

## **How the New Brexit Deal Will Reshape Business in the EU and UK**

Sam Gandhi, Nick Brittain, and Nicolas Lockhart  
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### **Sam Gandhi:**

Brexit is finally here. Four-and-a-half years since UK citizens voted to leave the EU a deal has been struck, and Britain is out. Companies worldwide are still asking questions. What laws now apply in the UK? Are investment and trade easier or does bureaucracy reign? And what opportunities exist amid the uncertainty? We'll find out in today's podcast.

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### **Nick Brittain:**

Some of the Europeans that I know are a bit sad but slightly puzzled as to why we did this to ourselves.

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### **Nicolas Lockhart:**

But after four years of a great deal of uncertainty for the business community we now have a much more stable basis for the UK/EU relationship.

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### **Nick Brittain:**

The EU is trying to protect its own markets and it certainly hasn't committed to an equivalence decision in financial services.

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### **Sam Gandhi:**

It seems like the two regions are like boxers eyeing each other about what's going to be next.

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From the international law firm, Sidley Austin, this is the Sidley Podcast where we tackle cutting edge issues in the law and put them in perspective for businesspeople today. I'm Sam Gandhi.

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Hello, and welcome to this edition of the Sidley Podcast, episode number 16. Today, we revisit the topic of Brexit in the aftermath of the agreement that took effect this past December 31. And we're joined once again by Sidley lawyers, Nick Brittain and Nicolas Lockhart.

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Nick Brittain is a senior counsel in Sidley's London office and a member of the firm's global finance, investment funds, and real estate practices. He has a broad range of experience in general banking and finance law and practices principally in the area of structured finance and securitization.

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Nicolas Lockhart is a partner in Sidley's Geneva office and a member of the firm's global arbitration and trade and advocacy practices. He focuses on the development of enforcement and international trade rules, particularly at the World Trade Organization. Before joining Sidley, Nick spent five years at the WTO appellate body advising on 16 appeal cases. Nick and Nic, great to see you again.

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**Nick Brittain:**

It's good to be here, albeit remotely.

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**Nicolas Lockhart:**

Same. Yeah. It's a pleasure to be back. Happy to have been invited.

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**Sam Gandhi:**

Nick Brittain, we last spoke with you and Nic Lockhart a year ago in the second episode of the Sidley Podcast, and that was on the eve of an 11-month transition period for Brexit. At that time, a final deal on Brexit was still pending. What happened in those 11 months? I know a lot has happened in the world but what particularly happened on Brexit, leading the final Brexit on January 1 of this year or, or as you've noted before, 11 p.m. London time on December 31.

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**Nick Brittain:**

Yes. It's important to note that Central European time was really the cutoff date, but as you say it, a lot has happened, especially on Brexit, although I guess with COVID some of the focus has gone off Brexit until very recently. But just to recap, as if it needed to be recapped, when we last spoke, we were on the verge of agreeing, what's called the withdrawal agreement, which are pretty much like the divorce papers with the EU. That was agreed at the last minute and became effective on 31 January of last year. And that established what we have referred to as a transition period from that date up until 31 December 2020 at 11 p.m., which is really called the implementation date.

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During that transition period, the UK was not a member of the EU, but the withdrawal agreement said it should be treated and will treat itself as if it is a member of the EU and so was subject to all EU laws whether then passed or passed within the transition period. During that transition period, trade and negotiations continue, and Nick can talk about that later and perhaps that will be the focus of most of this discussion. But trade treaties were negotiated. It took a lot longer, I think, than people hoped and ended up with a last-minute agreement on Christmas Eve, but the agreement was reached and the transition period ended on December 31.

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So, where we are now is that a trade and cooperation agreement was agreed and has been implemented and approved by the UK parliament and has been approved by the EU Council. There are two other agreements actually that were agreed at the same time. One on the security of classified information and another on nuclear cooperation. That's a UK/Euratom agreement but it was done at the same time.

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Now, the trade and cooperation agreement is the main treaty that people are focusing on. That applies in the UK. We're currently bound by it. It also applies provisionally in Europe, I think, because of the last-minute timing of the way in which the negotiations were conducted and agreed. The EU only had time to agree to it provisionally and so it's subject to legal and linguistic revisions, which is the phrase that they use. It applies provisionally in the

EU up until 28 February or earlier if both parties are able to implement their legislation in accordance with their own internal rules.

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There were rumors circulating on Friday that the EU might actually ask for an extension to the end of March, possibly into April, but those are just rumors at the moment. So, that's a rough idea of what's happened over the last 11 months.

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**Sam Gandhi:**

So, let me follow up on that because in his New Year's message to the country, Prime Minister Boris Johnson said that we have our freedom in our hands and it's up to us to make the most of it, but there still seems to be quite a lot of uncertainty still and in fact does anybody know exactly what laws actually apply in the UK and do they maximize the potential for business?

