Senior European Experts

Brexit: Extending the transition period: Arguments for and against

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Introduction

The UK is currently in a period of transition from membership of the EU, which it left on 31 January 2020, to a full departure from the EU's Single Market and other Treaty provisions due on 31 December 2020 when the current transition period ends.

Article 132 of the Withdrawal Agreement provides for a single extension to the transition period for up to two years if the UK and the EU agree to it by 1 July 2020 (as the EU's chief negotiator Michel Barnier reiterated in a letter recently which made it clear that, from the point of view of the EU27, this remained an option).[1] Agreeing in principle to such an extension would not preclude the parties from reaching agreement on a new trade and future relationship treaty by 31 December. In this paper we explain the current position and then set out the arguments for and against extending the transition period before giving our own conclusion.

The transition period

The transition period runs from 1 February to 31 December 2020. During this period the UK continues to be bound by EU law; as Article 127 of the Withdrawal Treaty puts it:

> Unless otherwise provided in this Agreement, Union law shall be applicable to and in the United Kingdom during the transition period.[2]

In simple terms, the UK has withdrawn from the political structures of the EU (Commission, Council and Parliament) but remains part of the Single Market, the customs union and other EU policies and subject to the European Court of Justice until the end of the transition.

The transition period was agreed on the basis that it would enable the UK and the EU to negotiate a long-term agreement between them for the future relationship covering such matters as trade, investment, security and citizen's rights. If such an agreement (or agreements) was reached by the end of the transition period, there would then be no "cliff edge" with business facing leaving the Single Market without the UK having established an alternative trading relationship with the EU.

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1 M. Barnier was replying on 25 May to a letter from several UK opposition parties; for the text see: 'EU open to two-year Brexit extension, says Michel Barnier in response to letter from opposition MPs', *ITV News*, 27 May 2020

2 For the text of the Withdrawal Treaty, see HM Government, 'New Withdrawal Agreement and Political Declaration', 19 October 2019

Arguments for extending the transition period

The UK & the EU are highly unlikely to conclude negotiations by 31 December

There is scarcely enough time for the UK and EU to reach a conclude negotiations by the end of December. It was always going to be extremely difficult to negotiate such an agreement in 11 months (hence the provision for extending the transition) but the impact of the Corona virus has made meeting the deadline all but impossible. And there is much more to negotiate about than just trade – the UK's security relationship with the EU is critical to the day-to-day maintenance of law and order, for example, and cannot be renegotiated in the time now available.

The economic cost of leaving the EU without a deal is too high

The economic cost to the UK of leaving the EU Single Market and the customs union at the end of December without an alternative trading relationship would be too high. In 2018, 45 per cent of the UK's exports (worth £291 billion) were to EU countries.[3] Leaving without a trade agreement means that the UK's imports and exports would be subject to duties and to customs controls, and could no longer be transported freely across the Single Market. In addition, British hauliers would lose their rights in the Single Market (including the crucial right of cabotage) and the price of many imports to Britain would rise.

The consequences of import charges and controls on exports to the EU would be disastrous for British agriculture and fisheries. The Withdrawal Agreement's Protocol on Northern Ireland, which as things stand has legal force independently of a long-term agreement with the EU, would lead to disruptive controls on trade between Northern Ireland and Great Britain.

Neither businesses nor the government are ready to implement the checks and controls needed to meet the UK's obligations as a member of the World Trade Organisation (WTO) from 1 January 2021. Cabinet Office Minister Michael Gove recently admitted that businesses haven't recruited the 50,000 customs agents needed if the UK leaves without a deal. Friction at borders could cause interruptions to the supply of goods, particularly food and medicines.

Supporters of no deal argue that the UK's position will be like that of Australia. Australia has a far smaller population than the UK (25 million compared to 68 million), it is ten thousand miles, not 20 miles, from Europe, only 15 per cent of its trade is with the EU and unlike the UK it has to pay the EU's external tariff. In fact, Australia does not have an agreement with the EU and is now seeking one.

The additional risks created by the pandemic make it irresponsible not to extend

Leaving the EU without agreement carries many risks but to do so when the UK is facing its worst recession since 1706 would be utterly irresponsible. The UK, which went into lockdown later than most other European countries, faces a long, hard road as it seeks to rebuild its economy, curtail unemployment and restore normality. There is simply not enough capacity in government or the private sector to cope with the simultaneous challenges of leaving the EU without agreement and the continuing threat of the pandemic, as the CBI has said. Supporters of a no-deal Brexit are trying to hide its economic impact behind the pandemic. It is true that it won't be possible to disentangle the economic

[3] Matthew Ward, *Statistics on UK-EU trade*, House of Commons Library Briefing Paper 7851, 16 December 2019, pp. 3, 4, 16

consequences of Brexit from those of the pandemic but the effect of both would be cumulative and longer lasting.

Leaving without a trade agreement and then negotiating one later would impose two disruptive changes on business

Some supporters of leaving the EU without agreement argue that doing so would force the EU to offer the UK better trade terms. In reality, British businesses would face a cliff-edge on 31 December and further disruption when agreement was reached with the EU. This would impose two lots of cost on business, it would increase uncertainty which would make investment more difficult, impede the negotiation of contracts (because terms of future business would be unknown) and generally frustrate businesses regardless of whether or not they trade with EU countries.

