

No-Deal Brexit and EU Commission Approach: General Principle of No Contingency Measures for UK Economic Operators

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As it stands, the UK will cease to be a member state of the European Union as of 30 March 2019.

On 24 November 2018 the UK and the EU agreed to enter into a Withdrawal Agreement. The Withdrawal Agreement provides in Article 127 (6) that during a transition period from 30 March 2019 to 31 December 2020 any reference in EU law to a Member State of the EU shall include the UK and accordingly the legal position of economic operators from the UK as of today would in principle continue to apply during the transition period, provided that the Withdrawal Agreement is finally adopted and entered into by the UK and the EU.

However, the final adoption of the Withdrawal Agreement requires the consent of and ratification by the Houses of Parliament in the UK. The vote in the House of Commons in the UK scheduled for 11 December 2018 was postponed. The House of Commons returned on 7 January 2019 and will resume debate on 9 January 2019. It is expected that the vote in the House of Commons will take place week beginning 14 January 2019. At the time of writing, it is unknown if the House of Commons will vote in favour of the Withdrawal Agreement. If the vote is unsuccessful, the UK may leave the EU without a deal.

In such case, the transition period will not come into force and UK economic operators, as well as goods and services from the UK, will be treated like any other Third Country economic operator, goods and services as of 30 March 2019.

The approach of the EU Commission in respect of contingency measures is express and straightforward. The EU Commission takes the point of view that market participants had sufficient time to prepare for a no-deal Brexit and the EU Commission has prepared all operators for the consequences of such by issuing a huge amount of preparedness notices. The [bulk of them](#) having been published at the beginning of 2018 and a reiteration thereof in July 2018.

By having done so the EU has strived to prepare itself for any potential future litigation in respect of claims relating to a potential breach of the general principle of trust (Vertrauensschutz) which is part of the EU wide principle of the rule of law (Rechtsstaatsprinzip) and claims relating to existing investment protection rules.

In its Memo of 19 December 2018 on "*Questions and Answers: the consequences of the United Kingdom leaving the European Union without a ratified Withdrawal Agreement (no deal Brexit)*", the EU Commission states that contingency measures will in principle be unilateral (to some extent requiring reciprocity from the UK but without any further negotiations) and shall be strictly limited to what is necessary to deal with major disruptions and that contingency measures cannot remedy delays that could have been avoided by preparedness measures and timely action by relevant market participants.

Accordingly, the EU Commission has restricted itself as of 19 December 2018 to only taking very narrow measures in respect of a no-deal Brexit on 30 March 2019:

- Rules for basic resident permits in the EU27 for UK persons



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Article By [Matthew Kirk](#)
[Jens Rinze](#) Squire Patton Boggs (US) LLP
[Brexit Legal](#)

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- Rules for bare bone air traffic
- Rules for basic road haulage
- Rules for allowing private UK cars to be used in the EU27
- Basic minimal rules in favour of EU banks relating to access to UK central clearing counterparties and UK central security depositories and the regulatory treatment of derivative contracts.
- Economic Operators are allowed to apply prior to 29 March 2019 for authorisations and access to Customs IT Systems for the Customs and Border controls which will apply as of 30 March 2019.

Finally, the EU Commission Memo of 19 December 2018 states that the above minimal contingency measure do not apply to Gibraltar.

Whether the EU Commission position will change in the next weeks is an open issue, but a change of the general principle described above is not likely.

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