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**Nick Brittain:**

Well, at the moment, the statutes all say that EU law, as it was on December 31, is now applicable under UK statutes rather than directly through the EU. So, there's a body of law which we will refer to as retained law, but any EU regulation or implemented directives as of 31 December now apply in the UK except for certain glosses where if you imported something word for word it wouldn't quite make sense and so there are some glosses that have been implemented by statute instruments that replace references, for instance, to EU member states to the UK and EU member states. So, a sort of typographical gloss in that sense, but there are other glosses as well where it was anticipated that we wouldn't reach agreement with the EU and so to the extent there are provisions that the UK did not want to implement yet, those have been repealed if you like as of 31 December.

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Those aren't significant changes. There's only minor changes around the edges, but in terms of does it maximize the potential of business, it's just too early in the process to say certainly at the moment, I'm afraid. As I say, the changes haven't been that significant. There have been minor changes

around the edges, but I think what the people who were enthusiastic about Brexit were hoping for fairly significant changes to bureaucracy and to regulation that would free up UK businesses from what they perceived to be restrictions of working within the EU. Those changes haven't yet been made because I think, and Nick may not agree with me here, but I think it's too early in the stage of the trade and cooperation agreement to say what changes the UK government are going to implement to perhaps free up business.

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So, in summary, I guess I'd say it's too early to say.

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**Sam Gandhi:**

And Nic Lockhart, from your perspective, what does the new agreement mean for business and for the UK/EU relationship? I realize it's a little bit early but you're already seeing reports of rotting fish in the docks and the UK fishermen quite unhappy still with the arrangements.

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**Nicolas Lockhart:**

Yes. I mean I think on Christmas Eve when the deal was struck, the immediate reaction from the business community and from political leaders was a collective sigh of relief because with seven days until the end of the transition period, we were staring over the edge of what had become known as the Brexit cliff edge, where we would have gone from a situation of almost seamless trade to trade with considerable friction in the form of duties and significant red tape. So, when the deal was struck on the 24th, as I say, a collective sigh of relief. What we have now is a deal that falls somewhere in between those two poles of completely frictionless trade, which we had, and significant friction.

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So, we now have an arrangement that certainly involves much less friction than we would have had if we'd stepped over that Brexit cliff edge, but it also involves much more friction than we had before when the UK was part of the EU and under the withdrawal agreement.

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Another thing that the deal means for business is that after four years of a great deal of uncertainty for the business community, following the UK referendum, we now have a much more stable basis for the UK/EU relationship, and I think business is now in a position where it can plan with more confidence than it could during that four-year period. Certainly, there are more restrictions than there were, but business is now in a position where it can adapt with a good deal of certainty to the new arrangement. So, generally, I think it's a positive when you compare it with the Brexit cliff edge but it does imply, I think, more friction, more costs, and more delay than we saw before.

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**Sam Gandhi:**

Nic Lockhart, what are the nuts and bolts of this agreement? What does this deal cover and, more importantly, what's not covered?

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**Nicolas Lockhart:**

I think we can describe this as a classic trade deal with important bells and whistles. So, let me start with the most important of those bells and whistles and that is that sitting on top of the trade arrangements, the EU and the UK have created an institutional framework, partnership council, which will agree on how the deal is to be implemented and how the deal is to be developed. How the trading relationship and other aspects of the relationship are to be developed over time.

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So, what we have is a dynamic agreement and we can maybe talk a little bit later about elements of that dynamism. But when we think about the nuts and bolts of the trade part, it covers the classic things that you would expect to find in a trade agreement. So, it covers trade in goods, trade in services, intellectual property, but it covers a bunch of other things as well like energy, transport, fisheries, law and justice, the list is long. It's a very comprehensive agreement. It runs to more than 1,200 pages.

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At the same time, despite the 1,200 pages, commentators are describing it as a skinny trade deal or a thin trade deal and that's because the extent of

the free trade commitments are not as extensive as we had under the single market. So, the devil is really in the detail here if we want to understand how seamless trade will be and what this means for business.

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I think the answer is that there will be quite a lot of friction and certainly much more friction than there was before, and you've already talked about some of the challenges that Scottish fisheries exporters have been facing. So, for the goods part of this agreement, trade and goods, it goes much further than the services part of the agreement. But at the same time, it falls far short of the old access that the UK and the EU enjoyed under the single market.

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So on goods, import duties go, so that's a positive, but they only go if goods have a UK or an EU origin. That means that the goods have to be produced or obtained within the UK or within the EU to enjoy tariff-free access. What does that mean? That means that there are pretty complex rules on a product-specific basis often that tell you whether a good enjoys tariff-free access or not.

