



19 September 2018

CIPFA – Brexit Legal Update

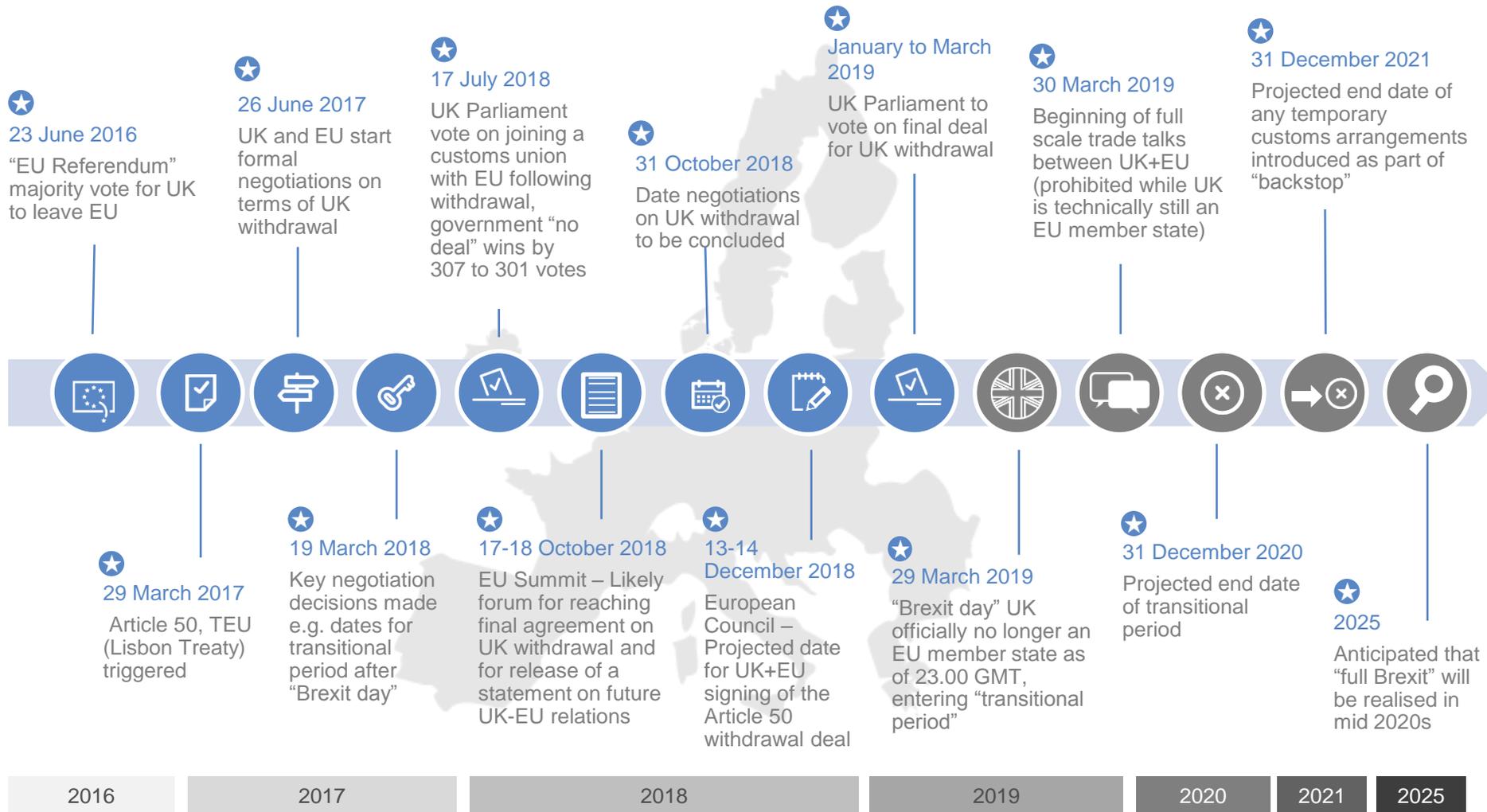
Helen Randall

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Sectors affected:



Brexit timeline



Transitional Period

- Requested by UK Government
- 30 March 2019 to 31 December 2020
- In practice:
 - UK remains in the single market
 - UK complies with most EU law
 - UK courts apply EU court's decisions (CJEU)
 - UK remains in a customs union, with the EU
 - UK retains access to EU's FTAs
- Major objectives:
 - No big bang shock to UK or EU economies
 - Allows negotiation of a permanent deal
 - Allows UK to set up customs, border and regulatory agencies

