

The business view of Brexit progress

Read what happened on 8th December 2017, when the UK and EU Commission recommended jointly that sufficient progress had been made in Phase 1 of the Brexit negotiations, and European Council President Donald Tusk set out draft guidelines for next steps for talks.

A breakthrough on first set of Brexit issues

For firms watching the UK-EU negotiations closely, progress through the first phase of Brexit talks before the end of the year was vitally important. It is now almost certain that will be achieved, as the EU Commission and UK Government published a joint report confirming agreement on the key issues of citizens' rights, UK relationship with Ireland and the financial settlement.

Welcome progress on citizens' rights, but still no legal guarantee

The EU and UK have come to a 'common understanding' ensuring that the 3 million EU citizens living in the UK and over a million UK citizens living in EU can "go on living their lives as before". Both sides have agreed on some important practicalities: no changes will occur before the UK's withdrawal date and rights will not be backdated, the process for applying for "settled status" should be simple, and people who have obtained "settled status" will be able to leave the country they're in currently for 5 years and still return under the same rights.

Compromise has been reached on several of the most contentious issues. The most difficult was around arbitration, but both sides have found a way forward. And for individuals, there is some reassurance. Family members on the date of exit and children born after this date will be entitled to join EU nationals in the UK, and vice-versa, irrespective of their nationality. However, future partners who marry after March 2019 will not have the automatic right to join their spouse in the UK or EU. Furthermore a deal was not reached on the

rights of UK nationals currently residing in the EU, but who move to another member state after the date of exit. This issue likely to be revisited in future negotiations.

The biggest challenge for business when it comes to citizens is a clear caveat that "nothing is agreed until everything is agreed". Therefore, EU nationals in the UK and UK citizens in the EU still do not have a formal guarantee their rights will be protected. The Withdrawal Agreement and Implementation Bill will enshrine the final provisions on citizens' rights into UK law, however this will take many months to happen. The CBI will continue its work to secure a guarantee that the rights of citizens will be protected, regardless of the outcome in the next stage of the negotiations.

UK relationship with Ireland

Negotiators achieved a number of important commitments on Ireland for businesses who are concerned about potential barriers to trade with the UK's closest European neighbour. These included:

- Reaffirmation of commitment to preserving the Good Friday Agreement
- The possibility of a hard border ruled out, protecting North-South trade
- The possibility of a border in the Irish Sea ruled out, protecting East-West trade

The hard work begins now to make this a reality. The EU has continued to state that the UK must bring solutions to the issue of the Irish border. The CBI is clear that solutions for customs proposed so far do not achieve the aim of avoiding the hardening of the border. However, the UK has committed that whatever happens, the UK will continue to ensure the same unfettered access for Northern Irish business to the whole of the UK's

internal market, and that in the event of no deal, “the UK will maintain full alignment with those rules of the Internal Market and the Customs Union which now, or in the future, support North-South cooperation”.

A special process will be established to achieve progress on Northern Ireland in the next phase of the Brexit process.

Financial settlement agreed, with positive news for UK involvement in some EU programmes

Both sides agreed that the UK will continue to honour its financial commitments to the EU for 2019 and 2020, post-departure, paying into the EU Budget as if it were a full EU member state.

Beyond this being part of the solution to progress, businesses and universities will be positive that any organisation currently benefiting from EU funding will still receive this after the UK’s withdrawal, as the UK will continue to participate in the Union programmes under the current budget **until their closure**. Similarly, the eligibility to apply to participate in EU programmes and funding for UK participants and projects during this time will be unaffected by Brexit for the entire lifetime of such projects.

However, there is still uncertainty for business over the fate of EU programmes beyond 2020. The door is open: the guidelines outline that the UK may wish to participate in some programmes post-2020 as if it “were not an EU member state”, and businesses in future could then benefit from a future ‘pay-in’ system for certain programmes. But from 2020, UK projects will no longer be able to apply for money from the European Investment Bank.

