

Brexit and treaties—what will happen to the EU’s international agreements when the UK leaves the EU?

15/08/2019

Public Law analysis: Mainstream interest in the UK’s departure from the EU, the prospect of doing so without a deal in place, has prompted considerable debate of the treaties that govern the UK’s current and future international relationships. Laura Rees-Evans, senior associate at Fietta, assesses the key treaties and contingency arrangements, both in place and in the pipeline, separating the known from the unknown quantities as she goes.

What is the status and impact of the UK’s preparations for Brexit as regards international treaties and arrangements in which it participates by virtue of its membership of the EU?

The UK’s membership of the EU regulates not only its relationship with the other 27 EU Member States (EU27), it also governs aspects of the UK’s relationship with countries outside of the EU (third countries). That is because the UK is a party to, or enjoys the benefits of, over 1,000 international agreements with third countries and international organisations by virtue of its membership of the EU. They cover a range of subject matters, including air services, fisheries, insurance, nuclear cooperation, political association, mutual recognition, trade and land transport. The draft [Withdrawal Agreement](#) negotiated between the UK and EU makes arrangements for both the relationship between the UK and the EU27 as the UK leaves the EU and the continuation of international agreements with third countries and international organisations during the ‘transition or implementation period’.

To prepare for a no-deal Brexit scenario (or for the end of a transition period, in the event the UK leaves the EU with a deal), the UK government has been working ‘to identify which international agreements need to be retained on exit, and to put in place arrangements with international partners to replicate the effects of the current agreements’, as stated in the Department for Exiting the EU (DExEU) [guidance](#). The government publishes details of the status of its programme of replication online. This is a significant programme of work, particularly as negotiations of new bilateral treaties and treaty actions relating to existing multilateral treaties have had to take into account the possibility both of the UK and EU striking a deal and of the UK leaving without one. The government has made substantial progress, though negotiations are ongoing in relation to some important agreements.

What happens in real terms if this preparation is not completed in time? For example, what will be the impact on supply chains, citizens’ rights etc?

If the UK leaves the EU with a deal, the draft Withdrawal Agreement provides that the UK will continue to be covered by the existing EU international agreements. Accordingly, the body of work that has already been completed would largely become relevant only at the end of the transition period.

Real impacts would be felt if the UK leaves the EU without a deal. If none of this work had been carried out, those impacts would have been enormous. Preparations have been put in place in a number of areas, in order to ensure a smooth transition out of the EU in the event of a no-deal Brexit, for example:

- [there continues to be a legal basis for flights to continue to operate between the UK and Canada and the UK and the US](#)
- [UK coach operators can continue to run occasional services into any EU Member State, plus seven further states, 'in much the same way as they do now' \(DExEU guidance\)](#)
- [the rights of 40,000 UK nationals living in Switzerland, and 14,000 Swiss nationals living in the UK, are protected](#)
- [UK consumers continue to benefit from trade in wine with Australia](#)
- various specific UK geographical indications continue to enjoy the protections they currently enjoy around the world, such as an [agreement with the US on recognition of certain distilled spirits](#)

The corollary of these success stories is that there will also be impacts if and where successor agreements will not be in place in time for a no-deal Brexit on 31 October 2019. For instance, while much progress has been made on contingency trade agreements (successor trade agreements will be in place with Israel, Iceland, Norway, and Switzerland, among others, accounting for '64% of trade currently covered by EU agreements for which the UK is seeking [continuity](#)' (Department for International Trade guidance)), there are a number of important agreements that are said to be subject to 'ongoing engagement' and therefore may not be in place in time for a no-deal Brexit on 31 October 2019, or that admittedly 'will not be in place' (trade agreements with Canada and Japan, respectively, being good examples). This means that, in relation to Japan, for instance, there will be no agreement allowing for preferential trading between the UK and Japan in the event that the UK leaves the EU without a deal on 31 October 2019.

How does this impact UK practitioners and what can they do to prepare?

UK practitioners will be impacted differently depending on their area of legal practice. Some will see relatively little impact, whereas others will be greatly impacted (competition and intellectual property practitioners are good examples) and there will be a new demand for international trade lawyers.

UK practitioners can continue to monitor the government's progress in delivering successor agreements relevant to sectors in which they advise via the UK [government website](#). Practitioners may be well advised to supplement their own advice to clients with that of public international law specialists, where, for example, questions arise relating to the status of the EU's international agreements vis-à-vis the UK post-Brexit or the status of intra-EU agreements.

What is the likelihood of legal challenges?

Given the significant level of uncertainty generated by Brexit, the risk of disputes arising is high. On account of the breadth of potential issues, and the ongoing lack of clarity over the way in which the UK will leave the EU, it is difficult to outline any specifics at this stage.

What are the priorities behind the scenes and how do you see these being actioned/progressed?

Brexit has generated an unprecedented level of interest in international treaties, both from Parliament and the public (perhaps reaching a peak in March 2019 when discussion of the possible invocation of Article 62 of the Vienna Convention of the Law of Treaties hit mainstream news media). This new interest has, among other things, led to a reassessment of Parliament's powers to scrutinise treaties (the framework for which is set out in the [Constitutional Reform and Governance Act 2010](#)) and how it organises itself to make use of those powers.

The House of Lords Constitution Committee published a [report](#) on 30 April 2019, concluding that Parliament's current mechanisms to scrutinise treaties were limited and flawed, and that reform was required. It proposed the creation of a dedicated parliamentary treaty committee to provide effective scrutiny. Since January 2019, the House of Lords EU Select Committee has been scrutinising new Brexit-related treaties. It remains to be seen how these proposed and current structures will develop. However, it is clear that there is and will remain a strong appetite in Parliament to play a more significant role in the UK's treaty-making processes, and that this could have long-term implications for the UK's ability to negotiate and conclude treaties.

What else should we be keeping an eye on?

The next few weeks and months will reveal whether the UK is to leave the EU with a deal, and if it is, what that deal looks like. The deal currently on the table (the draft **Withdrawal Agreement**) provides for an implementation period during which the UK shall continue to 'be bound by the obligations stemming from the international agreements concluded by the Union, by Member States acting on its behalf, or by the Union and its Member States acting jointly' (Article 129(1)). Practitioners may wish to keep an eye on this provision, and whether it (or an amended version of it) is ultimately included within any final deal the UK may reach with the EU. If it is not, the UK will immediately upon leaving the EU lose the benefit of any international agreement it currently enjoys through its membership of the EU (unless it has been replicated in a successor agreement or, in the case of certain multilateral agreements, the UK has acceded as in its own right).

Another major issue to watch over the next few months is the government's articulation of its post-Brexit policy on international investment agreements in general and, in particular, the fate of the twelve bilateral investment treaties between the UK and other Member States (intra-EU BITs). In January 2019, the UK (alongside all other Member States) [committed](#) to terminate all intra-EU BITs by 6 December 2019, by ratifying, approving or accepting a plurilateral or bilateral treaty. The timing of the UK's withdrawal from the EU, and the means by which it does so (with or without a deal), may therefore have a significant impact on the continuation of the UK's existing intra-EU BITs. In this respect, a no-deal Brexit on 31 October 2019 could leave investors in a better position than leaving with a deal or remaining in the EU, because it will allow the UK to preserve those existing intra-EU BITs.

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