Europe's common agricultural policy is broken – let's fix it!

Pitfalls on the way to a Brexit transition period

December 30, 2017 Written by **Alan Matthews Blog posts**

Most of the attention around the European Council meeting on 14-15 December 2017 last focused on the implications of the **Joint Report** agreed between the UK and EU negotiators on 8 December for the three key Phase 1 issues – citizens' rights, the financial settlement, and the border between Ireland and the North of Ireland. Sufficient progress on these issues was the prerequisite for the European Council to agree to move to the second phase of the negotiations. Both the European Council in **its conclusions** and the European Parliament in its **resolution of 13 December 2017** agreed with the **Commission recommendation** that sufficient progress had been achieved. Good summaries of the principles agreed in the Joint Report can be found in this **House of Commons Library report** and in **this briefing** prepared by the European Parliament Research Service. Michel Barnier, in winding up the European Parliament debate on the state of the Brexit negotiations on 13 December, **noted** that he hoped a

draft Withdrawal Agreement incorporating these Phase 1 principles would be ready by the end of January.

The European Council conclusions not only authorised the opening of the second stage of the withdrawal negotiations under Article 50 TEU but also included guidelines for the negotiations on a transition stage. Just five days later, on December 20th, the Commission had turned these guidelines into **draft negotiating directives**, although these will not be formally approved until the meeting of the General Council on 29 January next. As I discuss more fully below, agreed transition arrangements will be included in the Withdrawal Agreement as part of the Article 50 negotiations. The European Council will issue further guidelines in March 2018 on the framework for the future relationship. Both the Commission and the European Parliament envisage the framework for the future relationship taking the form of a political statement which will be annexed to the Withdrawal Agreement.

Simultaneously, in the UK, the **European Union (Withdrawal) Bill** has been making its way through the House of Commons, and the way in which the UK proposes to extricate itself from the EU has become clearer. The UK government is now proposing to introduce a Withdrawal Agreement and Implementation Bill which would enshrine the provisions of the Withdrawal Agreement, including transition arrangements, into UK law.

In this (lengthy) post, I focus on the implications of these developments for the Brexit negotiations and, in particular, the negotiations on the transition agreement. First, I examine the EU position on transition arrangements as set out in the Joint Report, the European Council guidelines and the Commission's draft negotiating directives. Second, I discuss the UK position on transition arrangements that has evolved over time but which still remains unclear. Third, I describe the way in which the UK government proposes to implement the Withdrawal Agreement, including transition arrangements, into UK law. Fourth, I draw attention to some issues which, it seems to me, could potentially derail the ratification of the Withdrawal Agreement both on the EU side and the UK side and thus put the framework for the future relationship at risk as well as increase the likelihood of a 'cliff-edge' Brexit.

While the Joint Report (and particularly the commitments in paragraphs 49 and 50 on avoiding a hard border on the island of Ireland) raises questions on the form of the future relationship between the UK and the EU which could deliver on those commitments, in this post I am only concerned with the transition arrangements which might kick in after 29 March 2019.

The importance of reaching agreement on transition arrangements needs to be emphasised (I have spelled out the consequences of a 'cliff-edge' Brexit in greater detail in **this report** for the European Parliament). In the absence of transition arrangements, trade between the UK and the EU would revert to 'WTO terms' and tariffs would be re-imposed on bilateral UK-EU27 trade. Customs procedures and heath checks would apply to exports and imports. The lack of preparedness of the customs administrations and other relevant authorities on both sides to manage border controls; the lack of knowledge on the part of the large number of new businesses that would face the need to seek customs clearance for their exports and imports; and the almost certain congestion at major ports of entry and exit because of the extra time required for these controls, would cause chaos for trade in goods, including agri-food products. Trade in services would face similar disruption as existing authorisations to provide cross-border

services in other EU country markets would no longer apply to trade between the UK and the EU. The purpose of transition arrangements is to avoid this disruption until a comprehensive trade agreement between the two parties can be put in place.