Some certainty around existing products

At the beginning of Phase 1 talks, negotiators also set out to agree a number of “exit issues”. For businesses, the most important of these was around certainty for goods that would be placed on the market before exit day. There has been some progress towards this – but not as much progress as UK companies were seeking, particularly around approvals and licensing.

Both parties have committed to ensuring the continued availability of goods placed on the market prior to the UK withdrawal. Any goods placed on the market under EU law before withdrawal may continue to circulate on UK and EU markets with no need for product modifications or re-labelling, and that these goods will be subject to continued oversight.

Moving on to trade and transition

The issues of citizens’ rights and the UK’s relationship with Ireland are important, but businesses have been looking for talks to move on to transition and trade. The European Council has now started working towards that aim.

Steps towards the right kind of transitional arrangements

Businesses have been calling for urgent agreement on transition arrangements, and received their strongest signal yet that this will be achieved. The joint paper states both sides seek “agreement as early as possible in 2018 on transitional arrangement”. If agreed, transitional arrangements would increase certainty and provide a period a time for businesses and regulators on both sides of the Channel to adapt to any new future economic relationship between the UK and the EU.

The EU has taken the right approach for firms, in proposing the UK remains in the Single Market and a Customs Union, with all its rights and obligations, until a new deal is in force. The European Council makes it clear, however, that these transition arrangements must:

- Be in the interest of the Union, clearly defined and limited in time
- Respect the whole of EU law, including new law
- Respect budgetary commitments as well as judicial oversight
- All the related obligation (all four freedoms)

What continues to remain unclear is the length of time these transitional arrangements will be for. This should become clear swiftly, as the guidelines call on the Commission to put forward recommendations to this effect, and on the Council to adopt additional negotiating directives on transitional arrangements as soon as possible.

First thoughts from the Council on the Future Economic Relationship

The Council’s guidelines commented briefly on the Future Economic Relationship, but there was very little detail for businesses to draw upon. The council draft guidelines confirm a “desire to establish a close partnership between the Union and the United Kingdom”. The guidelines acknowledge the UK’s intention to leave the Customs Union and Single Market and says it will ‘calibrate its approach regard[ing] trade and economic cooperation in light of this position... to ensure a balance of rights and obligations... in particular the need to preserve the integrity and proper functioning of the Single Market’.

CBI members still have the opportunity to influence the future deal, as the EU has placed the ball firmly in the UK's court to come forwards with proposal to provide further clarity on its proposed framework for the future economic relationship. The CBI is consulting with members on their views of the overall framework for the future economic relationship and welcomes input.

What comes next?

Sufficient progress should be endorsed by the Sherpas of the EU27 at the General Affairs Council on 12th December, followed by the Heads of State at the European Council on 15th December.

While it is highly unlikely the European Council will not follow the Commission's recommendation – it is a political body and last-minute changes cannot be ruled out. The CBI will continue to push for a positive agreement to get negotiations moving on to the future economic relationship.

Moving into 2018, additional draft guidelines will be published by the European Council to EU27 leaders on transitional arrangements, and then on to the framework for the future relationship between the UK and the EU.

It is crucial these issues are discussed urgently, not only to provide businesses with the certainty they need on transitional arrangements, but to meet the October 2018 deadline for a Withdrawal Agreement set by Michel Barnier, the Commission's Chief Negotiator.

What should businesses do now?

1. Give the UK Government their views on the length of the transition period

Businesses can be relatively confident that the form of transitional arrangements both sides are seeking should deliver as near to "status quo" as possible. However, the length of time those transitional arrangements will last for is still unclear. Firms should look to provide Government departments with evidence to explain how long potential Brexit changes could take to adapt to.

2. Let the CBI know views on the Future Economic Relationship

The Brexit debate will now move quickly onto the Future Economic Relationship, and the CBI wants to hear members' views on the overall form it should take. To set up a conversation, please contact EUNegotiations@cbi.org.uk

3. Continue preparations for Brexit Day 1

This progress shows that careless talk of walking away can be replaced by confidence that the UK can get a good deal. However, it is sensible for firms to continue prepare for all scenarios. The CBI will continue to support members with their preparations for Brexit Day 1.