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Now, that creates cost, compliance cost. It can create delay, but it can also mean that some aspect of current production won't qualify for tariff-free access if too much of the value of the goods comes from third country inputs, whether that's material inputs in terms of, say, goods or whether it's processing inputs. So, in that case, you either have to pay the tariffs or you change the way that you produce the good.

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We're already seeing a lot more red tape at the border. So, under the single market, goods moved freely from the UK to the EU and vice versa as if they were part and parcel of a single market. Now there are going to be border checks and the extent of those border checks will depend on what good we're dealing with. But where we're talking about things like health and safety then there could be quite extensive border checks and that is one of the reasons why fisheries exports have been subject to problems at the border because they now have to meet requirements for food safety that didn't have to be met before.

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Now, when we look at the services side, the European Union involves free market and services. Services are a really big deal for the UK economy. But under the new UK/EU deal, the TCA, there is very limited service access. So, the service access that was guaranteed before has really gone and hasn't been replaced with much extra that goes beyond what's covered, for example under WTO terms. So, yes, we're seeing a situation where the UK has, one, the freedom to regulate but that's come, I think, at something of a price, at least at the moment because trade will have greater friction, there'll be less access, it'll be more costly probably, and there'll be some delays.

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Now, one really important part of the negotiations was the so-called level playing field. So, the EU didn't want to see the UK develop as a low-cost producer competing on things like taxes and low regulation. Nick Brittain has already talked about that in terms of what might come in the future. The agreement tries to forestall the UK from exercising its regulatory freedom in a way that would undercut EU norms. So, it lays out some minimum standards in areas like subsidies, government support, labor and social standards, tax and competition, environment, and climate change.

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If the UK doesn't live up to the minimum standards in the eyes of the EU. Then there's a mechanism for the EU to move very quickly to impose tariffs on imports from the UK in a way that would undercut some of this tariff-free access. The EU has already put a warning shot across the UK bows; the UK authorized pesticide for limited use. It's a pesticide that is subject to regulation both in the UK and the EU but the EU noted that this was the kind of action which it thinks might involve undercutting EU regulations and lead to the EU invoking some of these clauses in the agreement.

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So, we have tariff-free access on the one hand. We have the freedom to regulate but that comes at something of a price.



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**Sam Gandhi:**

Where do you go from here? Meaning there still seems to be, as you said, quite a lot of friction, a lot of things to do but it seems like the two regions are like boxers eyeing each other about what's going to be next as opposed to what you normally see in these trade deals which is kind of a new step forward where both sides seem pretty satisfied. Is the relationship set for the long-term satisfaction of both sides at this point?

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**Nicolas Lockhart:**

Well, first off, where do we go from here? I think what we're going to see is a process of adaptation. So, exporters on both sides are going to get to grips with the paperwork that has to be filled in now to export goods with the requirements that apply to their goods. I think you mentioned the challenges that fisheries exporters have faced and they're not alone. There have been a number of other examples like that in the press. I think we'll see a process of adaptation where business gets used to the new requirements and so I think we'll see a smoothing out of trade in the short-term under the terms of the new deal. But where do we go from here in the medium term and is this a done deal? I think the answer is probably no and that flows from the fact that the parties have created this dynamic agreement.

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There is, I think, quite a lot left to be done. So, there's further work in many areas which is almost built into the trade agenda on things like data protection, financial services access, fisheries, energy. In all of these sectors there's kind of a built-in agenda for further work to see whether we will improve the terms of market access.

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There's also an automatic five-year review within the agreement. So, the whole thing is up for reconsideration after a five-year period. Then I mentioned as well that there's a partnership council, which creates the opportunity for negotiation of developing relations both in the areas that I just talked about and in other areas. So, for example, we could see negotiations to smooth out the border controls for health and safety. We could see negotiations to improve services access, things like mutual

recognition of professional qualifications or financial services, whatever it might be.

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So, I think the short answer is the UK has had something of an ambivalent relationship with its European trading partners going back to the very beginning of the European steel and coal community in 1952, and they stayed out for the next 20 years. Then they were in between 1973 and 2020, and I think what we see now is if you look at this in the long-term sketch, we see essentially the parties entering a new stage of that relationship where they're going to continue talking about how best to foster economic relations between them. But this isn't an issue that's going to go away either for business or for politicians.

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**Sam Gandhi:**

Are there specific timetables for addressing some of these issues in the near-term?

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**Nicolas Lockhart:**

Yes, there are specific timetables for addressing some of these issues. Maybe not firm, kind of set in stone, deadlines but certainly expectations. For example, on data protection there's a transitional period, which is set out in the agreement. I think it runs for three or four months and at that time it's expected that the EU will make what's called an adequacy ruling one way or the other to allow data flows between the UK and the EU. That'll be a very important decision for the relationship.

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Likewise, in the area of financial services and Nick Brittain, I'm sure, can speak more to this. But in the area of financial services there's a whole host of different service areas where the EU is set to make what's called equivalent decisions which will determine the access of UK financial service suppliers over the course of this year. And in fisheries as well. There's a built-in agenda with a timetable, and I think the same goes for energy.

