

A decorative graphic in the top right corner consisting of several overlapping, semi-transparent geometric shapes in shades of pink, light blue, and grey, set against a dark blue background.

BREXIT UPDATE

A presentation to the WSG Banking Group Conference

Vienna, Friday 14 February 2020

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TIMELINE 2020

31 ST January 2020	UK withdraws from the EU and the transition period commences
1 st March 2020	EU aims to have its negotiating mandate in place (following agreement at the February 25 Council of the EU)
June 2020	First 'taking stock' high level meeting between the UK and EU
30 th June 2020	Financial services equivalence decision deadline
1 st July 2020	Fisheries agreement deadline
1 st July 2020	Any extension to the transition period must be agreed before this date
26 th Nov 2020	It is thought the trade deal must be negotiated, checked, translated and presented to the European Parliament by this date.
31 Dec 2020	Data protection adequacy ruling deadline
31 st Dec.2020	11pm UK time: end of the transition period (unless an extension is agreed)

Current Hiatus “The Transition Period”

- Old regulations – continue to apply
- New regulations will apply (absent an exception)
- Regulations – if not adopted by Act of Parliament will cease to apply post transition
- Old directives (assuming adopted) - continue to apply
- New directives – will only apply if passed into English law
- Directives old and new passed into domestic legislation will continue to apply post transition – *unless there's further UK legislation to repeal all or specific ones.*

FINANCE TRANSACTIONS

- Material Adverse Effect
- Invoice Financing
- General Business Impacts
- Security and Guarantees
- Tax and Increased Costs
- Sanctions (EU Blocking Statute)
- Information Covenants
- EU regulations – covenants (e.g. COMI)

Current framework for civil justice & judicial co-operation

- Mutual recognition of choice of court clauses
- Mutual recognition of choice of law clauses
- Facilitation of service of originating process across national borders
- Mutual recognition of judgments

EU-UK Withdrawal Agreement

- Generally treats UK as if it was still a member state, until transition period ends 31 December 2020
- Some uncertainty

Focus on mutual recognition of judgments post-transition

Important factors include:

- When court proceedings start
- Nature of choice of court clause
- Terms that EU and UK may agree

Court proceedings start during transition period

Current reciprocity should continue to apply beyond 31 December 2020

Court proceedings start after transition period; no exclusive choice of court clause

Enforcement depends on domestic law of state in which judgment is enforced

Court proceedings start after transition period; exclusive choice of court clause, entered into after transition period

UK's intention to accede to Hague Convention in its own right – if so, there will be reciprocal enforcement between Convention states

Court proceedings start after transition period; exclusive choice of court clause, entered into during transition period

Complications, because Hague Convention may apply, but:

- English judgment to EU member state bears “change of status” risk
- EU state judgment to England – current Hague Exit Regulations are a mis-fit

Suggested considerations for contracts made during transition period:

- Non-exclusive EU state choice of court clause
- Exclusive English choice of court, but with requirement for later affirmation
- Arbitration clause

QUESTIONS & ANSWERS

- What are the concerns of EU countries in relation to the transition period and beyond?
- What would an ideal post Brexit position be for each EU member state, assuming -as we must – that there will not be full regulatory alignment?
- Do EU members feel that the absence of the UK will liberate the European project from the shackles of its most sceptical member?
- Which issues do EU states (individually) regard as the most important to settle : fishing rights, financial services, the Irish border, free movement, Gibraltar, etc.?
- What impact will the redistribution of UK seats in the European Parliament have?

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