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CIPFA SE conference – Brexit Legal Update

Paul McDermott

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State of Play

- **27th March** – House of Commons Indicative votes
- **29th March** – speculation of third vote on the Withdrawal Agreement (**MV3**)
- If **MV3** passed no later than 29th March – **Brexit Day 22nd May 2019?**
- Otherwise
 - Default **12th April 2019** no-deal Brexit Day
 - Or UK requests an extension – EU 27 decide whether to and for how long



Scenarios

- Withdrawal deal passed – 22nd May ‘Brexit Day’
- Parliament agrees alternative Brexit route
 - Scope for EU 27 to agree longer extension
 - Scope for constitutional crisis or GE
 - UK participates in the EU Parliamentary elections
- Time runs out – UK leaves with no-deal on 12th April
- UK withdraws Article 50 notice (unlikely)
 - ECJ – must be a genuine change (not tactical)
 - In accordance with the UK legal order

Legalities of Article 50 extension

- UK Act states 29th March as 'Brexit Day' - need to amend the law
- UK bound by EU law – amended on
- Extending Article 50: European Union (Withdrawal) Act 2018 (Exit Day) (Amendment) Regulations 2019
- UK government's position
 - Brexit day extended by royal prerogative
 - This includes the EU Treaty
 - Regulations merely 'tidy up' UK law



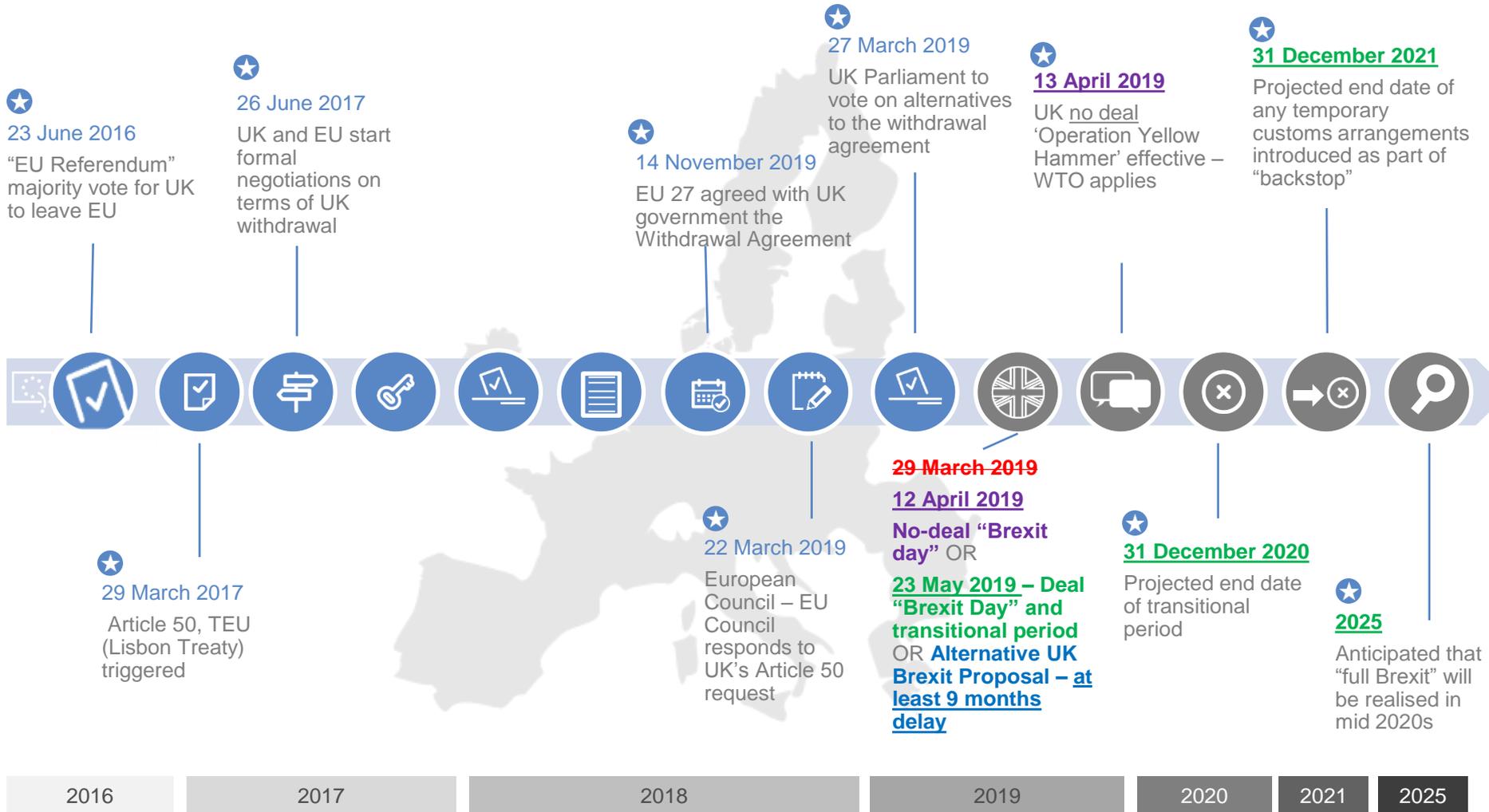
Roadblocks?



