

Negotiating Brexit transition ^[1]



Both the UK and the EU have set out their positions ahead of negotiations on a Brexit transition. There is broad agreement on both sides that any transition should reflect the current relationship, while recognising the UK will no longer be an EU member state.

But there are areas where both sides disagree, and there are several issues which need to be settled before a transition deal can be done.

The value of a transition decreases the longer it takes to agree, and the UK is hoping to reach a political agreement at the European Council in March. But that leaves negotiators little time to work through crucial issues, which we outlined in the table below.

Issue

Single Market

What the UK says* The UK will continue to be a member of the Single Market.

What the EU says** The UK will continue to be a member of the Single Market.

What that means Agreement.

Customs Union

What the UK says* The UK will continue to be a member of the EU Customs Union.

What the EU says** The UK will continue to be a member of the EU Customs Union.

What that means Agreement.

Oversight by the European Court of Justice (ECJ)

What the UK says* The UK will continue to be under the full jurisdiction of the ECJ.

What the EU says** The UK will continue to be under the full jurisdiction of the ECJ.

What that means Agreement.

EU elections

What the

UK says* The UK will no longer nominate or elect members of EU institutions.

What the EU says** The UK will no longer nominate or elect members of EU institutions.

What that means Agreement.

Decision making

What the UK says* The UK wants to establish a process for resolving concerns if new laws are deemed to run contrary to its interests and in which it has not had a say.

The UK will no longer participate in the governance or decision making of EU bodies, offices or agencies.

What the EU says** The UK will not attend committees or expert groups, and only in exceptional circumstances could it be invited to attend, but without voting rights.

The UK wants to agree a means of influencing EU rules that affect them, despite leaving the institutions.

What that means The EU wants the UK to be invited to give its view on a case by case basis.

New rules

The UK will accept new laws, subject to the way decision-making will work, as outlined above.

What the UK says* Because it usually takes around two years for major legislation to make its way through the EU system, virtually all the laws in place by exit date will have been drafted while the UK was still an EU member state.

Any changes to EU law made during transition will automatically apply to the UK.

What the EU says** Direct effect and primacy of EU law will continue.

Both sides agree that the UK will be bound to accept new EU rules during the transition period.

What that means The UK will want to try and agree a mechanism to ensure its voice is heard where necessary.

Independent trade policy

What the UK says* The UK will seek to negotiate and sign new trade agreements, although they will not come in to force until the transition period ends.

What the EU says** Unless authorised to do so, the UK may not be bound by new international agreements that it enters into on its own and in areas where the EU has competence.

What that means Both sides are in broad agreement that the UK can negotiate new trade deals during a transition but no clarity on if they can be signed before the transition ends.

New EU trade deals

What the UK says* The UK will continue to replicate the new rights and obligations of trading arrangements entered into by the EU.

What the EU says** The UK must continue to comply with EU trade and customs policy.

What

that Agreement.
means

Existing Free Trade Agreements (FTAs)

Existing international agreements should continue to apply during the transition.

What the UK says*

All parties should agree that the UK should continue to be party to these agreements.
The EU has not stated its position on the rollover of existing FTAs.

What the EU says**

Michel Barnier has said the UK must be bound by international agreements it is party to through its membership of the EU. But it cannot guarantee the UK gets to keep the benefits of these deals, which is also a matter for the other signatories.

The UK is likely to ask the EU for support in rolling these deals over in upcoming transition talks.

What that means

EU guidelines say the UK can continue benefiting from these agreements, but there is no reference to rolling over existing FTAs.

Migration and citizens' rights

Free movement will continue as now.

What the UK says*

UK will put in place a registration system which allows the UK to better plan for a future migration regime.

What the EU says**

The provisions of the citizens' rights part of the withdrawal agreement should apply as from the end of the transition period.

What that means

Duration

What the UK says*

The duration of the transition would be strictly time limited, guided by how long it will take both sides to prepare and implement new processes.

