THE END OF THE BREXIT TRANSITION PERIOD
Where Do We Stand?

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1. Introduction

In June, the UK Government formally confirmed that we would not seek an extension to the Brexit transition period, beyond 31 December 2020. With this has come the task of preparing our legislation, systems and processes as quickly as possible and at the same time, ensuring the security and safety of our businesses and consumers during the Coronavirus pandemic.

With less than three months to go the question is, are we ready? This short review aims to inform and update ACG members on the UK's planning, including some of the current concerns and risks.

2. Events

The COVID19 pandemic brought massive health concerns and the resulting lockdown and restrictions meant that Government and industry have been more focused on how they can protect and safeguard people, business and the economy. This meant that Government and business resources were moved from Brexit preparations to deal with more immediate dangers.

Until the crisis hit, the government's main priority had been our exit from the EU. Thousands of civil servants were employed in unravelling the UK-EU relationship, whilst modifying our current regulatory regimes and introducing new and alternative UK legislation, alongside different systems and databases.

The COVID19 crisis changed all of this and major government resources had to be moved quickly to cope with the emergency to help support recovery and restore the economy. For example, HMRC had employed significant numbers of officers on planning for new border processes. Many of these were swiftly moved to the employment retention scheme. Other major Government Departments also felt the impact including the Treasury, Health and Social Care, Transport and Business, Energy and Industrial Strategy (BEIS), where staff were moved to cover economic support plans, healthcare and business support. Sources suggest that less than a quarter have so far returned to their Brexit duties.

As we know, UK based companies have been hugely impacted by the crisis, retail outlets were forced to close, supply chains were disrupted and stocks were drastically run down. As a result, reports suggest that many businesses became less adequately placed to prepare for Brexit. The Confederation of Business Industry (CBI) has confirmed that 80% of retailers and 62% of service firms had reported cash-flow problems and that reserves set aside for Brexit had already diminished. Moreover, according to the British Chamber of Commerce there has been very little corporate attention to Brexit for the past six months.

Unfortunately, many experts forecast that supply chains could worsen in the run up to Christmas and the end of the Brexit transition period. This opens doors to criminal counterfeiters, who have been stockpiling in readiness, according to RUSI (the Royal Institute Services Institute). We saw signs of this during the lockdown period, when legitimate retail outlets were forced to close their doors, less enforcement resources were available and criminals across the UK spotted the gaps, broke the rules and began trading.

Clearly, legitimate businesses are in a much weaker economic position than a year ago and the severe fall in economic growth, across the world, could mean that it will be more difficult to completely replace EU trade. Simultaneously, Government financial support for business has inevitably lessened and this could lead to more businesses closing or minimising their reach. More redundancies seem inevitable. Moreover, as we currently a trade deal with the EU looks evermore ulikely, for many, it will be difficult to put plans in place to alleviate any further disruption.

3. Government progress

Aside from the pandemic and economic disruptions, the Government still needs to finalise a raft of Brexit related laws by 31 October. Until the Coronavirus crisis hit, thousands of civil servants had been engaged in developing policy, laws and new trade deals. Work was also been ongoing to put new public bodies in place to assume responsibilities, previously dealt with by EU institutions. This work included the preparation of new regulatory regimes, systems and databases.

We are informed that no more legislation is needed to leave the EU. The Withdrawal Act repealed the 1972 Community Act, removed EU law from having an effect in the UK and also transposed many EU laws into a new body of UK law called "Retained Law". However, we have learned that hundreds of Statutory Instruments have been needed to correct errors found in Retained Law. In some way, this could be expected as over 10,000 pieces of legislation needed to be created in a very short time.

On Retained Laws, it should be noted, that Trade, Financial Services, Agriculture, Fisheries and Immigration Bills have been delayed. This means that, at present, these areas of UK law remain in line with the EU. This is likely to bring some discussions back to Parliament and MPs may also need to consider an emergency budget before the end of the year.

In the meantime, talks with the EU appear to have stalled. If negotiations are finally terminated, we will need to intensify our "no deal" planning even more quickly.

A further extension to the current transition period seems impossible . The UK has said no and some EU countries would also be likely to oppose a further delay. Nevertheless, bearing in mind the impact of the pandemic across Europe, a temporary reciprocal deal might still be agreed to ensure markets are orderly and also allow time for more "no deal" planning on specific issues such as aviation and financial services. However, staunch Brexiteers are likely to baulk at this and in any event, the Government has little time to re-open debates and past decisions.