Roadblocks

- EU Council decision of 22nd March
 - **22nd May** Brexit if WA approved no later than 29th March
 - **12th April** – no-deal Brexit Day
- Parliament must approve any final WA – section 13 European Union (Withdrawal) Act 2018
- HM Government – the executive – only it can negotiate/agree deal with the EU
- UK political impasse – constitutional crisis?
- EU 27 – patience worn thin?
- EU parliamentary elections 23rd to 26 May 2019

Brexit timeline – 5 mins to midnight?



Transitional Period – Withdrawal Deal

- Requested by UK Government
- 30 March 2019 to 31 December 2020
- 2 years extension – by joint EU/UK agreement
- 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

Transition period specifics

- **Procurement** - remains almost the same as now re regulations and procedures
- **State aid** incorporated into UK law substantially the same
- Competitions and Markets Authority (**CMA**) UK regulator – more obligations for public authorities
- **ECJ** – UK courts can seek interpretation on applicable EU law
- **ECJ judgements** – binding precedents for UK courts (in relevant areas)

No Deal Procurement

- EU procurement Directives have already been incorporated into UK legislation.
- These apply immediately after no-deal
- Amended regulations for no-deal
- New UK procurement e-notification service
- UK government has taken steps to “maintain” membership of GPA (WTO procurement agreement)
- EU firms able to bid in UK and vice versa
- Within the GPA rules – UK scope to change procurement rules

No deal State Aid

- UK published draft regulations
 - Incorporated state aid law into UK law
- Exemptions from state aid rules to be replicated from existing EU rules
- Competition and Markets Authority (**CMA**) to become new UK “state aid regulator”
- Greater burden on local authority/public sector – reporting
- Strategy to retain rules until an EU trade deal struck?
- Thereafter freedom to change or water down

No deal - Access for People

- Resident EU nationals retain right to live and work in UK
- UK introduced settled and right to settle schemes for EU nationals
- Individual EU states implementing their own rules
- Probable UK citizens 90 day visa free access – ETIAS
- UK could strike bilateral deals allowing free movement of some groups with quotas imposed on others (EU or other countries)
- Require international driving permits and insurance

UK's Technical Challenge

- **Immense**
- Is there a consensus for a replacement withdrawal agreement?
- 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:
 - **12 April 2019 no-deal**; or
 - **31 December 2021 end of transition**
- Meanwhile trying to ensure stability in the UK economy

Alternative options



Trade - WTO

- UK is a WTO Member
- UK must gain approval for its own WTO tariff schedule
 - Tariffs – a tax on imports
 - Tariff Quotas
- UK published ‘emergency’ low tariff schedules
- Legality unclear – though slow resolution of disputes
- Trade deals not agreed: EU, Japan, Korea, Canada, Australia or New Zealand
- ‘Big players’ waiting for UK/EU resolution
- 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
- UK systems not ready to replace EU institutions
- Impact on UK economy?
- Possible variant – emergency exit transition followed by no deal

The Withdrawal Agreement

- **Risen from the dead?**
- 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 – committee/arbitration
- Financial services not covered – but given separate access
- DUP and some Conservative MPs' reactions

Current position

- **A mess !**
- UK not in control of its options
- UK not prepared for no deal on **12th April** 2019
- 12/4 – No-deal probably means invoking the Civil Contingencies Act 2004
- Is Parliament capable of reaching a consensus?



No Deal – interim EU measures

- EU has adopted a range of measures
- Objective to protect EU states and citizens
- Aim to mitigate some disruption
- E.g. Flights and Eurostar permitted – but restrictions apply
- Further measures could be adopted
- Clock is ticking
- Many subject to EU Parliament input – **those elections**

No- deal UK measures

- UK adapting most EU law into domestic law
 - Ensures continuity
 - Ensures a legal order or avoiding have no regulations – e.g. medicine
- UK likely to waive a range of customs/border controls with the EU – continuity
- UK (even Boris) wants some form trade deal with the EU
- Many countries reluctant to commit to UK trade deal until UK/EU agree trade terms
- Within WTO rules UK could then change rules/laws/tariffs

Current legal 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

Discussion and Questions



Contact



Paul McDermott
Partner

d +44 (0)20 7423 8043

e pmcdermott@trowers.com

 **@PaulWMcDermott**

Linkedin: **Paul McDermott Trowers**

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