

Our position

Transitional arrangements: A Brexit necessity



AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €2 trillion in 2016, directly supports more than 4.5 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

Summary

The Brexit negotiations are already proving to be highly political and extraordinarily complex. It is increasingly clear that the two-year timeframe mandated by Article 50 for the UK's withdrawal will be wholly insufficient – both to define the terms of an ambitious new relationship between the EU and the UK, and to allow appropriate time for companies to adapt to new requirements. Moreover, the new institutional and legal frameworks required post-Brexit are highly unlikely to be in place on the date of the UK's departure.

A comprehensive transitional arrangement – based on the UK's existing terms with the EU, implemented for as long as necessary, and agreed as soon as possible – is essential to mitigate risk and to reduce uncertainty for EU and US companies, who are heavily invested in and indeed serve both regions, and who are currently planning for the worst-case scenario.

US business interest in Brexit

US companies have for decades benefited from the ability to seamlessly move goods, services, capital and people across EU borders and under a common set of regulations. In 2016, Europe received approximately 60 percent of US foreign direct investment (FDI), directly supporting some 4.5 million jobs and generating billions of euros in trade and investment. The UK is a particularly important destination for US companies within the EU, as the recipient of around one quarter of all US FDI flows to Europe.

US businesses' supply chains, innovation models and strategic deployments are highly integrated across the Channel. Significant disruption or changes to the current economic and political relationship between the UK and the EU could have profound effects on the ability of US companies to serve customers in these markets.

The value of a transitional arrangement

There are three compelling reasons for a transitional arrangement to be agreed as part of the Brexit process:

1. **Avoiding the “cliff-edge”:** The primary purpose of a transitional deal is to help avoid a “cliff-edge” scenario, whereby the EU and the UK fail to reach a deal by March 2019 and the UK subsequently crashes out of the EU. The political, economic and legal fall-out of a disorderly exit – for which neither the EU nor the UK would be prepared – could be devastating for all parties concerned.
2. **Certainty and predictability:** Companies of all sizes rely on a stable and predictable business environment to succeed. A transitional deal would lessen the uncertainty surrounding Brexit currently hindering confidence and negatively affecting the business climate on both sides of the Channel.
3. **Guiding businesses for what's next:** A transitional arrangement which includes broad indications of the nature of the new EU-UK relationship will equip both sides with the time necessary to define ambitious new ties, and provide companies with the information they need to prepare for what comes next.

The importance of an early agreement

The EU and the UK should look to negotiate on and conclude in principle the terms of a comprehensive transitional deal as soon as possible. The earlier the terms are agreed and communicated, the more valuable they will be for companies who are reviewing their commitments and planning for the worst-case scenario.

Decisions by businesses to adapt to new scenarios need to be taken well in advance, often with more than 12 months' notice, making long-term contingency planning increasingly challenging. An agreement in principle on the terms of a transitional deal as soon as possible is crucial to assuage business concerns and reduce uncertainty. Absent a transition deal, many companies – if they have not already done so – will be forced to activate in a disorderly manner worst-case scenario contingency plans as early as March 2018, causing disruption and potentially affecting investment decisions in both regions.

It should be noted that any transitional deal is contingent upon the existence of a final EU-UK exit agreement under Article 50 – further underscoring the vital significance of an agreed and ratified withdrawal deal by March 2019.

Key provisions of a transition

A comprehensive transitional arrangement agreed by the EU and the UK should follow these three principles:

1. **Status quo transition:** To ensure that companies have to plan for only one set of changes, the UK should remain a de-facto member of the EU for the duration of the transition, with the exception of UK institutional representation at EU-level. During this period, the UK would remain a member of the Single Market and the Customs Union, accept and implement new EU regulations, allow for continued freedom of movement, and be subject to the jurisdiction of the European Court of Justice (ECJ).
2. **Transition for as long as necessary, then time to adapt:** To allow new frameworks to be satisfactorily defined and procedures established, a “bridging period” should be agreed which should last as long as necessary – and at a minimum three years. This should be followed by an “adaptation period” that provides for the phasing in of requirements over a period of time, to allow companies to implement any necessary changes in the most orderly and efficient way possible.
3. **Guidance for the future:** As part of a transition arrangement, or in parallel, the UK and the EU should include as detailed a framework as possible on the nature of the future UK-EU relationship. This will provide companies with further certainty and enable them to focus their resources in the areas most relevant to them. Absent this information, a transition arrangement runs the risk of delaying the “cliff edge” that companies will face on the date of Brexit. A transition period should ultimately be about building a bridge to a new relationship – not simply placing a plank at the edge of the cliff.

Conclusion and next steps

The EU and the UK should seek to agree in principle on a comprehensive transitional arrangement as soon as possible and ideally not later than March 2018. The US business community is available to provide input into this process and throughout the Brexit process, in order to deliver the best possible outcome for businesses, consumers and citizens on both sides of the Channel.

Without such guarantees currently in place, US businesses are being forced to review their commitments, plan for the worst-case scenario and make calculated business decisions accordingly.