

## EU prepares for a “managed” no deal Brexit



On 19 December 2018, the European Commission (“Commission”) announced that it started implementing its “no deal” contingency action plan, as a result of the uncertainty about whether the UK will approve the Withdrawal Agreement next month. It published a new package of 14 measures to prepare for a “managed” no deal Brexit, which it says are “absolutely necessary to protect the vital interests of the EU and where preparedness measures on their own are not sufficient”. The measures are limited to specific areas including financial services, air transport, customs and climate policy, amongst others, and are to be time limited.

### **Citizens’ Rights**

The terms in the Withdrawal Agreement protect the rights of UK citizens living in the EU and vice-versa. If the Withdrawal Agreement is not approved by the UK, these protections will fall away. The Commission is, therefore, urging the EU27 Member States to adopt measures which will ensure that UK nationals legally residing in the EU27 on the date of the UK’s withdrawal from the EU will continue to be considered legal residents, provided that the UK adopts a reciprocal approach towards EU27 citizens legally residing in the UK.

Furthermore, the Commission wants Member States to protect the acquired rights (including social security rights) of EU27 citizens and UK nationals who exercised their free movement rights before 30 March 2019. The UK Government has already stated that it will protect the rights of EU27 citizens lawfully residing in the UK on 30 March 2019 if there is no deal.

In terms of travel, the Commission has adopted a proposal for a Regulation which exempts UK nationals travelling to the EU27 from visa requirements provided this position is reciprocated in the UK.

### **Transport**

In order to ensure that air traffic can continue between the UK and the EU27 in the event of a no deal, the Commission proposes to ensure, for a period of 12 months, the provision of certain air services between the UK and the EU and to extend, for the same period, the validity of certain aviation safety licences.

In terms of road haulage, the Commission proposes to allow UK operators to temporarily (nine months) carry goods into the EU.

These proposals are subject to the UK conferring equivalent rights to EU air carriers and EU road haulage operators respectively and the UK complying with fair competition conditions.

### **Customs and the export of goods**

If there is no deal, the free movement of goods between the UK and the EU will cease and goods moving between the UK and the EU27 will be subject to customs formalities. To mitigate the disruption of a “no deal” Brexit, the Commission proposes two measures:

- to include the seas surrounding the UK in the provisions on time limits within which entry summary declarations and pre-departure declarations that have to be lodged prior to leaving or entering the EU; and
- to add the UK to the list of countries for which a general authorisation to export dual use items is valid throughout the EU.
- Member States must, however, be ready to apply the EU’s Customs Code and the rules on indirect taxation in relation to the UK with effect from 30 March 2019.

### **Financial Services**

On financial services, the Commission proposes:

- a temporary and conditional equivalence decision for a 12-month period to ensure no immediate disruption in the central clearing of derivatives and for a 24-month period in central depositories services for EU operators currently using UK operators; and
- to facilitate novation for a 12-month period of certain over-the-counter derivative contracts where a contract is transferred from a UK to an EU27 counterparty

### **Comment**

With just over three months until the UK is due to leave the EU, it is not surprising that the Commission has begun to implement its contingency plan. The UK Government is also increasing its no-deal preparations with £2 billion having been allocated to government departments to implement their contingency plans. Furthermore, the Government is encouraging businesses to put their contingency plans in place.

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