

Client briefing

Brexit: what did we get for Christmas?

The conclusion of a comprehensive £650 billion trade and cooperation deal on 24 December has been welcomed on both sides of the Channel. The formal approval process is well underway, enabling the UK to transition to its new relationship with the EU on 1 January 2021 in an orderly manner.

Overview

The Brexit negotiations which have now concluded were not simply about trade in goods, but a much broader range of issues including services, transport, security co-operation, fisheries and much more. The Trade and Cooperation Agreement – which runs to over 1200 pages including annexes and protocols – will provide the framework for the UK's relationship with the EU for years to come. The conclusion of such a comprehensive agreement in such difficult circumstances is no mean achievement.

Even though it is the most comprehensive trade deal ever concluded by the EU, the Agreement is as much about establishing the framework for future co-operation as setting definitive ground rules to operate from day one. That is why so much of the Agreement is taken up with establishing detailed governance and dispute resolution procedures, which need to operate outside existing EU and UK institutions.

The Agreement has already been unanimously approved by the ambassadors for the 27 remaining EU member states. It is due to be approved by the UK Parliament on 30 December, which is likely to be a formality in view of Labour's decision to back the deal. It will then enter into force on a provisional basis, pending approval by the EU Parliament, which is likely to take place early in the New Year.

In this briefing we offer a brief summary of some key areas of the Agreement. More detailed assessments will follow when our specialist teams have had the opportunity to study it in more depth.

Goods

The headline news is that the Agreement provides for the continuation of tariff and quota free trade in goods between the UK and the EU. However, certain non-tariff barriers to trade will arise in consequence of the UK's decision to leave the single market. These include rules of origin, customs formalities and regulatory checks, which will vary according to the categories of goods in question.

There are a number of provisions in the Agreement which mitigate these non-tariff barriers, including allowing for self-certification of conformity with regulatory standards by manufacturers and allowing some customs formalities to be handled under the "Authorised Economic Operators" regime. There are also specific arrangements in a number of sectors (including automotive and pharmaceuticals) to facilitate bilateral trade. However these measures will not be sufficient to eliminate some additional friction at UK/EU borders from January onwards.

The UK Government had already announced that it would phase in checks and paperwork on goods arriving from the EU between January and July 2021, whether or not a deal had been agreed. Our understanding is that the EU will not reciprocate with similar mitigating measures, although the Agreement provides a framework for continued cooperation to facilitate the smooth movement of goods over the border.

Arrangements for goods moving between Great Britain and Northern Ireland will be governed by the Northern Ireland Protocol to the EU Withdrawal Agreement. The implementation framework was agreed earlier in December, and in this case the EU has agreed that the necessary checks can be phased in.

Services

The Agreement's provisions in relation to services are more limited than those relating to goods. As a result, UK service providers will lose their existing rights to offer services across the EU, meaning that as a general rule they will need to comply with the separate rules of each member state where those services are provided.

There will be some exceptions, notably in relation to financial services. Currently UK providers rely on "passporting" rights to provide services in the EU, which will lapse when the UK leaves the single market. The UK had hoped that a decision on an "equivalence" regime to replace these rights could be tied in with the conclusion of the Agreement. However, the EU is keeping this decision separate, and the vast majority of the necessary equivalence decisions have not yet been made.

The UK had also hoped that the current regime for mutual recognition of professional qualifications could be carried over into the Agreement, at least in some form. However all it provides is a framework for future mutual recognition decisions to be made on a case by case basis.

People

The Agreement does not include any measures to replace freedom of movement, which will end on 31 December. EU nationals will therefore have to meet the same requirements as migrants to the UK from other parts of the world. The UK has developed a new immigration regime which will apply to all foreign nationals arriving in the UK from 1 January 2021. UK citizens travelling to the EU will have to comply with the immigration requirements of the member state to which they are travelling.

The Agreement notes that both the UK and the EU provide for visa free travel for short-term visits by each other's citizens and envisages that this will continue on a reciprocal basis. There is no obligation on either side to continue these arrangements, though advance notification is required if they are changed. The Agreement does however contain mutual obligations in relation to business travel, to facilitate short-term business visits, subject to a number of conditions and exceptions.

The position of EU nationals and their families already settled in the UK by 31 December 2020 is protected by the EU Withdrawal Agreement. They will be eligible to apply for settled status, provided that they do so by the end of June 2021. Equivalent rights will be granted to UK citizens settled in the EU by the end of 2020, though the precise arrangements will differ from state to state.

Data

The UK Government had hoped that the EU would make an adequacy decision in relation to the UK's data protection regime before the end of the transitional period, but this has not happened. However, the Agreement provides that data transfers can continue from the EU to the UK for a maximum of six months from 1 January, which should provide sufficient time for an adequacy decision to be made.

The UK Government has already confirmed that data flows from the UK to the EU will be permitted from 1 January onwards under UK data protection legislation, which is currently not materially different from EU data protection law.

Further information

We explore the implications of Brexit on a number of practice areas including data protection, intellectual property and supply chains on our [Brexit hub](#). More information about the UK's new immigration regime is available [here](#).

The full text of the Agreement is available [here](#). The Government has also produced a [summary explainer](#). The equivalent EU document can be accessed [here](#).

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