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**Sam Gandhi:**

Nick Brittain, we talked a little bit about the UK's attitude towards the EU. What's the EU's attitude towards Brexit now that it's actually here?

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**Nick Brittain:**

Well, on a sort of personal level some of the Europeans that I know are a bit sad and slightly puzzled as to why we did this to ourselves. I think some of us in the UK are still a bit puzzled as to why we did this to ourselves, but I think on that personal level a lot of people were sad to see the UK go, but they want to get on with it, and I think there's a certain amount of frustration as to how long it was taking.

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**Sam Gandhi:**

How will this affect regulations for businesses across the EU?

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**Nick Brittain:**

Well, I think as Nic Lockhart said, the trade and cooperation agreement is wide ranging and contains some detail. It's thin in places and comprehensive in others about the continued business relationships but it seems to me that there was an attempt to be as comprehensive as possible and to give as much freedom as possible to the parties within the constraints of each political agenda.

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My reading is that the EU political agenda was to preserve the level playing field and make sure that there isn't an incentive on other member states to leave, and if the UK is an example of getting preferential trading treatment then I think that would be difficult for the EU politically. So, at the moment, the basic answer to your question how will it affect regulation of business across the EU, the regulation hasn't substantially changed in each country. We're still subject to broadly the same regulatory regimes. There are just issues that arise from the UK no longer being a member state. So, Nic Lockhart referred to equivalence.

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In some areas where businesses are heavily regulated, the UK will have lost its automatic right to conduct that regulated business, but there are mechanisms in some areas where an equivalence decision can be made by the EU to effectively allow UK entities to have access to business or regulated business in the EU. Unfortunately, equivalence doesn't cover every area. It's not the same as the passporting rights that regulated entities had in the EU before we left. But it does go some way to allowing UK businesses to continue to conduct regulated business. But it is quite apparent that the EU is trying to protect its own markets and has not made many commitments to equivalence decisions.

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It certainly hasn't committed to an equivalence decision in financial services. There is a political declaration, which is non-binding, attached to the TCA, which gives a standard for the EU and the UK governments to discuss cooperation between the relevant regulatory bodies. There will be a memorandum of understanding produced on that by March but no commitment at this stage for the EU to commit to an equivalence decision in financial services or many of the other regulated areas.

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**Sam Gandhi:**

Let me follow up with you, Nick Brittain, on one thing, which is we talked about what Prime Minister Johnson had said. That the country had freedom in its hands but in reality what you and Nic Lockhart are talking about is a trade agreement in which the UK has broken away from the EU but in reality they're still kind of tied together to some degree, and they can't have all the freedom that maybe they want even under this agreement. Is that ever going to be really, truly acceptable to the people that truly wanted and drove Brexit?

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**Nick Brittain:**

I think there needs to be a certain sense of realism. Nic Lockhart referred to it earlier that you can have freedom and sovereignty but there's a cost. I think the people who wanted the freedom will have to realize that if we want to create a looser regulatory regime to encourage business then the cost of that may be more restricted ability to do business in Europe, and that's a

political decision that the government can make and it's free to make. But if it wants to continue trading with the EU then there are voluntary decisions it needs to make within the framework of the TCA to make sure that there is a level playing field and the two regimes for business are equivalent and remain in parallel. So, there's a cost to everything. That's much like life really, isn't it? You can't have your cake and eat it.

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**Sam Gandhi:**

And Nic Lockhart, just talk about that trade agreement again and the unusual features in the sense that typically when we see trade agreements they're meant to bring countries or regions together to be able to trade more, whereas in this case this one seems to be doing the opposite. This trade agreement seems to be pulling people apart as opposed to making it easier to trade and that's probably the nature of Brexit. How does it move forward in terms of this particular trade agreement?

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**Nicolas Lockhart:**

Sam, I think whether we look at this trade agreement as pulling people apart or putting them together, as taking away opportunities or creating opportunities is really a question of perspective. Nick Brittain mentioned that the withdrawal agreement, which we talked about last year, was the divorce agreement, and this agreement is the agreement that is intended to be forward looking and put trade relations on a new footing for the future. So, I think from the perspective of this agreement, the alternative was trading on what's called WTO terms that would have been much less favorable than the terms under the TCA, which the UK and the EU have just agreed.

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So, when you look at it from that perspective, I said earlier, there are the two poles. There's the old single market, which was seamless trade, and then there's WTO terms at the other side, which would have involved considerably more friction. We're in between those two poles. We have more friction than we had before and in that sense this is unusual. But we have less friction than we would have had on WTO terms. So, in that sense, this is a perfectly usual trade agreement.

