

POSITION SUMMARY



BREXIT & TRANSITION PERIOD

16 January 2018

KEY MESSAGES

The European spirits industry welcomes the early ambition displayed by the EU on transition. However, we call on the Member States:

- ✓ To be flexible on the length of transition. We believe a transition length of at least 2 years is likely to be required.
- ✓ To ensure that all EU legislation and international obligations deriving from the EU's current FTAs and bilateral spirits agreements apply in full and in a reciprocal way to the EU-27 and the UK until the end of the transition period.
- ✓ To ensure dynamic regulatory continuity during transition, allowing EU legislation initiated and finalised during the period to apply to the UK during this time.

EXECUTIVE SUMMARY

Our industry welcomes the recognition by the EU and the UK of the need to negotiate transitional arrangements to act as a bridge between the UK's departure from the EU on 29 March 2019 and the eventual entry-into force of a future relationship agreement.

It is heartening to see that the EU's position on transition - outlined in the European Council Guidelines and the European Commission's Draft Negotiating Directives - favours an arrangement close to the 'status quo'. It is indeed essential to allow businesses and public administrations sufficient time to prepare themselves for the future framework and avoid a gap between the end of transition and the start of the future bilateral relationship. Such a gap would require our member companies and smaller producers across our supply chains to adapt twice to changing regulatory contexts, which could substantially increase costs.

Transition must be predictable, pragmatic, and non-disruptive, providing a continuity that covers not just the Single Market and the Customs Union, but also extends to other elements of EU law including the use of the Excise Movement and Control System (EMCS) for movements of duty-suspended excise goods between the EU and UK. ***Our industry therefore fully supports the EU's intention to ensure that continuity implies the continuation of the full body of EU law.***

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It follows that **regulatory divergence** between the UK and the EU would therefore **be avoided during transition** – this includes EU legislation initiated and concluded during the transition period – thereby maintaining the integrity of the market.

Despite the high level of ambition contained in the EU’s initial draft position, **our industry wishes to stress to the EU-27 the importance of showing flexibility on the length of the transition, ensure that all legislation initiated and finalised during transition applies to the UK during this time, and that the EU’s current FTAs and bilateral spirits agreements, in place or initiated and finalised during the period, apply to Member States and the UK until the end of the transition period.**

LENGTH OF TRANSITION:

It is clear that Brexit will impact every corner of our supply chains and distribution networks. The production of some of our spirit categories requires several movements between the UK and the EU-27, including a number of material inputs such as agricultural raw materials, glass bottles, and the barrels in which the products are matured.

While we welcome the preferred timeframe for transition as noted in the EU’s draft Directives that would see it run until 31 December 2020 we **would like to see a transition that provides sufficient time for the conclusion of an ambitious and comprehensive agreement between the EU-27 and the UK. We therefore feel there is a need to prepare for the possibility of extending the envisaged timeframe for transition in case the EU-UK agreement negotiations or ratification are delayed. We believe a transition length of at least 2 years is likely to be required.**

DYNAMIC REGULATORY CONTINUITY:

Regulatory divergence post-Brexit is an issue of great concern for our industry in relation to the imposition of non-tariff barriers between the UK and the EU-27. Whilst we recognise that managing divergence is a long-term future relationship issue, it is essential that during the transition, provision is made to ensure that the EU’s entire body of law does not stand still during transition.

Transition must therefore be dynamic, allowing EU legislation initiated and finalised during the period to apply to the UK during this time.

We welcome the proposed statements in the Draft Negotiating Directives according to which, during the transition period:

- “the Union acquis should apply to and in the United Kingdom as if it were a Member State.”
- “any changes to the acquis should automatically apply to and in the United Kingdom.”
- “Union law covered by these transitional arrangements should deploy in the United Kingdom the same legal effects as those which it deploys within the Union.”

For the spirits industry this is particularly vital in respect to the ongoing revision of the ‘Spirits Drinks Regulation’ (Reg. 110/2008) which sets the rules for the definition, production and labelling of all spirits produced in the EU. Once finalised, the revision must be applicable in the EU-27 and the UK during transition, thereby ensuring that consumers can remain confident of the quality of products and that the definitions it contains continue to underpin the sector’s Geographic Indications (GIs) that are a basis of its export success.

We welcome the Phase 1 agreement to avoid a hard border on the island of Ireland and to ensure “full alignment” with the rules of the Customs Union and Single Market that uphold the Belfast Agreement. **However, we feel that further clarity will be required on this complex matter during the Phase 2 negotiations.** The Irish whisky and spirits industry operates on an All-Island basis with seamless cross-border supply chains. It is vitally important that these are protected from any divergence of rules or the imposition of disruptive, new excise or tax requirements. This is a matter which we are continuing to monitor closely.

3RD COUNTRY FTAS AND BILATERAL SPIRITS AGREEMENTS:

Our industry is concerned that the Draft Negotiating Directives for transition lack clarity when it comes to whether the UK will definitely continue to be part of the bilateral agreements agreed by the EU with 3rd countries. The draft Directives state that the continuity of 3rd country agreements will be determined by an assessment of the “Union interest”.

If transition is to be truly ‘status quo’, it must encompass the entire body of EU law, including the integrity of EU trade policy and international legal obligations which includes providing for the continuity of its FTAs and bilateral spirits agreements across the entire jurisdiction to which that law is applied.

Failure to do so could necessitate additional customs formalities at the UK-EU border, despite the UK still effectively being a member of the Customs Union, and would lead to immediate rules of origin complications affecting EU and UK products.

Undermining the integrity of the trading relationship that 3rd countries negotiated with the EU could potentially endanger the continued trade benefits and protection of GIs for spirits drinks. Anti-counterfeiting actions which enforce these protections are central to our industry’s ability to continue to prosper as a European export champion.

We conclude therefore that it is in the EU’s interest to provide continuity in the access that it promised in good faith to its trading partners when concluding its network of trade agreements.

In order to prevent a “Union interest” test from becoming a political distraction, we call on the EU-27 to include a clear definition when it adopts the European Commission’s negotiating mandate for transition.

This definition, whilst explicit and transparent in the methodology and process that will be used to assess it, must be designed to ensure that it is considered in the “Union’s interest” for all existing EU FTAs and bilateral spirits agreements to continue to apply across the entire jurisdiction to which that law is applied the EU-27 and the UK - during the transition period.