4. Issues

4.1. Data Exchanges

Some critical issues are not up for negotiation. One is on data flows and exchanges, which are vital for enforcement and business. In these areas we are reliant on unilateral EU decisions.

The key to retaining our current position on data exchange and engagement is whether the EU agrees that the UK's governing data regime is 'adequate'.

'Adequacy' has a critical influence on how data can be transferred between the EU third countries. The EU's decision on adequacy is due by 21 December and the European Court of Justice (ECJ) sets very high standards for data use and demands strict protections. These are set out in the General Data Protection Regulation (GDPR). If the UK data regime is judged as being adequate, we will only need to continue to comply with UK data regulations and will be able to continue exchanging data with the EU. However, if not granted, there is a real risk that dataflows will be heavily disrupted.

Alongside 'Adequacy', the EU is also set to decide on whether to grant the UK 'Equivalence' in financial services. This would involve the EU recognising the UK's regulatory regime for financial services, making it easier for parts of the financial services sector to trade. Currently the EU and UK seem to be criticising each other for delays in this area.

4.2. Borders and Systems

Border preparations were underway, ahead of a possible "no deal" scenario in 2019. This work was fast-tracked at the beginning of 2020. For example, HMRC has been preparing the Customs Handling of Import and Export Freight (CHIEF) system, which records the movement of goods, in readiness for a predicted 500% increase in customs declarations.

However, ACG members have major concerns about how well other systems are being developed. We are assured that COPIS (the EU's Anti-Counterfeit and Anti-Piracy System) will be replaced by 1 January 2021. COPIS is the critical EU information exchange system for all EU wide customs actions related to IP enforcement, at the EU's external borders. It is also the central management system for rights holders' applications for action. In addition, the system facilitates important interactions with other systems within the secure Common Communication Network & Common System Interface (CCN/CSI) network. This is an indispensable system for protecting IP rights at our borders and ACG members are naturally anxious about whether the UK system will completely replace COPIS by 1 January and that all current EU-wide applications will be transposed to the new UK version, in time.

In addition, a critical question still lies over the Northern Ireland (NI) border. Trade movement is a major concern, but security and safety are also crucial. Disagreements continue and time is shortening to find a final solution that will ensure goods from the Republic can enter NI without restrictions.

For many businesses there is more confusion because the Government has seemingly changed some messages about how businesses will need to prepare for the UK-EU border. It is understood that the Government is now planning a "six-month" phase of new border formalities, but there is no knowledge about whether this will match EU planning.

What seems to be true, is if there is no zero-tariff Free Trade Agreement (FTA), there will be additional requirements placed on goods moving between the EU and the UK and the UK will be required to apply an EU tariff to any ('at risk') goods destined for the EU.

At the moment it appears that the most we can hope for is that the EU takes a rational approach to ease the impact.

There can be little doubt that leaving the EU will profoundly change the trade and customs relationship at the Irish border, but goods moving across the English Channel will also result in new customs checks and safety and security inspections.

As a result, those engaged in operating and using these straits need to know how the new system will work, in practice, including the forms that will need to be completed and when and what systems will be used to carry out any physical checks.

Greater transparency about how borders will work in respect of the Channel/Euro-Tunnel between Dover, Folkestone and Calais and also ferries between Folkestone and Calais and Dunkirk is much needed. These passages play an equally important role in UK–EU trade, much of which is carried out by 'Roll-on Roll-off' traffic, where goods remain on vehicles and are driven on and off ferries or trains.

The process on the French side of the border has been clear for some time and a new border operating model was introduced in Calais and Dunkirk in September 2019.

However, the UK has had no previous customs processes for 'Roll-on Roll-off' traffic arriving in the country. This means that we have needed to develop a new system, but information on how this will work in relation to customs formalities has been slow on arriving. Reports are that the UK Government plans to introduce a new 'light touch' customs approach, for imports from the EU, for a six-month period. This would offer more time to introduce structures, jobs and technology to support new systems and physical checks. The Government has also confirmed it is looking at five sites in Kent to build new "holding" infrastructure for traffic and one new site has already been bought near Ashford.