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I think there are other ways in which this is also a very usual trade agreement and that is that both sides have walked away from this agreement with a sense that they achieved the things that were probably most important to them. For the UK, that was regulatory sovereignty, the ability to forge an independent trade policy, the ability to forge its own independent, domestic regulation and the UK has preserved all of that.

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What they've got is tariff-free access to the EU market. They've got broader tariff-free coverage than any of the other EU's trade agreements. So, in that sense, it's a really good thing for the UK. But there's more friction than there would have been otherwise. So, as Nick and I have both said, the regulatory freedom that the UK has won through Brexit, both for its domestic regulation and for international trade policy, comes at a price in terms of its relationship with the EU.

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From the EU's perspective, they walked away with some assurances about the level playing field and that was really important for the EU. They were not willing to give tariff-free access to an important economy like the UK economy on its shores if they were going to face what the EU regarded as unfair regulatory competition. So, whilst the UK has preserved that regulatory freedom and they can put in place rules that would involve regulatory competition with the EU, if they do that then they will lose some of that tariff-free access to the EU.

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So, I think it's a complex balance where both sides were able to walk away with the sense that they had achieved what was important to them in this negotiation. Then finally, as I've said, it's a dynamic agreement. So, each side has achieved what was important today, but they've created a framework, what an EU law for an agreement of this type is called a privilege link, where they can move forward together in this partnership to develop the relationship if that's what they each want to do.

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**Sam Gandhi:**

If you were advising a company based in the UK, how do you advise them in terms of how to do business with the rest of the EU at this point?

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**Nicolas Lockhart:**

Well, I think the short answer to that question, Sam, is that you're going to be doing business most likely with more paperwork, more cost, and more delay. Probably not significant. It's probably not going to prevent you from exporting goods that you used to export, at least if you're in the goods sector. But it is going to be a little bit more difficult than it was in the past.

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The longer answer is how you do business with the EU from the UK will really depend on what you're selling. So, when you're selling goods, as I said, you're going to have to start thinking about whether your goods meet rules of origin requirements. Do you comply with product standards? Have you filled out the right paperwork to get your goods across the border? Sometimes, that's going to be significant. So, when it's health and safety, things like food. Then that could imply some more considerable burdens than you had in the past.

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Actually, a lot of the press that we've seen around the teething issues has been food related. So, you mentioned fish. There was a report last week of a truckload of crisps, what you call over there chips, being stuck for two days trying to get into Northern Ireland. There was a report of sandwiches being confiscated. So, definitely more friction and you definitely want to make sure that you understand the rules that apply to your goods when you're trying to get them over the border.

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If you're in a services sector, it's perhaps a bit more complicated because the agreement doesn't really lay out a lot of the rules, and so as Nick Brittain put it earlier, you don't have an automatic right to trade the way you did in the past, and I think we're still waiting to see exactly what some of these services rules might look like. You need to make sure that you have

the right licenses and the right permissions to provide services cross border.

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**Sam Gandhi:**

Nick Brittain, what we saw in the lead up to the TCA was that we saw a lot of anxiety in the markets and then the FTSE 100 surged upon the news of the Brexit deal. Clearly, the market was way down from the impact of the lockdowns in the UK but also the lack of this trade agreement. But now that the trade agreement is done and you're seeing the larger picture now, has Brexit ultimately made the UK more desirable from an investment standpoint?

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**Nick Brittain:**

That's a very difficult question to answer so early in the game effectively. As Nic Lockhart was saying, at the moment there's a lot of focus in the UK, certainly in the UK press about what are probably, at least I hope, are teething issues in a new trade relationship. If you compare how easy it was to do business with the EU last year with what's happening this month then it doesn't seem particularly positive. There is some friction, but you perhaps have to compare the UK now with a non-EU country trading with the EU on terms of a broad and comprehensive trade and cooperation agreement. The legal requirements in the UK for investment either from outside the EU or from the EU into the UK haven't changed.

It's pretty much the same regulatory regime, the legal structures haven't changed. The freedom that the government might exercise to make the UK more attractive hasn't yet been implemented and there isn't currently any material proposals, I think, to implement those changes yet. We simply don't know how attractive the UK is going to become more than it currently is. Again, it's very early in the process to say but the UK and especially London's got very good infrastructure, really good skillset and now has the potential to, at a cost, as we referred to earlier to how easy it is to trade with the EU but we do actually have the freedom now to implement regulatory structures, legal structures, and cooperation agreements with other countries that would make the UK even more compelling an investment than it was before.



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**Sam Gandhi:**

You're listening to the Sidley Podcast. We're speaking with Sidley Senior Counsel Nick Brittain and Sidley Partner Nicolas Lockhart about how the new Brexit agreement will impact regulations, trade, and investment in the business world. I want to talk a little bit about the uniformity of the regulatory regime between the UK and the EU and Nick Brittain, let me come back to you about what does this agreement mean for European Courts of Justice and other disputes?

