CULTURE, TOURISM, EUROPE AND EXTERNAL AFFAIRS COMMITTEE

INQUIRY ON THE NEGOTIATION OF THE FUTURE RELATIONSHIP BETWEEN THE EUROPEAN UNION AND THE UK GOVERNMENT

SUBMISSION FROM EUROPEAN POLICY CENTRE

EXTENDING THE TRANSITION PERIOD

- Views on whether the UK government should request an extension to the transition period;
- Your reasons why an extension to transition is or is not required.
- If you believe an extension to transition is required, how long such an extension should be for (one or two years).

There is an overwhelming case for requesting an extension to the transition period. The Covid19 pandemic is already having a major impact on the negotiations between the EU and the UK. In the short-term the pandemic affects the practical execution of the talks as well as decision makers’ bandwidth to focus on the negotiations. Overall, the impact of the pandemic increases the risk of not reaching a trade deal before 31st December 2020, that is, unless an extension to the transition period is agreed before 1st July 2020. The UK’s outright refusal to discuss an extension seems therefore reckless. No matter what one’s hopes are for the future relationship, an outright refusal to contemplate an extension in face of a far-reaching and unprecedented economic crisis is irresponsible.¹

On a practical level the pandemic has disrupted the talks by making it impossible to meet face-to-face. Travel restrictions and Covid19 cases in both negotiating teams have delayed an already compressed timetable. It appears that the UK has been more strongly affected in terms of its staff capacities as several UK civil servants had to be redeployed to work on the government’s Covid19 response. Even though the negotiations have now resumed via videoconferencing, virtual meetings cannot fully replace the personal rapport and trust-building that comes with in-person meetings.

On a political level there will not be any bandwidth to focus on the Brexit negotiations while the pandemic’s economic, social and political fallout requires full attention. Therefore, Brexit is necessarily given less priority by governments in the UK and the EU. The lack of political capacity and guidance makes it extremely difficult to move beyond technical negotiations and into a state where political compromise and deal-making become possible.

¹ See also Zuleeg, Fabian (2020), "The need for a longer transition", Brussels: European Policy Centre.
On an economic level, the global economic downturn strengthens the case for an extension to the transition period. With view to the UK economy, the Bank of England has forecast the worst economic recession in 300 years. An extension would avoid adding a second economic shock, no matter what scale, at the end of the year. The economic impact on the UK of such a shock could even be aggravated if firms choose not to restart their operations after the lockdown has ended due to the prevailing uncertainty about market access to the EU. It would create greater legal and planning security for governments, businesses, and citizens to extend transition.

The transition period can only be extended once either until 31 December 2021 or until 31 December 2022. Anything shorter would defy the purpose of an extension, that is, among other things, to create legal and planning certainty for businesses and citizens. Since the economic, social and political effects of the Covid19 crisis are expected to have long-term consequences a longer extension of two years would be preferable. Given that Article 132 only allows a one-off extension, an extension of two years would also avoid the possibility of another cliff edge after one year.

It is important to note that there is a process to agreeing to an extension and that the request should therefore not come at the last minute on 30th June. The Joint Committee can only formally adopt the decision to extend once the terms and conditions, including the length of the transition and the UK’s financial contribution, have been decided. The EU and UK representatives in the Joint Committee must factor in some time for the internal discussions among the EU27 and within the UK. The UK will additionally have to repeal its domestic ban before being able to agree to an extension.

The EU has been clear that the UK must ask for an extension. If the UK’s outright refusal does not change, the UK will leave the EU’s single market with or without a deal on 31st December 2020. At the moment it seems unlikely that Boris Johnson will ask for an extension as provided for in the provisions of the Withdrawal Agreement. The British government seems to be strongly influenced by the belief that the current Covid19 crisis has weakened the EU and its unity and that the EU member states will start making concessions once the UK threatens to walk away from the negotiations later this year. This form of brinkmanship underestimates the EU’s willingness to protect the integrity of the single market, i.e. the cornerstone of its economic and political project. Even though the EU would prefer to conclude a deal, it is a misconception that it is ready to pay any price to prevent no deal.

There is a chance that the British government might ask for an extension after the deadline under the provisions of the Withdrawal Agreement has passed. It is important to note that all available options for an extension after 1st July are legally and politically tricky. Legally, it would likely require the conclusion of a mixed treaty and therefore a unanimous decision in the Council, the agreement of the European Parliament, and depending on the laws of each member state the parliamentary approval not only of national, but also of regional parliaments. Politically, it will be more difficult to come to an agreement. The UK would have to expect the same terms and conditions, i.e. agreeing a financial contribution and a length of up to 1 or 2 years. An agreement of fisheries as well as the implementation of the Withdrawal Agreement would also remain prerequisites for any future negotiations.
Additionally, vested interests might come into play. Under the impression of the severe Covid19 crisis some member states might make additional demands. The potential political and legal pitfalls make it uncertain if a late extension request could still be accommodated, again increasing the chance of a no deal default.