Public Procurement of Goods, Services, Works & Utilities

- EU procurement Directives have been transposed into the following UK legislation:
 - Public Contracts Regulations 2015
 - Utilities Contracts Regulations 2016
 - Concession Contracts Regulations 2016
- These will continue to apply immediately after Brexit
 - Thereafter UK will have freedom to change procurement rules (subject to international agreements)
 - This could open up the market to suppliers outside EU
 - UK relationship with EU still to be negotiated
- UK is a member of the WTO but is not currently a direct member of GPA (currently through EU membership)
 - UK government is taking steps to “maintain” membership of GPA

State Aid

- UK government confirmed intention to keep EU state aid rules (contained in Article 107(1) TFEU)
 - These rules are transposed into UK legislation under European Union (Withdrawal) Act 2018 – applying to all sectors including
 - agriculture;
 - fisheries; and
 - transport
- Exemptions from state aid rules to be replicated from existing EU rules
- Competition and Markets Authority (CMA) to become new UK “state aid regulator”
 - CMA to receive £15 million additional funding – is this enough?

Competition

- UK government has committed to rigorous competition law enforcement after UK's withdrawal from EU
- House of Lords EU committee report ***Brexit: Competition and State aid*** (2 Feb 2018) recommended:
 - Consistency between UK and EU approach to competition during transitional period
 - UK free to adopt innovative / responsive approach to tackling competition enforcement challenges after conclusion of transitional period
 - A formal agreement on investigations and enforcement
- What we know so far:
 - The CMA will independently regulate competition law in UK
 - This means EU Commission will no longer have power to investigate potential breaches of Articles 101 and 102 TFEU in UK or be able to compel CMA to do so

Access to People

- EU nationals retain right to live and work in UK at present
- UK may strike a deal allowing free movement of some groups with quotas imposed on other groups
- Arguably creates level playing field for movement of workers on international scale

UK's Technical Challenge

- Exiting the European Union:
 - decoupling from regulatory regime
 - loosening economic integration
 - maintaining favourable access to EU/EEA and other markets
 - implementing alternative regulatory and standards bodies
 - by either:
 - 29 March 2019; or
 - 31 December 2021
- Meanwhile trying to ensure stability in the UK economy

Trade - WTO

- UK is a WTO Member
- UK participates in GPA through the EU
- UK must gain approval for its own WTO tariff schedule
- Inconceivable that the UK would be blocked?
- UK would have to adopt new/separate:
 - Tariffs – a tax on imports
 - Tariff Quotas
- EU/UK agreed apportionment of shared agricultural quotas but USA, Brazil, Australia, China and Russia object
- International trade politics will apply

Free Trade Agreement (FTA)

- Two or more nations/custom unions
- Agree to vary WTO tariffs
- Permits more preferable trade terms
- Can also agree:
 - Technical or professional standards
 - Safety standards
 - Access to markets
 - Dispute resolution

Brexit Scenarios – No deal

- No transitional period
- UK/EU apply tariffs to goods
- EU treats UK as third country
 - Custom formalities – supply chains
 - Goods and medicine standards
 - UK loses access to all EU's FTAs
 - UK qualifications not recognised
- Impact on UK economy?
- Possible variant – transition followed by no deal

Brexit Scenarios – Chequers Brexit

- Prime Minister's proposal
- Transition until 31 December 2020
- Free Trade Agreement:
 - In goods (not services)
 - Customs arrangements – (not union)
 - UK processes EU custom duties
 - No tariffs
- UK/EU dispute mechanism EU/EFTA?
- Financial services not covered
- EU and some Conservative MPs' reactions

Brexit Scenarios – “Blind Brexit”

- Transitional period adopted
- Irish Border backstop agreed
- No agreement on future UK/EU relationship
- Negotiations during Transition
- Dangers
 - Prolongs uncertainty for business
 - UK weaker hand as a non EU-member
- However
 - Avoids cliff edge no-deal
 - Appeals to ‘British pragmatism’

Current position

- Public Procurement – retain✓ - access for EU and international companies?
- State Aid – retain✓ - UK regulator announced (CMA)✓
- ERDF/ESIF – UK government to fund✓ & new UK system to be implemented
- Agriculture – new UK subsidy system✓ – in development
- Medicines – regulator required
- Fisheries – UK implement its own quota systems

Summary – in brief

- The UK will not be leaving the EU until 29 March 2019 – at which point it will enter “transitional period” up to 31 December 2020
- The UK will broadly retain EU procurement rules (immediately after Brexit) and State Aid rules (with CMA oversight)
- Competition law will remain substantially the same during implementation phase, save for regulatory changes
- EU nationals currently residing in UK will retain rights to live and work in UK
- Implications for trade are dependent on the final form of the Brexit deal

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Any questions?

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