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**Nick Brittain:**

It was one of the political goals of the May government and the new Johnson government when that was elected to make sure that European Court of Justice no longer had any jurisdiction over the UK. So, that was one of the bright lines of the trade and cooperation agreement. The ECJ doesn't have jurisdiction anymore. There are transitional provisions to allow for decisions of the ECJ to impact on decisions of the UK courts but those are quite complicated rules and they're designed to make sure that we can break away from that precedent.

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**Sam Gandhi:**

We talked a year ago about a significant concern, which is travel and that continues to remain a significant concern both for UK and EU nationals. How are things going to change with regard to travel in the aftermath of the Brexit agreement? Can people continue to move freely between the UK and the rest of the EU?

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**Nick Brittain:**

Basically, yes. It depends of course what you're going to do. If it's tourist travel if you are a UK citizen or resident going to the EU, you can stay for up to 90 days within any 180-day period not necessarily consecutive. If you want to stay for longer than that you may need a visa. Within that, you can conduct some business activities but it's fairly limited. If you are going for pure business travel, you may need a visa within that 90-day period. If you're going there to work for more than 90 days in any 180-day period then you may well need a visa or work permit. That is really decided on a

country-by-country basis. There's very good information on UK government websites as to what the particular requirements are.

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One thing to bear in mind though if you are traveling to the EU to conduct business, if it's something that requires a professional qualification, for instance being a lawyer or auditor or architect or any activity in a regulated industry then it isn't automatic that UK professional qualifications are recognized in EU jurisdictions. So again, you need to look that up on a case-by-case basis to see whether the activity that you are going to go conduct professionally requires recognition of your qualifications.

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In terms of the other direction, in terms of EU nationals coming to the UK it's broadly the same except it's a six-month period rather than a 90-day period. So, it seems that travel to the UK from the EU is slightly easier than travel from the UK to the EU.

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**Sam Gandhi:**

Let me follow up on one very important thing. What about roaming charges? There was a rumor that the UK would no longer be subject to the ban on roaming charges when EU cell phones come into the UK. What is the status of that?

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**Nick Brittain:**

I'm not entirely sure, to tell you the truth. You're right that we're no longer bound by the EU legislation that prevents it. Whether the phone companies have gotten used to not charging roaming charges and decide to keep that policy going remains to be seen, but we are, I think, free from that requirement, which is a shame because it's a nightmare, isn't it, to go on holiday to the EU and receive a 100 pound bill because your kids have been playing Minecraft on their mobiles but maybe that's a small price to pay.

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**Sam Gandhi:**

Nic Lockhart, a year ago we spoke about the nuances and the special case of Northern Ireland. Northern Ireland under this agreement will continue to have a different relationship with the EU than the rest of the UK because it will remain in the EU single market for goods. So, what is happening under this agreement with Northern Ireland? Should the U.S. and specifically the new President Biden be concerned?

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**Nicolas Lockhart:**

The situation of Northern Ireland continues to be regulated by the withdrawal agreement, which we talked about last year. That was the divorce agreement. The issue with Northern Ireland is border checks between Northern Ireland and the Republic of Ireland, which together form the island of Ireland. The reason that those border checks are an issue is because of the Good Friday agreement from 1998, which brought to an end decades of political conflict in Northern Ireland.

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Now, under that Good Friday agreement, the two countries, so the United Kingdom and Ireland, have committed that there will be no hard border. There will be no border checks. There will be no red tape at the border between Northern Ireland and Ireland. And complying with that aspect of the Good Friday agreement was obviously easy when the UK and Northern Ireland were part of the EU single market because there was no border.

The situation changes now when the UK has left the EU and as we've talked about already today, there are now all kinds of requirements for border checks. So, that would mean that in principle when goods are exported from Northern Ireland to Ireland that they should be subject to border checks.

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So, the solution to this problem, the way that the circle was squared, if you like, between the new trading relationship and the Good Friday agreement was that Northern Ireland would remain obviously part of UK sovereign territory but that in terms of the trading relationship between the UK and the EU, Northern Ireland would be effectively part of the single market. Now,

what does that mean in practice? What that means is that there's no border when goods move from Northern Ireland to Ireland, but there is, if you like, a regulatory border when goods move from the rest of Great Britain to Northern Ireland.

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So, all of a sudden from 1 of January this year we've seen border controls effectively be applied to movements of goods from Great Britain to Northern Ireland and a number of press reports have highlighted the difficulties that that has created. I mentioned earlier that there was a lorry load of crisps that sat for two days trying to get into Northern Ireland because these goods coming from Great Britain did not have the right paperwork to get into Northern Ireland.