The EU position on transition arrangements

During the course of the negotiations on Phase 1 of the Withdrawal Agreement, the UK gradually accepted nearly all EU demands on the three Phase 1 issues. But these concessions may appear small compared to what the UK will be asked to swallow during the transition period under the European Council guidelines and the Commission's draft negotiating directives (and which have also been supported by the European Parliament in its December resolution). The Commission draft negotiating directives spell out how it sees the UK's position in no uncertain terms. In the **Commission summary**:

> • There should be no "cherry picking": The United Kingdom will continue to participate in the Customs Union and the Single Market (with all four freedoms). The Union acquis should continue to apply in full to and in the United Kingdom as if it were a Member State. Any changes made to the acquis during this time should automatically apply to the United Kingdom.
>
> • All existing Union regulatory, budgetary, supervisory, judiciary and enforcement instruments and structures will apply, including the competence of the Court of Justice of the European Union (CJEU).
>
> • The United Kingdom will be a third country as of 30 March 2019. As a result, it will no longer be represented in Union institutions, agencies, bodies and offices.
>
> • The transition period needs to be clearly defined and precisely limited in time. The Commission recommends that it should not last beyond 31 December 2020.

These arrangements are a Brexiteer's worst nightmare, only redeemed by the fact that they will operate only for a 21-month period. Far from taking back control, these transition arrangements would mean that the UK would be subject to all current rules and any new ones introduced during the transition, without having any possibility to influence them. It would continue to be subject to and would have to observe the rulings of the CJEU without having representation on this Court. The EU Treaties as well as regulations and decisions would continue to have direct effect in the UK, and the UK would be obliged to introduce legislation to give effect to new EU directives. The quid pro quo in return for accepting these conditions is that for businesses the Brexit 'cliff edge' would be postponed for up to a further 21 months, during which time the Commission anticipates a new trade agreement will be negotiated and agreed.

It is worth noting that the European Parliament, in its December resolution, accepted that the transition period could last for a period up to three years, thus continuing into the next MFF period. This is an issue on which the General Council will have to decide at the end of January. Many experts believe even a three-year transition might be too short a period in which to conclude a fully-fledged trade or association agreement. All agree that this WILL be a trade agreement under Article 218 and in all likelihood it will require ratification by all Member States as well before it can come fully into force, even

if some trade aspects can be introduced by the Commission earlier on a provisional basis.

What about common policies including the CAP? From a reading of the Joint Report (especially paragraph 71) and the insistence in the Commission's draft negotiating directives that the transition period should end at end December 2020, the UK will continue to participate in all EU policies until the end of the current MFF, thus including the CAP. Paragraph 71 of the Joint Report states:

> Following withdrawal from the Union, the UK will continue to participate in the Union programmes financed by the MFF 2014-2020 until their closure [..] Entities located in the UK will be entitled to participate in such programmes. Participation in Union programmes will require the UK and UK beneficiaries to respect all relevant Union legal provisions including co-financing. Accordingly, the eligibility to apply to participate in Union programmes and Union funding for UK participants and projects will be unaffected by the UK's withdrawal from the Union for the entire lifetime of such projects.

This was confirmed by Michel Barnier in **his statement** at the plenary session of the European Parliament which debated the state of play of the negotiations with the UK on 13 December 2017. "*On the basis of the decision of the European Council, we will also move forward on defining a transition period, which will be short and supervised during which we will maintain the full regulatory and supervisory architecture – and obviously the role of the Court of Justice – **as well as European policies*** (my bolding)."

UK Secretary of State for the Environment Michael Gove had previously indicated that it would be a matter for negotiation whether Britain's farmers were subject to the EU's Common Agricultural Policy in any transition period after the UK leaves the EU. While this would seem to be ruled out by paragraph 71, there is a potential let-out in the following paragraph 72 in the Joint Report:

> In the second phase of negotiations it could be agreed that some rules related to Union programmes that would be considered as not relevant in relation to a departing Member State would not apply. As part of the second phase of negotiations, the Union and the UK could also decide to agree to simplified procedures so as to avoid unnecessary administrative burdens extending well beyond the end of the current multiannual financial framework, provided that they respect the sound financial management of the Union budget and do not result in discrimination in favour of the UK or UK beneficiaries. The UK and the Union could also agree on administrative procedures to facilitate the management of specific programmes.

This would seem to provide a hook to allow the UK to diverge in its model of agricultural support during the transition period if it were deemed that the method of agricultural support was "*not relevant*" in the case of a departing Member State. Alternatively, the potential to use "*simplified procedures*" might be used as a lever to allow the UK to diverge from CAP rules. On balance, however, given the way cross-compliance rules and greening conditions are linked to the payment of direct payments under the CAP, it is hard to see the EU side agreeing that UK farmers could receive these payments until the end of 2020 while not being required to follow the same obligations. And for Pillar 2 payments, the UK already has scope as a Member State to adjust its rural development programmes, albeit within the constraints of the CAP Rural Development Regulation.

