



Brexit, Deal or No-Deal: That is the Question

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📌 SOCIETY, CONNECTIVITY, EMPLOYMENT AND PENSIONS

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Once again, the deadline for the final divorce of the United Kingdom from the European Union has been postponed: the European Council, following the negotiations of 10 April 2019, granted the British Prime Minister Theresa May a further extension - until 31 October 2019 - of the term to convince the House of Commons to approve the Withdrawal Agreement signed with the European partners.

This is a "*flexible postponement*": in fact, if the Withdrawal Agreement were ratified before 31 October 2019, the United Kingdom's exit from the European Union would take place from the first day of the month immediately following.

However, the European Council has made it clear that the extension must not jeopardise the proper functioning of the European Union institutions, especially at such a delicate time as that of the

elections of the European Parliament. In particular, in the event of non-ratification of the Withdrawal Agreement by 22 May 2019, the United Kingdom will have to organize elections to the European Parliament on the basis of the EU law. Otherwise, the withdrawal will take place on 1 June 2019.

This extension does not mean that the United Kingdom is going to change course. The question remains as to what will happen in case of withdrawal with agreement and in case of withdrawal without agreement, especially with regard to free movement of persons and to workers' rights.

The Withdrawal Agreement

The Withdrawal Agreement provides for transitional measures applicable until 31 December 2020, which should allow the United Kingdom and the European Union to reach a subsequent agreement governing their mutual relationships.



During the transitional period, the United Kingdom would no longer be part of the European Union and would no longer be represented within the European bodies and institutions. Therefore, the United Kingdom would not participate to the European decision-making process. However:

- (i) it would continue to participate to the customs union, to the European single market - with application of all four freedoms, including the free movement of persons - and apply all European Union policies; and
- (ii) it would continue to apply the European law in full.

Therefore, if Theresa May gathered sufficient consensus on the arrangements reached with Brussels, EU citizens residing in the UK and UK citizens residing in the EU could continue to exercise all the rights currently secured by the EU law, based on the principles of equal treatment and non-discrimination. The UK courts should also take the rulings of the EU Court of Justice as a reference.

A Protocol annexed to the Withdrawal Agreement contains the so-called backstop clause, which is intended to prevent the reconstitution of a physical border between Ireland and Northern Ireland. At the end of the transitional period, a single custom territory would be created for the entire territory of the EU and the United Kingdom, including Northern Ireland, in which the Community Customs Code would apply in full to Northern Ireland and just a more limited number of its provisions would apply to the United Kingdom.

No-Deal Brexit

On three occasions the House of Commons has rejected the text of the Withdrawal Agreement. Yet, it has as well rejected the possibility of withdrawing from the European Union without an agreement.

At this stage it is hard to foresee how the United Kingdom will overcome such an *impasse*.

Both the British government and the European institutions are aware of the risks associated with an excessively disorderly exit of the United Kingdom from the European Union.

On 13 November and on 19 December 2018 the European Commission presented a "*No-Deal Contingency Action Plan*" containing some legislative proposals, as well as indications for the Member States on the measures to be implemented in the event of a no-deal Brexit.

First of all, a no-deal Brexit would imply the end of the free movement of persons, resulting in the mutual impossibility for the EU citizens and the UK citizens to move, live and work on both sides of the border without a regular permit.

As to the UK citizens travelling to the European Union:

- for stays up to 90 days within a six-month period, the European Commission has adopted a proposal for a regulation which would exempt them from the visa, provided that a like exemption is granted by the UK to the European citizens;
- for stays longer than 90 days, they would have to obtain a residence permit or a long-stay visa from the authorities of the member States;
- those who have stayed for at least five years in a Member State would be granted a long-term resident status in accordance with the European legislation. To this end, periods of time spent in one of the Member States before the date of the withdrawal would count.

The European Commission has also invited the Member States to take measures to ensure that UK nationals residing in the EU at the date of withdrawal will continue to be considered as legally resident in their territories after the withdrawal, provided however that

reciprocal measures be taken by the United Kingdom.

On the Italian side, "legislative measures are going to be prepared for a substantial maintenance of the existing legal framework to ensure that UK citizens residing on 29 March 2019 [the former date of the withdrawal] in Italy will qualify and will be granted a timeframe long enough to apply for and obtain the long-term resident status contemplated by the Directive 2003/109/EC. In this way, they will continue to enjoy rights such as access to medical care, employment, education, social benefits and family reunification.

As to the EU citizens travelling to the UK, on 6 December 2018 the UK Government published a policy paper in which it specified that in the absence of an agreement:

- all acquired rights will be maintained and guaranteed to those who have been continuously residing in the United Kingdom for at least five years as at the date of the withdrawal ("Settled Status"). However, just the British courts will have jurisdiction for the protection of these rights;

- those who have been residing in the United Kingdom for less than five years as at the date of the withdrawal may apply for the so-called "Pre-Settled Status", a temporary permit to be granted pending the fulfilment of the conditions to obtain a permanent permit;
- those arriving in the UK after the withdrawal will be treated differently, based on the UK national immigration legislation and on reciprocity.


On 12 July 2018, the British Government published a White Paper containing a detailed proposal on post-Brexit relationships between the United Kingdom and the European Union. The UK Government has stated that it will maintain the current EU-derived labour legislation that affects a number of institutions including commercial agency contracts, working time, holidays, parental leave, fixed-term contracts and part-time work.

After the withdrawal, however, the United Kingdom will no longer be held to comply with the subsequent European legislation, which in the future could result in fewer rights for the British workers.



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