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Laga Newsflash

Brexit: political deal on movement of goods during transition period

Introduction

The EU and UK negotiators reached a political deal on parts of the legal text of the Withdrawal Agreement, covering citizens' rights, the financial settlement, various other withdrawal issues, and the terms of a transition period, which would run to 31 December 2020. On 19 March 2018, the European Commission published a Draft Agreement on the withdrawal of the UK from the European Union ("EU") and the European Atomic Energy Community (hereinafter the "Draft Agreement"). The Draft Agreement can be consulted via this link.

Note: The text upon which the negotiators have found an agreement is marked in green. In yellow the negotiators agreed on the policy objective. Text without mark-up indicates no agreement has yet been found between the negotiators.

There are still a number of open issues on which agreement must be reached, most notably in relation to the Irish border, before the Draft Agreement is finalised. It must also then be ratified.

Goods moving between UK and EU during the transition period

Customs

The negotiators have provisionally agreed on a transition period up to and including 31 December 2020, lasting 21 months. This will come into effect as of the date of the entry into force of the Withdrawal Agreement.

The UK will no longer be an EU Member State as of 30 March 2019. However, under the terms of the Draft Agreement, Union law will continue to apply to and in the UK during the transition period (references to Member States shall be read as including the UK), with some very limited exceptions.

This means that the free movement of goods between the UK and EU-27 will remain in place until 31 December 2020. Consequently, any movement of goods between the territory of the UK and the EU-27 during the transition period shall be treated as an intra-EU movement regarding importation and exportation licencing requirements in Union law. Also UK and EU businesses will not be required to file import or export declarations for goods moving between both territories during the transitional period.

The Draft Agreement also elaborates on the status of goods that started their movement in the UK or EU-27 before the end of the transition period, but arrive in the other territory only after 31 December 2020. Businesses should be prepared for the burden of proof that will be imposed regarding those movements.

VAT & Excise duties

The Draft Agreement provides that EMCS and Horizontal Directive 2008/118/EC remain applicable on excise goods under a duty suspension arrangement or released for consumption moving between the UK and EU-27 during the transitional period.

For VAT, the UK and EU negotiators have so far only agreed on the policy objective to continue applying the VAT Directive in its current state in respect of goods moving between the UK and EU-27 during the transition period. If further agreement can be found at negotiator level, such movements would qualify for VAT purposes as intra-EU dispatches and acquisitions rather than exports and imports until 31 December 2020.

Goods moving between UK and Free Trade Area of the EU during the transition period

The Draft Agreement states that during transition the UK shall be bound by the obligations stemming from international agreements concluded by the EU. It does not – and cannot – oblige the counterparties to those international agreements to give the UK the benefits foreseen under these agreements. The EU may notify the counterparties that the UK is to be treated as a Member State but it seems unlikely that the EU could make the counterparties agree.

The Draft Agreement also allows the UK to ‘negotiate, sign and ratify’ international agreements that it will enter into in its own capacity, provided those agreements do not take effect during the transition period (unless authorised by the Union).

Next steps

On 23 March, the European Council adopted guidelines for talks on a post-Brexit relationship with the UK, paving the way for the next phase of negotiations.

First of all the European Council reiterates that nothing is agreed until everything is agreed. Further, the European Commission confirmed to work towards a balanced, ambitious and wide-ranging free trade agreement (FTA) with the UK aiming to maintain zero tariffs and no quantitative restrictions. Bottom line remains that the EU cannot offer the same benefits to the UK as it offers to Member States and benefits cannot amount to participation in the Single Market or parts thereof. The FTA is expected to be finalised during the transition period.

How can companies prepare?

Despite the uncertainty associated with Brexit, it is a business risk like any other; one where the variables can be understood, analysed and planned for. Some businesses may also identify opportunities arising from changes made as a result of Brexit. Whilst the Draft Agreement and the European Council guidelines show that the negotiations continue to progress and demonstrates the political will to reach agreement on a transition period, there are still a number of open issues to agree before the Withdrawal Agreement is ratified and becomes law (which is not likely to happen until 2019).

This means that uncertainty remains, and as such, Laga recommends that companies continue to plan for a scenario of maximum change. A multi-disciplinary team of subject matter experts can assist companies in analysing the impact of Brexit across their business: placing the potential customs and tax issues in the wider business context.

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