What does the Brexit Flextension Mean for Business?

April 15, 2019

On 10 April 2019, the European Union granted the United Kingdom a flexible extension, coined a "flextension", until 31 October. This additional period of time is intended, to allow the UK to ratify the Brexit Deal, an agreement devised between the EU and the UK for the orderly exit of the UK from the bloc. The Deal includes a transition period, a controversial solution to manage the border between Ireland and Northern Ireland, and provides for such things as citizens' rights and the legal status of goods in transit at the moment of Brexit. The flextension will end as soon as the Deal is ratified, if it happens before the end of October. Should the UK Parliament not find a majority to support the Deal, the UK could be forced to seek another extension or risk crashing out of the EU on Halloween.

The so-called "cliff edge" Brexit remains a real possibility considering that the Deal has been rejected by Members of the UK Parliament three times already, and successful cross-party negotiations is not by any means a foregone conclusion. The UK certainly will continue its no deal preparations, including efforts to strike post-Brexit trade agreements with third countries; to date, the agreements it has secured cover only about 11 per cent of UK trade by value. The UK also could use this time to reconsider its Brexit strategy, which ranges from holding a second referendum to attempting to amend the Political Declaration attached to the Deal which delineates mutual commitments concerning the future UK-EU relationship to abandoning Brexit altogether.

During the flextension, the UK will continue to have full EU membership rights and obligations. It will remain part of the internal EU Single Market and external trade will continue to take place pursuant to EU free trade agreements with third countries. EU law will continue to be fully applicable, which also means that the UK must participate in European elections in May 2019. Should it fail to do so without having ratified the Deal, the UK would find itself ejected from the EU as of 1 June 2019.

The flextentions avoids disruption for the moment, but the serious regulatory and legal uncertainty remains, including the possibility for abrupt changes to tariff and trade requirements, and negative impacts on investments, supply chains, the labour market and the value of the GBP. While both the EU and the UK announced legal concessions to address the most hard-hitting impacts of a no deal departure in the weeks leading up to the original end March Brexit date, most measures are limited in scope and time and, further, could be subject to further change in the coming weeks and months.

Monitoring developments to enable contingency planning is second nature for many companies at this point in time. Statistics and surveys from multiple sources, however, indicate that a majority of companies that will be affected have yet to assess implications for their business, including customs procedures, currency changes, operating under new trade agreements; implications for data transfers, work forces and legal contracts; and the production, cost, availability and provenance of essential business goods. In addition to contingency planning, businesses continue to be well advised to follow the UK's progress in implementing new legislation to replace EU law and to take advantage of the opportunity to address potential business issues by contributing to public consultations and engaging with regulators.