Thus, my reading of the situation is that UK farmers, under the EU's negotiating position, would still be operating within the parameters of the CAP until the beginning of 2021. The Joint Report (in footnote 10) takes pains to stress that EU funding for direct payments in 2020 is not paid out of the 2014-2020 MFF and thus will be a charge on the UK Treasury. On the other hand, payments to farmers who enrol in multi-annual Pillar 2 schemes which continue beyond 2020 would continue to be refunded by the EU.

The UK's evolving position on the transition period

What might be the UK's attitude to the EU vision of how the transition period will operate? The UK has already moved a long way towards the EU position, in ways that I outlined in **my report** on the institutional aspects of Brexit to the European Parliament (see pp. 61-65). The UK government was always clear that some form of transition period would be desirable if not essential. In her **Lancaster House speech** in January 2017, the UK Prime Minister called for a "*phased process of implementation*" towards the future partnership which should be agreed by the end of the Article 50 process. She seemed to envisage a staggered and differentiated implementation process in which the time needed for the different elements of the new arrangements to be phased in could differ.

Later, in its **partnership paper on future customs arrangements**, the UK government seemed to accept "*a model of close association with the EU Customs Union for a time-limited interim period*" would be necessary in order to minimise disruption for businesses.

The UK Prime Minister went much further in her **Florence speech** in September when she accepted that "*access to one another's markets should continue on current terms*" during the transition period. She further recognised in that speech that "*The framework for this strictly time-limited period, which can be agreed under Article 50, would be the existing structure of EU rules and regulations*". Note how the use of the word 'framework' here suggests that there would be scope to 'take back control' in at least some areas provided the relevant elements of the EU acquis were upheld.

When **answering questions** on her Florence speech in the UK Parliament in October, the Prime Minister restated that the UK intended to leave the customs union and the single market on 29 March 2019 but that it intended to seek a new (transition) agreement which would enable businesses to operate on the same basis and on the same rules and regulations as at present. However, the Prime Minister failed to make clear in response to questioning in what way this transition agreement might differ from membership of the Customs Union and Single Market while permitting trade to continue on the same basis as when the UK was a member of the Customs Union and Single Market. The European Council's unambiguous démarche is intended to settle this question.

How the UK proposes to disentangle itself from the EU

Before considering how the UK might respond to the EU's negotiating position (which remains to be confirmed by the General Council on 29 January next), we should take account of important developments in the UK debate over the past two months with regard to how it intends to extricate itself from the EU. There are two key pieces of legislation: the **European Union (Withdrawal) Bill** (which I will refer to as the EU Withdrawal Bill) which was introduced in the House of Commons on 13 July 2017, and a

proposed Withdrawal and Implementation Bill which will give effect to the Article 50 Withdrawal Agreement in due course.

The EU Withdrawal Bill seeks to "*repeal the European Communities Act 1972 and make other provision in connection with the withdrawal of the United Kingdom from the EU.*" The European Communities Act ensures EU regulations and decisions take direct effect in the UK as well as providing the basis for implementing EU directives under delegated law-making powers (see the annex at the bottom of this post for greater detail). Effectively, the EU Withdrawal Bill removes the competence of EU institutions to legislate for the UK. It also takes a snapshot of EU law as it exists on 'exit day' and transposes that law into domestic UK legislation in order to provide legal certainty and continuity at the point of the UK's exit from the EU.

Under Clause 1 of the Bill, the European Communities Act is repealed "*on exit day*". In the original version of the Bill, exit day "*will not necessarily be the day on which the EU treaties cease to apply to the UK".* For the purpose of the Bill, "*'exit day' means such day as a Minister of the Crown may by regulations appoint.*"

By not explicitly linking the exit date set by the Article 50 Withdrawal Agreement to the domestic legal concept of the 'exit day', the EU Withdrawal Bill in its original version would have granted the government discretion to decide when the provisions of the Bill would take effect. The government's initial position was that its intention was to align 'exit day' with the day that the UK leaves the EU under Article 50, and that the distinction was intended only to take account of the date and time that would be set out in the Withdrawal Agreement. However, it was also seen as giving the government the necessary flexibility to take account of any transition arrangements (for a discussion, see this House of Commons Library **briefing on exit day**).