What the EU says**

The transition period should end in December 2020, aligned to the end of the EU's current multi-annual funding framework.

What that means

The EU is taking a more dogmatic approach towards timing and the UK may want to negotiate provisions that offer a little more flexibility.

The annex to the EU agreement suggests the guidelines would be updated in line with progress in the negotiations, which suggests there is potential for flexibility.

Issue	What the UK says*	What the EU says**	What that means
Single Market	The UK will continue to be a member of the Single Market.	The UK will continue to be a member of the Single Market.	Agreement.
Customs Union	The UK will continue to be a member of the EU Customs Union.	The UK will continue to be a member of the EU Customs Union.	Agreement.
Oversight by the European Court of Justice (ECJ)	The UK will continue to be under the full jurisdiction of the ECJ.	The UK will continue to be under the full jurisdiction of the ECJ.	Agreement.
EU elections	The UK will no longer nominate or elect members of EU institutions.	The UK will no longer nominate or elect members of EU institutions.	Agreement.
	The UK wants to establish a	The UK will no longer participate in the governance or decision making of EU bodies, offices or agencies.	The UK wants to agree a means of influencing EU rules that affect them,

Decision making	What the UK says* run contrary to its interests and in which it has not had a say.	What the EU says**	despite leaving the institutions. What that means
	The UK will accept new laws, subject to the way decision-making will work, as outlined above.	The UK will not attend committees or expert groups, and only in exceptional circumstances could it be invited to attend, but without voting rights. Any changes to EU law made during transition will automatically apply to the UK.	The EU wants the UK to be invited to give its view on a case by case basis.
New rules	Because it usually takes around two years for major legislation to make its way through the EU system, virtually all the laws in place by exit date will have been drafted while the UK was still an EU member state.	Direct effect and primacy of EU law will continue.	Both sides agree that the UK will be bound to accept new EU rules during the transition period.
Independent trade policy	The UK will seek to negotiate and sign new trade agreements, although they will not come in to force until the transition period ends.	Unless authorised to do so, the UK may not be bound by new international agreements that it enters into on its own and in areas where the EU has competence.	The UK will want to try and agree a mechanism to ensure its voice is heard where necessary.
New EU trade deals	The UK will continue to replicate the new rights and obligations of trading arrangements entered into by the EU.	The UK must continue to comply with EU trade and customs policy.	Agreement.
Existing Free Trade Agreements (FTAs)	Existing international agreements should continue to apply during the transition. All parties should agree that the UK should continue to be party to these agreements.	The EU has not stated its position on the rollover of existing FTAs. Michel Barnier has said the UK must be bound by international agreements it is party to through its membership of the EU. But it cannot guarantee the UK gets to keep the benefits of these deals, which is also a matter for the other signatories.	The UK is likely to ask the EU for support in rolling these deals over in upcoming transition talks. EU guidelines say the UK can continue benefiting from these agreements, but there is no reference to rolling over existing FTAs.
Migration and citizens' rights	Free movement will continue as now. UK will put in place a registration system which allows the UK to better plan for a future migration regime.	The provisions of the citizens' rights part of the withdrawal agreement should apply as from the end of the transition period.	The UK position is that all EU citizens arriving after March 2019 will need to register and will be subject to the new migration regime once it is implemented. The EU position means the current UK approach would not be possible, as EU citizens arriving during the transition would be entitled to stay under the terms agreed in December 2017. They could not be subject to a new UK migration regime.
Duration	The duration of the transition would be strictly time limited, guided by how long it will take both sides to prepare and implement new processes.	The transition period should end in December 2020, aligned to the end of the EU's current multi-annual funding framework.	The EU is taking a more dogmatic approach towards timing and the UK may want to negotiate provisions that offer a little more flexibility. The annex to the EU agreement suggests the guidelines would be updated in line with progress in the negotiations, which suggests there is potential for flexibility.

*Taken from David Davis speech on 26 January. **Taken from EU negotiating guidelines agreed on 29 January.

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