

Prolonging the acquis is a blueprint for the Brexit transition



In a [report](#) published in late 2017, **Piet Eeckhout** and **Oliver Patel** assess the options for a Brexit transitional arrangement. They argue that the most realistic option is for the full body of EU law to continue to apply in the UK, while the UK simultaneously ceases to be an EU member state. Their insights serve as a good explanation of the recent row over EU citizens' residency rights once the transition period begins.

The blueprint for a transition period that we advocate as the most viable is where the UK gives up its membership but accepts EU laws lock, stock and barrel. In her [Florence speech](#), Theresa May made clear that the UK seeks a transition where 'access to one another's markets should continue on current terms', i.e. nothing changes. She even accepted that the framework for this period would be 'the existing structure of EU rules and regulations', with David Davis confirming in his [speech in late 2017](#) to German business leaders that the UK wants to remain in all EU regulatory agencies during the transition. Similarly, the EU has also indicated that it would accept a status quo transition, but this would require 'existing union regulatory, budgetary, supervisory, judiciary and enforcement instruments and structures to apply'.

An extension of the EU *acquis communautaire* (the full body of EU law) to the UK, while the UK simultaneously ceases to be an EU member state, is the obvious choice for the post-Brexit transition. This is for three reasons. First, it's comprehensive, meaning that very little changes on Brexit day, and a cliff-edge is avoided. Second, it's relatively straightforward from a legal perspective, at least compared with the other options. The Article 50 withdrawal agreement could be the legal basis, meaning it would require approval only from a qualified majority of the European Council and the European Parliament, but not member state parliaments. It's simpler than the UK re-joining the EEA Agreement via EFTA or crafting an EEA copycat agreement. The former would require treaty amendment and the approval of member state parliaments, while the latter would require bespoke institutional mechanisms for dispute settlement and enforcement to be set up. Third – and perhaps most importantly – it's politically feasible.

Of course, there would be bitter pills to swallow. What's the point of leaving the EU if nothing changes aside from losing your seat at the table? However, May has already accepted free movement, budgetary contributions and a role for the [European court of justice \(ECJ\)](#) in the transition, and the government recognises that wasting time negotiating a bespoke transition is futile when the future relationship is the big prize. Why fill yourself up on the starter when the main course is still to come?



What would an extension of the EU *acquis*, without membership, actually mean? First, the whole body of EU law would continue to apply in the UK post-Brexit, meaning cooperation in many areas, such as trade and security, could carry on unchanged. Second, the UK would continue to accept the burdens and obligations of membership, despite losing its representation in the EU institutions. Third, it would enable the UK and the EU to continue sorting out their future relationship after withdrawal, with minimal disruption.

However, there would be challenges, and the thorny legal and political issues cannot be underestimated. For example, the EU would insist on ECJ jurisdiction continuing, and the legal principles of supremacy and direct effect being upheld. Due to the principle of the autonomy of EU law, well established in ECJ case law, the EU would insist that no other court have ultimate authority to interpret EU law. It would also not accept bespoke, sectoral carve-outs in areas like fisheries and agriculture – much to Michael Gove’s dismay – due to the interwoven and cross-cutting nature of EU law. EU law is an integrated system, with all kinds of connections between its parts. Take fisheries, for example. If fisheries policy is excluded but environmental policy is not, there will then be a need to identify, specifically, which legislative cross references which no longer work, and this will entail detailed scrutiny and political disagreement. Finally, the issue of the UK’s status vis-a-vis the EU’s international agreements with third parties, including a whole series of international treaties and free trade agreements (FTA) would remain unresolved. Take the example of the EU-South Korea FTA. Once the UK is no longer a member state, that FTA cannot continue to apply to UK-South Korea trade relations without some kind of negotiation and update. The reason is that the FTA is defined as applying, on the EU side, in the territories of the EU member states. Nor can the withdrawal agreement fix this, as South Korea is not a party to it.

Despite this, an extension of the EU *acquis*, without membership, is much easier to sort out, both legally and politically, than every conceivable alternative transitional option (except, perhaps, extending Article 50), and the two sides already agree on the fundamentals.

It must be stressed that this status quo transitional arrangement, desirable as it may be, does not resolve the fundamental issues of Brexit. One day, the UK will have to choose what it wants: sovereignty or market access. Also, it doesn’t prevent there from being a cliff-edge at the end of the transition, especially if it’s only a couple of years long. (An indefinite transition is desirable but politically implausible; an easily extendable deal would do the trick). However, it buys time – an invaluable resource when the clock is ticking.

*This post represents the views of the author and not those of the Brexit blog, nor the LSE. A shorter version of this blog originally appeared in [The Guardian](#) and [The Constitution Unit](#). Piet Eeckhout and Oliver Patel’s full report, *Brexit Transitional Arrangements: Legal and Political Considerations*, can be accessed [here](#).*

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