Then, on 9 November 2017, the UK Prime Minister announced that the government would table an amendment to its EU Withdrawal Bill to fix 'exit day' for all purposes of the Bill at 11:00 pm GMT on 29 March 2019. The effect of this amendment is that 'exit day' would be defined in primary legislation rather than, as previously, by a Ministerial decision in the form of secondary legislation. The reason given for the amendment was to remove any confusion or concern about what 'exit day' meant. For some commentators, the effect of the amendment is to weaken the UK's negotiating position and to put unnecessary pressure on the UK's negotiators. But it also made clear that the government did not intend to use a prolongation of the 'exit date' as a means to cater for a possible transition period.

A second clause in the Bill was also seen as having implications for how a transition period would be implemented in UK law. Clause 9 of the EU Withdrawal Bill enables a Minister of the Crown to make regulations to implement the Article 50 Withdrawal Agreement if the Minister considers that such provisions should be in force on or before exit day. This clause was the focus of considerable criticism because it seemed to allow Ministers to make extensive legislative commitments by way of statutory instruments to implement the Withdrawal Agreement before Parliament would have a chance to debate and approve this agreement.

On 13 November 2017 David Davies, UK Secretary of State for Exiting the European Union, **announced** in the House of Commons that, once an Article 50 agreement had been reached, the government would bring forward primary legislation in the form of a withdrawal and implementation bill to implement that agreement. The proposed Bill would cover the contents of the Withdrawal Agreement, which will include issues such

as an agreement on citizens' rights, any financial settlement and the details of an implementation period agreed between both sides. This seemed to leave unclear the purpose of Clause 9 in the EU Withdrawal Bill. Subsequently the House of Commons passed an amendment to the EU Withdrawal Bill stating that clause 9 could only be used if Parliament has already enacted "*a statute … approving the final terms of withdrawal of the United Kingdom from the European Union*".

In a **written statement** to the House of Commons on 13 December 2017, David Davies further clarified the government's intentions. He confirmed that a vote would be taken in the form of a resolution in both Houses of Parliament covering both the Withdrawal Agreement and the terms of the future relationship as soon as possible after the Article 50 negotiations had concluded. If Parliament supported the resolution to proceed with the Withdrawal Agreement, then the Government would bring forward a Withdrawal Agreement and Implementation Bill to give the Withdrawal Agreement domestic legal effect.

Parallel with this process, the UK Constitutional Reform and Governance Act 2010 normally requires the Government to place a copy of any treaty subject to ratification before both Houses of Parliament for a period of at least 21 sitting days, after which the treaty may be ratified unless there is a resolution against this. This implies an 'up-down' voting procedure in which the only options are to allow the treaty to be ratified or to prevent its ratification. The idea is to prevent Parliament from putting forward amendments which might unravel the delicate balance of concessions that had been negotiated.

However, this would seem possible in the case of the Withdrawal Agreement and Implementation Bill which will go through the normal process of parliamentary scrutiny. Indeed, David Davies confirmed in his **statement** to the House of Commons on 13 November 2017 that "*the House will be able to go through it line by line and agree it line by line.*" The implications of this procedure for the possible ratification timeline of the Withdrawal Agreement are considered below.

Legal issues around the transition arrangements

Although the European Council's intentions with respect to the transition period are clear, there remain some unanswered questions. What form would a transition agreement take and, in particular, what would its legal basis be in European Union law? How will the UK Withdrawal and Implementation Bill accommodate a transition period when the UK is no longer an EU member, but during which EU law would continue to apply? These are legal questions and I claim no legal competence. However, the issues they raise are sufficiently important that it seems worthwhile to try to provide a lay person's perspective. These two questions are posed in **this discussion paper** by University of Cambridge legal academics, and I draw on their analysis in what follows.

The legal requirements for EU ratification of the transition agreement. Both the UK and the EU27 agree that the transition arrangements will form part of the Withdrawal Agreement under Article 50. However, the UK at that time will no longer be an EU Member State. The transition agreement element of the Withdrawal Agreement would thus be a trade agreement between the EU27 and a third country. Presumably, it will be notified as such to the WTO under GATT Article XXIV as a customs union (for trade in goods) and under GATS Article V as an Economic Integration Agreement (for trade in services) as exceptions to the WTO principle of non-discrimination. As a trade

agreement, the question arises whether it would also require ratification by Member States.