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There have also been reports actually of shortages of supplies to supermarkets in Northern Ireland, again, for similar reasons. So, I think in the short-term the new arrangements are obviously posing a challenge for suppliers into Northern Ireland from the rest of Great Britain as they learn to comply with the new requirement. I think it's to be hoped that these will be, as both Nick and I have said, teething problems but the fact remains that exports from Great Britain to Northern Ireland will be treated like exports to the European Union and that means that that trade will be subject to these border controls that we talked about earlier. It will not be a friction-free trade as you would normally find within a single sovereign territory.

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Instead, it will be as if you were trading between two different countries when you go from Great Britain to Northern Ireland. Last year, we talked about whether that could create economic opportunities within Northern Ireland. I think as we see how this plays out in practice the jury is very much out as to whether or not that will happen. And I think the mindset that said that was a possibility I think was based on the idea that the UK as a whole would probably have slightly more friction-free trade with the EU so there would be less of a difference in exporting from Great Britain to Northern Ireland than there is now.

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So, there are I think probably more barriers than were expected but hopefully traders will quickly come to terms with what that means. To your question about whether that should be a concern for the U.S., I mean I think in terms of international relations, I think everybody has been focused on ensuring the successful and continued implementation of the Good Friday agreement. So, security in Northern Ireland I think is the most important factor, which politicians have been focused on, whether that's in the EU, in the UK, or in the U.S. and elsewhere. I think whilst the arrangements that have been developed for Northern Ireland are unusual, I think they are well adapted to ensuring the continued performance of the Good Friday agreement.

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**Sam Gandhi:**

What are the prospects for individual trade deals between the UK and other countries, particular the U.S.? And how should American companies be positioning for this? Is there continued lobbying going on of the UK done with the EU and now moving on to other countries?

00:44:10

**Nicolas Lockhart:**

That's a really important part of why the UK decided to leave the EU was the ability to forge its own independent trade policy and the UK has been very active in this area in parallel with negotiating the trade and cooperation agreement with the EU. In fact, the UK has already signed 34 trade agreements with 91 countries. So, many of these are what's called continuity agreements, which effectively replicate or roll over the terms of existing trade deals between the EU and a third country. Where the UK would have lost the benefit of that deal when it exited the EU. So, what they've done is they've negotiated directly with the third country and they've rolled over the terms of the EU deal to give continuity and stability to business. They've done a great job in that.

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They've also started down the path of negotiating new trade deals with third countries from scratch. They've concluded one with a major trading partner in Japan, so what that means is as we stand today, the UK has quite a number of trade agreements with third countries, and I include the EU in

that but also Canada, I mentioned Japan, Korea, Singapore, and the UK is now in the process of negotiating with other significant trade partners.

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So, you mentioned the United States, but also with other countries like Australia, New Zealand, and I think the plan is to launch negotiations this year on a new deal with Canada. The big question for these trade deals is whether these trade deals can make up for what's lost with the EU. So, stepping out of the EU single market and entering into this new relationship with the EU implies, as we've said, a little bit more friction at the margins, a little bit less economic opportunity. The question is whether these other trade deals can replace what's lost or go further than that and put the UK in a better overall position.

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Now, there are a number of estimates for the potential cost of losing the single market access but they run to somewhere around five percent, sometimes more, sometimes less of GDP over an extended period. The UK government has provided its own assessment of the potential benefits of these trade deals with third countries and based on those assessments, I think we can question whether these trade deals with third countries will replace what's been lost with the EU. So, to give you a couple of examples, the UK's assessment of the 15-year benefit of a trade deal with the U.S. is between 0.07 and 0.16 percent of GDP. With Japan it is 0.07 percent. With Australia it is 0.02 and with New Zealand it is close to zero is the assessment.

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Now, these are small numbers in overall GDP terms. That doesn't sound like they would replace everything that might be lost but these are still numbers that imply billions of dollars' worth of trade. So, they do represent important opportunities for business in terms of how the UK forges its new, independent trade policy and so how should business be positioning itself. You asked about lobbying by business. Now, that's a normal part of trade negotiations is that commercial stakeholders let government know what they need to see in a trade agreement in order to increase their export sales, whether that's goods or services.

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Then in the negotiations, the government would aim to tailor the rules to try to promote the interests of its own commercial stakeholders. So, business on both sides of the Atlantic and business generally that is vested in the UK should be active at the moment in speaking to its government stakeholders about what they need to make for more friction-free trade. Whether it's between the U.S. and the UK, or the UK and Canada, UK and Australia. These are opportunities for business to create a new generation of trade rules that will foster their business development.

00:48:46

**Sam Gandhi:**

Nick and Nic, I want to end with both of you on the implications you see for businesses. Despite the remaining uncertainty, the bureaucracy and other wrinkles that still remain, to what extent do companies see an opportunity in Brexit? Let me ask you both also, do you think someone has won in this? Has one side won over the other in these negotiations?