**LEAVING TRANSITION WITH A DEAL**

- Whether you believe a deal will be agreed between the UK government and the EU by the end of 2020;
- Given the EU negotiating mandate and the UK government’s negotiating priorities as set out in the UK’s approach to negotiations, what an agreement might look like;
- Which sectors and policy areas you believe need to be covered by any deal;
- Any areas that you believe won’t be or don’t need to be covered by a deal.

It seems less and less likely that a deal between the UK government and the EU can be agreed by the end of 2020. This assessment is based on the lack of time and bandwidth due to the impact of Covid19 (as outlined above), the lack of progress and British engagement with the EU’s key issues as well as the fundamentally different ways in which the EU and the UK have been approaching the negotiations.

The EU has approached the negotiations on the basis of the revised Political Declaration agreed with the UK government on 17 October 2019. The UK’s approach seems to be to refer to other EU free trade agreements (FTAs) as blueprints rather than referencing the Political Declaration. Given the unique EU-UK relationship in terms of proximity, size of the UK economy, and economic interdependence, the EU does not see these as realistic templates. These are thus not on offer (and have never been on offer).

In addition, the EU approaches the negotiations as one package and aims at achieving progress in all areas in parallel, including an overarching governance structure. The UK on the other side pursues a more selective approach and would like to negotiate separate agreements covering different sectors. Due to its difficult experience with the highly complex EU-Swiss agreement, the EU does not offer multiple bilateral agreements to third countries. In the case of Switzerland the EU even negotiated a new institutional framework agreement in 2018 (still to be ratified) which would introduce a more comprehensive framework and a role for the European Court of Justice. It is therefore clear that any future deal between the EU and the UK will have to be a comprehensive agreement with a single governance framework, including a role for the European Court of Justice and the UK’s continued adherence to the European Convention on Human Rights.

In terms of essential areas which need to be covered by any deal, the pandemic strengthens the EU’s case for protecting the integrity of the single market and for having strong level playing field provisions in place to allow for an even economic
recovery. It is therefore very unlikely that the pandemic leads to a loosening of the EU's negotiating mandate. The EU will not agree to a trade deal without ambitious level playing field provisions, including on state aid. Another prerequisite for any deal will be an agreement on fisheries.

Additionally, the proper and timely implementation of the Protocol on Ireland and Northern Ireland remains a big challenge and under any scenario a precondition for a deal on the future relationship. However, the Withdrawal Agreement and therefore the Irish Protocol will have to be implemented regardless of a deal. Even in the event of a no deal the UK needs to make sure to implement the Protocol, otherwise it risks major disruptions to trade across the Irish Sea, potentially a hard border on the island of Ireland, major reputational damage with potentially negative implications for the conclusion of future trade deals, and possible legal ramifications if the UK breaks an internationally binding treaty.

With view to progress on the most contentious issues, it is important to note that there is a landing zone for a deal provided that the UK decides to seriously engage with all parts of the negotiation. It is not possible to reach an overall compromise if the UK pursues a selective approach and only engages on areas of self-interest. If the UK does not change its approach it becomes very difficult to reach a deal in the remaining time. In addition to the existing content-related differences in various areas, the UK's aggressive rhetoric on sovereignty and divergence undermines trust and risks creating serious doubts about the UK's commitment to reaching a deal or even to adhering to legally binding agreements, such as the Withdrawal Agreement.

LEAVING TRANSITION WITH NO FREE TRADE AGREEMENT IN PLACE

- The likelihood of leaving transition without a trade agreement in place;
- What would be likely to happen in terms of the negotiations and to UK-EU relations after the end of the transition period if there is no free trade agreement in place;
- The UK’s preparedness for leaving the transition period at the end of 2020 without a free trade agreement in place.

Unless an extension is agreed or the UK government changes its negotiating strategy, it is increasingly likely that the UK will leave the transition period at the end of 2020 without a free trade agreement in place.

In terms of the UK’s preparedness, leaving the transition period without a future deal could not come at a worse time. Businesses and citizens are fully occupied with the economic crisis at hand. In light of Covid19 they do not have the capacity to prepare for the looming changes that could result from a no deal Brexit; such as further disruptions to supply chains. This is especially challenging for sectors that are currently heavily affected by Covid19 and that are also vital for keeping supply chains intact post-Brexit, e.g. the logistics sector.
Hence, the Freight Transport Association, the British International Freight Association and the Road Haulage Association have all called for an extension to avoid adding additional pressure on supply chains.

It appears that the UK has not been updating its preparations for leaving the transition period without a deal. Michael Gove informed the House of Commons’ Committee on the Future Relationship with the European Union in a hearing on 27th April 2020 that Operation Yellowhammer, the government's contingency planning for a no deal, has been stood down. Gove reiterated that there are no plans to revive Operation Yellowhammer as the government expects to conclude a deal. Again, this form of brinksmanship underestimates the EU’s preparedness to protect the integrity of the single market. Running down the clock without preparing for the worst case scenario leaves the UK without any leverage and will no help in securing a deal.

If the UK and the EU fail to reach an agreement by the end of 2020 it is likely that there will be attempts to conclude some sectoral deals to mitigate at least some of the impact of crashing out without a trade deal. This form of a managed no deal is no viable alternative to a trade deal and will create immense uncertainty for businesses and have severe economic consequences.

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