further legislation.

Major change will occur only when the transition period ends. This is because the Withdrawal Agreement does not provide for the future relationship between the UK and the EU. The negotiation of that future relationship – in the form of a long-term free-trade agreement – is due to start shortly. It will likely be a complex process, and there is no guarantee that it will be completed before the end of the transition period. While the Withdrawal Agreement’s negotiation and passage through the UK parliamentary approval process were both protracted and fraught, the UK and EU may look back on that process as having been ‘the easy bit’.

Trade agreements between the EU and other countries have in the past taken years to finalise. On the other hand, the circumstances here are unique and may deliver a faster outcome. For example, the outline of the future relationship has already been agreed, in the short Political Declaration that accompanied the renegotiated draft withdrawal agreement in October 2019. The matters addressed in the Declaration include tariff-free and quota-free trade, access to the EU markets for services, and co-operation in key areas such as defence. In the Political Declaration, the UK and EU also agreed to uphold “*the common high standards applicable in the Union and the United Kingdom at the end of the transition period in the areas of state aid, competition, social and employment standards, environment, climate change, and relevant tax matters*”.

However, the UK government subsequently indicated an intention to diverge from the common standards envisaged by the Declaration. Sajid Javid, the UK’s Chancellor of the Exchequer (i.e., the UK’s finance minister), recently [told the Financial Times](#) (registration required) that “[t]here will not be alignment [in rules between the UK and the EU], we will not be a ruletaker, we will not be in the single market and we will not be in the customs union - and we will do this by the end of the year”. In response, the EU has indicated that the greater the UK’s freedom to diverge from EU rules, the more distant the two sides’ post-Brexit relationship will necessarily become, due to the additional barriers that would need to be put in place to protect the EU’s single market. Such barriers would likely apply irrespective of the tariff and quota arrangements that are put in place (and, as Mr. Javid’s statement indicates, the UK does not intend to remain in the EU customs union after 31 December).

A looser UK/EU relationship, for example, one in which the UK is unable to participate in the EU’s existing regulatory regimes such as [REACH](#), has the potential to alter significantly the regulatory landscape in which businesses operate. Even if the UK ultimately decides not to diverge from EU rules, a free-trade agreement in which the UK has the legal right to diverge could still see businesses needing to meet double registration and licensing processes. This would be in addition to the increased customs formalities which the UK government’s intended future relationship will necessarily entail.

Mr. Javid also told the *Financial Times* that since the date of the 2016 Brexit referendum, businesses have had to prepare for Brexit and will have until the end of 2020 to “adjust”. The continued uncertainty regarding the nature of the future EU/UK relationship has led commentators to question how businesses should be preparing and adjusting, and whether there is sufficient time for them to do so, particularly where complex cross-border supply chains are concerned.

The focus now will be on the exact nature of the future UK/EU free trade agreement and the extent to which the EU and UK agree or are willing to compromise on trade and co-operation terms. If compromise proves impossible, and no agreement is reached by the end of the transitional period, the UK may exit the EU without any agreement on its future relationship with the EU. Reliance on WTO terms following a no-deal Brexit is an alternative, but it is not straightforward and may have been made less so by the United

States' refusal late 2019 to reappoint a US judge to the WTO appeals panel, impairing final resolution of WTO disputes – including any dispute which might arise between the UK and the EU in the future, should their future relationship be on WTO terms.

In the meantime, preparation for Brexit, as far as possible, together with monitoring negotiations for the EU/UK free trade agreement, has never been more important for businesses in both the EU and the UK.

[Read more on Brexit.](#)

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