00:49:09

**Nick Brittain:**

Taking that last question first, I think that perhaps we can use the divorce analogy. Nobody wins. I think the best you can hope for is you part as friends. I hope we have with the EU. I think the media and perhaps politicians like to talk about it as one party having won over another. As Nic Lockhart said, and I'm sure I agree with him, there were bright line points that the UK wouldn't concede and they got most of those. There were bright line points the EU wouldn't concede and they got those.

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So, I think we can say that out of that agreement the salient points were covered. I think there is some disappointment in the UK, certainly in the financial services community that that wasn't covered by the trade cooperation agreement. In terms of whether businesses are seeing opportunities, I think it's difficult to say at this stage. It's very, very early in the process, as I said earlier. Most of the advice that we're giving and the questions that we're being asked relate to preserving business rather than taking advantage of business prospects.

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So, in some industries, although it's not politically a very popular conclusion to come to, many businesses have decided to open branches or separate establishments in the EU so that they can continue to do business with the EU. But as Nic Lockhart was saying earlier, the real opportunities will arise from new trade agreements that the UK is now free to conduct with other countries and potentially a relaxation of regulatory rules and presumably less red tape, which will free up business. I don't think, at the moment, we can say which direction those changes are going to go in, but it is definite in my view that there will be opportunities and where in which the UK business community conducts itself it will find those opportunities and make the most of them, I hope.

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**Nicolas Lockhart:**

Sam, I think on the first question, whether one side has won, like Nick Brittain, I don't think of it in those terms. I think both sides will feel that they've accomplished their key negotiating objectives. They have achieved their key red lines and they've established a basis for future cooperation in this dynamic agreement. So, I think it's a stable base for the time being and it holds out the opportunity for further negotiations.

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In terms of opportunities, I think on the UK side there may be opportunities when it comes to the rules of origin.

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To meet the rules of origin, a UK producer might consider changing the way it produces the goods in order to benefit from tariff-free access to the EU if that's sufficiently worthwhile. Now, there'll obviously be situations where it's better just to pay the duties on import into the EU because it's not a sufficiently big part of the trade. But there will be other cases where it is worthwhile for the UK producer to look at the supply chain and to consider changing the supply chain.

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So, in those situations the economic dislocation that the rules of origin create will create opportunities for somebody within the UK or possibly the EU to fill out the supply chain and enable tariff-free access to be enjoyed



for that good. Second area of opportunity for UK business is, as Nick Brittain said, in the case of trade with third countries. So, we've talked about how the UK is now at the early stages of shaping its trade policy for trade with third countries, and we've talked about how that will be done in a way that will try to enhance opportunities, economic opportunities for UK exporters of goods and services.

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So, there's an opportunity for business to engage with the UK government. The UK government is listening attentively to the needs of business and to try to shape these free trade agreements that the UK is negotiating, like with the U.S., in ways that create new economic opportunities. That will be particularly the case, I think, where the UK is negotiating an agreement where it gets a step ahead of EU competitors either because it reaches a deal with a big economy where the EU doesn't have a deal yet, so that could be the U.S., or where they just get better terms of access. The UK gets better terms of access than the EU currently has.

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So, there are some opportunities there on the UK side. On the EU side I think there are also opportunities. So, I mentioned one in terms of helping meet rules of origin requirements where those are currently met by inputs from third countries. That's also a potential opportunity the way the rules work for EU suppliers. But there will also be opportunities, and I'm sure EU politicians are looking at this carefully, for EU suppliers to replace UK suppliers in trade within the EU. So, if we take, for example, financial services and the equivalence decisions that are coming this year, to the extent that the EU's decisions make it harder for UK suppliers to supply financial services to the EU, that creates opportunities within the EU for those services to be supplied by EU service suppliers.

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We have seen in the past four years since the referendum, we have seen, as Nick Brittain said, establishment of entities within the EU to effectively take advantage of those opportunities from the EU side, and we've also seen some business moving from the UK to the EU. Early this year, I think there was a significant flow of trade on one of the exchanges that moved almost overnight from London to Europe.

00:55:42

**Sam Gandhi:**

We've been speaking with Sidley lawyers Nick Brittain and Nicolas Lockhart about how the new Brexit agreement will impact the EU and the UK in terms of trade, regulation, and investment. Nick and Nic, thank you for joining us. This has been a great look at how Brexit will shape business going forward after a lengthy process.

00:55:59

**Nick Brittain:**

You're welcome, Sam.

00:56:00

**Nicolas Lockhart:**

Thank you. It was a pleasure.

00:56:03

**Sam Gandhi:**

You've been listening to the Sidley Podcast. I'm Sam Gandhi. Our executive producer is John Metaxas, and our managing editor is Karen Tucker. Listen to more episodes at [Sidley.com/SidleyPodcast](https://www.sidley.com/SidleyPodcast), and subscribe on Apple Podcast, or wherever you get your podcasts.

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