The only guarantee that we will be able to extend the transition period is if we do so by 30 June

The only legally guaranteed method of extending the transition period is by utilising the provisions in Article 132 of the Withdrawal Agreement. This means that the UK and the EU would need to reach agreement in principle on extending the transition by the end of June. It might still be possible to reach agreement on extending the transition later in the year but there is no obvious legal basis for doing so. Many (but not all) EU lawyers take the view that Article 50 TEU, the legal basis for the Withdrawal Agreement, could not be used, even if the EU has in the past often found a lawful way to implement a decision for which there is widespread political agreement.

Arguments against extending the transition

The decision has already been taken – there will be no extension

When Parliament agreed to the Withdrawal Agreement and passed the necessary legislation in January, it did so knowing that that legislation stated that they would be no extension of the transition period beyond 31 December, 2020. Extending the transition would require fresh legislation which Parliament might refuse to pass (but since all the opposition parties support an extension – as do all the devolved institutions – this is hardly a very convincing argument).

We need to get Brexit done

The British people voted to leave the EU four years ago and we left on 31 January 2020. There has been time enough to negotiate with the EU to resolve our differences. Extending the transition period would not increase the chance of getting a free trade agreement with the EU but rather play into their hands. Only a small percentage of UK businesses export to the EU; most would be unaffected.

A free trade agreement with the EU would be useful but is not essential

Many western countries trade perfectly successfully with the EU without having a free trade agreement with it. The United States, for example, was the largest market for EU exports in 2018 yet there is still no free trade agreement between the two.[4] WTO rules provide an adequate framework for trade between the UK and the EU while protecting our mutual sovereignty.

<u>The impact of leaving will be diminished by the pandemic</u>

The Corona virus pandemic does not make the problem worse, it makes it easier. In the midst of widespread controls on all aspects of our lives, the imposition of controls by the EU on UK exports are unlikely to be a significant issue. There may be an economic cost to leaving EU without a free trade deal but it will be insignificant compared to the damage that has already been done by the Corona virus and which must be our main preoccupation.

<u>Extending the transition means delaying the return of our sovereignty</u>

The UK is now in political and legal limbo. We are not in the EU but are still controlled by Brussels. The UK Government's Corona virus business support package still had to receive EU state aid approval. EU rules still apply to us and this would remain the case during the extension but we have no say over them. We need to return our sovereignty to our Parliament; extending the transition period would risk further EU laws being imposed.

<u>Extending the transition would cost the UK £22 billion or more</u>

While the UK is in the transition it is paying into the EU budget. The EU begins a new budget period in 2021, one which is likely to be based on it taking a higher share of its member countries' gross national income (GNI) than it does at present. This would mean the UK paying at least £22 billion into the EU for a two-year extension with the risk that we would have to pay considerably more if the EU agrees to a larger GNI share.[5] The UK would also lose the potential additional economic benefits of free trade agreements with non-EU countries during the extension worth billions of pounds.

Conclusion

The argument in favour of extending the UK's transition period for leaving the EU is overwhelming. Leaving the Single Market and the customs union at the beginning of 2021 would impose unnecessary additional costs on businesses and consumers for no political or economic gain. The UK will simply not be ready to implement the range of controls and procedures that are required at international borders to handle trade with the EU by 1 January 2021. The private sector has not recruited the customs agents it needs to manage these procedures and there can be no guarantee that Government IT systems to deal with the trade and taxation consequences of Brexit will be in place by then either.

The default option of trading with the EU on WTO terms would extremely damaging for British business not just because of the tariff burden but also because of the need for elaborate controls (rules of origin, food safety checks, phytosanitary controls etcetera) on imports and exports (and even the US does not trade with the EU on purely WTO terms).[6]

Extending the transition would have a cost but the UK's contribution would be likely to be on a per capita basis similar to that used for Norway (as provided for in the Withdrawal

4 Eurostat, 'USA-EU - international trade in goods statistics', 6 May 2020

5 Roger Bootle *et al.*, *Brexit Delayed is Brexit Denied: Why the UK Must Not Extend the Transition Period*, Centre for Brexit Policy, 16 May 2020, p. 27

6 The EU and the US have 62 bilateral agreements between them, 37 of which are directly related to trade and economic co-operation.

Agreement), as Stefaan de Rynck of the European Commission stated recently, rather than the far larger amounts suggested by some supporters of no deal.[7]

Without a trade agreement with the EU, the argument for extending the transition was always a strong one. But in the current circumstances failing to extend would be highly irresponsible. We are only just beginning to understand the scale and depth of the economic crisis that is developing daily as a result of the pandemic. The recession we are likely to experience will be deeper than anything experienced in the United Kingdom since the eighteenth century. It would be extraordinary to put commitment to Brexit before the economic interests of consumers and businesses struggling to cope with the potential losses of millions of jobs and of tens of thousands of businesses.

A decision in June to extend is thus the only sure way to avoid the damaging consequences of failing to reach a deal with the EU by the end of this year.

June 2020

[7] Mr de Rynck is a unit head in the Commission taskforce co-ordinating the negotiations with the UK; he was speaking to the Institute for Government.

Senior European Experts

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