If it were deemed to be a 'mixed agreement' in EU terms, meaning that it also covered areas that remain within the competence of Member States, then as a normal trade agreement it would require ratification by EU national parliaments as well as the EU Council and Parliament and the UK. Because, under the European Council guidelines, it is intended to cover the whole of the EU acquis, it is inevitable that it will cover issues which are currently within the competence of Member States.

However, the prevailing view is that, because this trade agreement will be concluded under Article 50 TEU and not under Article 218 TFEU (which sets out the procedures for concluding trade and association agreements), it will not require ratification by Member States. Indeed, the UK government set out what I assume is the common understanding with the Council in its **written statement** to the House of Commons on 13 December 2017 that "*It will not require separate approval or ratification by the individual Member States*". No one disagrees that, as the Cambridge law academics **write**, the Withdrawal Agreement "*as a matter of EU law, [..] does not require national approval in each of the Member States*". What is at issue is how wide can the scope of the Withdrawal Agreement be interpreted? "*So the legal question for a transition arrangement falls into two parts: is such an arrangement actually within the competence of the Union under Article 50 and if so, to what extent do the procedural rules limit what such a transition framework might contain?*".

The problem is that Article 50 does not make any explicit mention of a transition agreement. The EU Council will argue that because the transition arrangement will be temporary with a fixed expiry date, it can be concluded as part of the Withdrawal Agreement. But not everyone will agree. As the Cambridge lawyers **argue**: "*The more that such an agreement merely perpetuates membership subject to minor modifications, the less easy it is to characterise as a 'withdrawal' agreement within the meaning of Article 50*". Their concern is shared elsewhere. For example, Politico Europe has **reported** the concerns of the German Bundestag on the scope of the transition agreement. It is very possible that this is an issue on which the European Court of Justice will be asked to rule, which would be likely to delay the eventual ratification of any Withdrawal Agreement on the European side.

Implementing the transition agreement in UK law. Despite the UK government's attempt to set out a clear process for implementing the Withdrawal Agreement into UK law, this may not be plain sailing either. The UK government's strategy consists of two phases. The EU Withdrawal Bill disables the validity of EU law and the competence of the European Court of Justice in the UK on 29 March 2019. The proposed Withdrawal Agreement and Implementation Bill would then turn (some or all) of these powers back on again a milli-second later for a time-limited period. As Robin Walker, UK Undersecretary of State for the Department for Exiting the European Union, has **explained**: "*The substance of the EU withdrawal Bill is the business of making the statute work for exit day. We would expect any matters relating to the implementation period to be dealt with in the withdrawal agreement and implementation Bill*".

This two-phase strategy, although apparently cumbersome, does make sense as compared to a strategy of simply delaying the 'exit date' in the EU Withdrawal Bill. The Cambridge law academics point that that merely leaving the European Communities Act in place for the transition period is not necessarily a satisfactory legal solution to

ensuring the continued application and primacy of EU law in the UK. For one thing, the Act derives much of its force from the obligations and restrictions created or arising by or under the EU Treaties – but once the UK is no longer a party to the Treaties, it is doubtful that these obligations and restrictions would continue to have force. The Act confers on Ministers the power to make delegated legislation for the purpose of implementing EU obligations, but once the UK leaves the EU it will no longer have EU obligations to implement. So simply leaving the European Communities Act in place is an inadequate legal basis for the transition period.

The EU Withdrawal Bill will domesticate EU law up until 29 March 2019. The proposed new Bill may well look and feel like the repealed European Communities Act 1972, in that it would provide the domestic legal base for the continuation of EU law, but with the crucial distinction that, while any new EU laws introduced during the transition would have to be implemented during this transition, they would not form part of 'retained EU law' which would automatically transfer to the UK statute book unless this was specified in the Withdrawal Agreement and Implementation Bill. Lawyers worry that this could create different categories of UK law and wonder about the status of EU legislation introduced on the statute book during the transition period when that period expires.

I want to highlight here the political consequences of the UK government's strategy. The obligations on the UK during the transition period, even if modified from the all-or-nothing position in the European Council guidelines, will be a hard nut for the UK Parliament to swallow. But it now appears that the UK Parliament will not only have an opportunity to approve or disapprove of the Withdrawal Agreement (including the transition arrangements) as a whole, but to propose detailed amendments to individual elements of that agreement.

