

December 2019

Newsletter

Brexit Prospects: Impact of Conservative Party Win in UK General Election

On 12 December 2019, the UK general election resulted in a victory, with a large majority in the House of Commons, of the Conservative and Unionist Party ("CUP") of Prime Minister Boris Johnson.

As the election was crucial for the further development of Brexit, this newsletter summarizes the CUP's policy intentions, and the outlook for the realization thereof, in this area. As a general matter, we hereby note that while Brexit will now likely proceed on the basis of the current Withdrawal Agreement, the possible difficulty to negotiate an EU-UK free trade agreement ("FTA") by the end of 2020 remains a key risk. As such, we strongly recommend that companies that may be affected by Brexit continue to undertake any necessary contingency planning.

I. CUP Brexit Policy

I.A. Ratification of Withdrawal Agreement

As stated in its election manifesto, the CUP's first priority "is to get Brexit done" by ensuring the timely ratification of the Withdrawal Agreement

that the EU and the UK revised in October 2019.¹ To do so, the CUP aims to submit the agreement to the UK Parliament "before Christmas" *i.e.* 25 December 2019 and to complete the ratification by the current deadline of 31 January 2020.

We hereby recall that the Withdrawal Agreement provides for a transition period that will last until 31 December 2020 with a single possible extension of up to two years, during which time nothing will change except for the fact that the UK will no longer be able to participate in the EU's decision-making and governance. In addition, the agreement offers legal certainty after the transition period through provisions on, *inter alia*, goods placed on the market, ongoing movements of goods, existing EU intellectual property rights ("IPRs"), personal data protection, and pending EU judicial and administrative procedures.

I.B. Negotiation of FTA

Second, the CUP has stated that after proceeding with Brexit on 31 January 2020, its priority will be to negotiate a EU-UK FTA without any extension of the transition period beyond December 2020.

In this regard, the revised EU-UK Political Declaration of October 2019 provides that the FTA would ensure "no tariffs, fees, charges or quantitative restrictions across all sectors," as well as "appropriate and modern" rules of origin and "ambitious" customs arrangements.² Furthermore, the EU and the UK would promote regulatory approaches that avoid unnecessary barriers to trade in goods. The EU's new Trade Commissioner Phil Hogan hereby recently noted that while it remains unclear "what type of FTA the UK will ultimately want," the EU aims for an agreement that provides not only zero tariffs and zero quotas but also a level playing field in terms

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¹ See [CUP Manifesto 2019](#); [Withdrawal Agreement](#).

² See [Political Declaration](#).

of state aid, labor and environmental protections, and taxation.³

II. Outlook for Brexit

As the CUP can now form a government that will, through its working majority in the UK Parliament, be virtually assured of having its legislative initiatives passed, expectations are that Johnson will be able to complete the UK's ratification of the Withdrawal Agreement and proceed with Brexit by 31 January 2020.

Questions remains, however, as to whether it will be possible to negotiate an EU-UK FTA by 31 December 2020. In particular, EU Trade Commissioner Hogan has urged a "focus on content, not timing" as there "is a lot of work to be done" and "no accurate way to predict how long it will take to negotiate,"⁴ which suggests that the stated deadline may not allow enough time to conclude an FTA. EU officials have therefore highlighted the option to extend the transition period, but the fact that the CUP has ruled out any such extension means that another 'no-deal' scenario remains a key risk.

III. Our Recommendation

Assuming that the Withdrawal Agreement will be ratified by 31 January 2020, we recommend that companies nonetheless continue to undertake the necessary contingency planning for after the transition period, when the UK would become a third country and there may not be an FTA to mitigate any negative economic impact thereof. We hereby wish to highlight that any party involved in supply chains with the UK should, as a minimum, be aware of its responsibilities and the applicable formalities in cross-border trade and consider the following key issues:⁵

- **Trade in goods:** companies should verify and/or ensure compliance with applicable (i) certifications and authorizations, (ii) localization requirements, (iii) labelling and marking, (iv) origin rules, (v) customs formalities and duties, (vi) prohibitions and restrictions, and (vii) sanitary and phytosanitary standards.
- **Trade in services:** companies should verify and/or ensure compliance with applicable (i) licensing and authorizations, (ii) rules for

cross-border supply of services, and (iii) requirements for professional qualifications.

- **Other issues:** companies should verify and/or ensure compliance with (i) rules on IPRs protection in the UK, (ii) any choice of UK jurisdiction in commercial contracts, (iii) EU rules on transfers of personal data, (iv) rules on EU or UK company status, and (v) rules for direct taxation.

Do not hesitate to contact us should you require further information concerning, or legal assistance with, any of these matters.

Brussels, 13 December 2019

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³ See <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2088>.

⁴ *Ibid.*

⁵ See https://ec.europa.eu/info/sites/info/files/brexit-preparedness-communications-checklist_v3_en_0.pdf.