Unfortunately, at the moment, it appears that the EU has ruled out a phased approach. If this stance remains then businesses will need to be ready for more rigorous customs checks on the EU side of the border from 1 January 2021. In view of the high volumes of traffic crossing the Channel (estimated at 400 commercial vessels per day) there is a real need to ensure UK businesses are properly prepared for EU checks, which could lead to greater delays on either side of the border.

A further concern for many is whether the UK has enough customs officers to process an extra 200 million additional declarations every year. In February, the Government revealed that many more customs officers would be needed to meet the demand and it has provided £84m of funding to support the training of new officers. Moreover, the Government announced a further £10 million to recruit 500 more Border Force officers to carry out checks at the border. However, current reports suggest many customs officers have yet to be trained.

5. Following 'a no deal' scenario

At this time, it seems doubtful that the UK and the EU will agree to side deals to soften any potential setbacks from Brexit.

In relation to trade and treaties, the EU has clear rules on how it deals with "Third Countries". This is commonly known as "article 218 territory", which brings a complex ratification process. In effect, to sanction any trade agreements with third countries, the EU needs a unanimous mandate. This means that an EU-UK treaty would firstly require a majority vote in the European Parliament and then, unanimous ratification by the 27 Member States' national parliaments. So, in effect, individual countries could block an agreement.

Clearly, "no deal "means the cutting of existing trade and cooperation agreements with the other EU Member countries. Therefore, we need to move quickly to ensure duplicate deals are in place. UK officials have been working hard to replicate the 36 FTAs that we currently party to as an EU member, whilst opening up new treaties with other third countries. Reinstating the EU FTAs will take time and some countries may have no incentive. In fact, in some cases there has been less progress than expected and certain countries have already made it clear that they cannot sign up to agreements in the same way.

Nevertheless, the UK has made real progress in this area, securing 20 trade agreements with 49 countries, amongst them significant economies such as South Korea, Switzerland, Israel, South Africa and Japan. Another agreement has been concluded with Canada on air services and nuclear cooperation. In addition, mutual recognition agreements have been established with the USA, New Zealand and Australia. But, we may need to bear in mind that other countries may believe that there are more important FTAs to be made. For example, New Zealand and Australia are already working on FTAs with the EU.

In truth, it is highly likely that Brexit will continue to dominate Government affairs for some years, and at the same time we will need to rebuild our economy and support businesses, which are struggling as a result of COVID19.

Furthermore, we may find added pressures within the UK as the home nations also look for financial support. For example, Northern Ireland could face significant disruption to its economy. The NI civil service estimates that 40,000 jobs could be at risk from no deal exit, as the border will become more challenging despite any new infrastructure.

Scotland is likely to also increase pressure for a second referendum on independence and farming, fisheries and manufacturing will be particularly high-risk sectors for Wales.

Alongside all this, the Government will be spending its time tackling huge issues such as housing, education and the tax system, together with re-building the economy after COVID19.

At present, there are over 300 Brexit related work-streams in progress, which will continue beyond 31 December and the civil servants engaged in responding to COVID19 may simply be unavailable to deal with the necessary preparations and fall out from a 'no deal' EU exit.

Moreover, even if a limited Free Trade agreement with the EU could be agreed, negotiations on other major issues such as foreign policy, defence and security will be necessary as discussions have been prohibited in these areas. So, all of this could occupy Government and Parliament for some time.

6. Conclusion

One of the main objectives of negotiating the Brexit transition period was to give business more time to prepare for change. However, the impact of the pandemic crisis means that there is less funding and resources available to help alleviate any problems or setbacks.

Furthermore, many large and small and medium-sized enterprises are now facing unexpected financial dilemmas, which may become more problematical if trade with the EU is hampered or even blocked. The second wave of COVID19 inevitably adds more risk, no matter how prepared companies are.

With only less than three months to go, the Government will quickly need to consider how it will rebuild the economy and prepare for any trade barriers, whilst ensuring our borders are properly protected.

Alongside this, new regulations, systems and infrastructure will need to be in place, as businesses adapt to new rules and models, including possible regulatory barriers and tariffs.

If information and guidance is inadequate, businesses will be ill prepared.

To overcome concerns and allow businesses to plan, the Government needs a major information drive to provide more transparent detail about its progress in numerous areas and what needs to be done. It also needs to inform businesses about what they need to do to ease any risks.

In the meantime, ACG will do its best to try to gain as much clear-cut detail and information as possible and will be informing our members as quickly as we can.