From the EU side, if it is negotiating with a partner in the knowledge that whatever agreement it negotiates might be subject to amendment, the natural response will be to limit the concessions it might be prepared to make to the UK. Any sign of flexibility on its part would surely encourage more demands for flexibility when the Withdrawal Agreement is debated in the UK Parliament.

From the UK side, given the precarious majority of the UK government in Parliament, there must be a strong likelihood that it will be unable to prevent amendments which the EU side would find unacceptable and thus bring the whole Withdrawal Agreement into jeopardy. The vulnerability of a UK government bill to amendment has already been painfully exposed in the changes that have been made to the EU Withdrawal Bill in its passage through the House of Commons.

Conclusions

The implications of the European Council guidelines for the transition period are far-reaching. An experienced commentator, Professor Kenneth Armstrong, one of the University of Cambridge legal academics, discussed in a blog post as recently as the middle of November various legal options for the transition period (his arguments are set out in a more detailed way in this **technical paper**), and **concluded** that the front runner "*would seem to be some sort of continuation of a limited set of current obligations on a strictly time-limited basis*". The notion that the UK as a non-Member State would be asked to accept a continuation of ALL of its current obligations, albeit on a strictly time-limited basis, still had not dawned.

We now await the General Council meeting in late January when it will approve negotiating directives for the Commission negotiator. It is unlikely to soften the Commission's draft directives. The UK will also be expected to come with its proposal for what it calls an implementation period in the next month or so in which it will set out how it proposes to secure continued access to each other's markets on the same terms as today. At this point, the extent of divergence between the two positions will be revealed. Certainly, the UK has moved closer to the EU position over time. It seems now to accept that it will remain in a customs union and implement single market rules as well as finance and participate in common policies until the end of the current MFF period, but this remains to be clarified. One might also foresee that the continued jurisdiction of the European Court of Justice during the transition period will be a sticking point.

Given the minefields described above, we should be aware that the prospects at this point in time of successfully concluding the Withdrawal Agreement including a transition period before 29 March 2019 cannot be taken for granted, with all of the repercussions in terms of citizens' rights, the financial settlement, the Irish border and trade disruption that a failure would have. And this is before discussions get going on the future trade relationship after March. Our New Year's wish must be that this pessimistic conclusion will be overturned as the negotiations progress in the course of 2018. On this basis, I wish all readers a Happy New Year!

Annex on the UK European Communities Act 1972

The House of Lords Select Committee on the Constitution in its **interim report** on the Withdrawal Bill described the role played by the European Communities Act 1972 and the implications of its repeal as follows:

Clause 1 of the Bill states that "*The European Communities Act 1972 is repealed on exit day.*" For present purposes, the ECA serves three vital functions:

• It provides for directly effective EU law, such as treaty provisions, regulations and decisions, to have effect in the UK without the need for further enactment. Thus, for instance, regulations adopted by the EU (to the extent that they comply with the requirements for direct effect) become effective and enforceable in the UK without the need for domestic transposition.

• It provides for the supremacy in the UK of directly effective EU law. Among other things, this enables UK courts to "disapply" Acts of the UK Parliament and to quash other legislation to the extent of any inconsistency with relevant EU law.

• It provides a legal basis for implementing EU law to the extent that this is necessary. For instance, most EU directives—which do not, in the same way as regulations, decisions and some treaty provisions, have direct effect—have been implemented using the delegated law-making powers conferred by the ECA.

It follows that repealing the ECA will have three principal effects:

• Directly effective EU law will no longer have effect in the UK, because the ECA will no longer authorise it to do so. Although, even without repeal of the ECA, directly effective EU law would cease to have effect in the UK upon exit, because the ECA provides for the direct effect of EU law in the UK only to the extent that the UK's treaty obligations so require; post-exit, no such obligations will persist.

• Directly effective EU law will no longer have primacy over UK law— both because there will be no EU law capable of having primacy and because, in any event, domestic accommodation of primacy will cease upon repeal of the ECA.

• The legal basis upon which UK secondary legislation has been made so as to implement EU directives will be swept away, rendering such secondary legislation invalid.

This post was written by Alan Matthews.

Update 31 December 2017: Added a paragraph to include a reference to the European Parliament's acceptance of a transition period up to three years.

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