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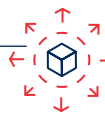

BREXIT CHECKLIST: KEY IMPLICATIONS FOR BUSINESS



As the deadline for the UK’s withdrawal from the EU approaches, and Brexit negotiations continue, it is vital for companies to address the challenges to their business. We have identified the **key areas** that will be impacted by Brexit, whether there is a UK-EU Free Trade Agreement or a “no deal” Brexit; and outlined recommendations of what to consider for each of these areas. Forward planning in each of these areas is essential.

Baker McKenzie’s dedicated team can help you assess the impact of Brexit on your business. Please contact one of our specialists (contact details below) for further information.

For an assessment of the implications of the Transition Period, please see our separate detailed publication on the **EU Withdrawal Agreement**.

Area	Key issues	Recommendations
Customs 	<p>Tariff impact</p> <ul style="list-style-type: none"> No deal situation: UK and EU will trade as 3rd countries (on WTO terms). Introduction of duties on goods shipped from UK to EU (and vice versa) If an EU-UK Free Trade Agreement (“FTA”) is concluded, duty relief will be available for shipments between EU and UK but only for “originating” goods (i.e. goods wholly obtained or substantially worked or processed in UK or EU). Still much less favourable situation than the current Single Market/ customs union. Loss of duty relief under EU FTAs on import into UK. <p>Non-tariff impact</p> <ul style="list-style-type: none"> Administrative burden of customs declarations on goods shipped from UK to EU (and vice versa). Proof of origin needed to claim benefit of duty relief under EU/ UK FTA (assuming one is agreed upon). Complex administrative burden. 	<ul style="list-style-type: none"> Understand supply chains; where goods are moved from and to (including third countries, UK and EU); and what manufacturing takes place in the EU/ UK. Calculate additional duties and financial impact on supply chains and consider how to mitigate this. Scale up customs team/ expertise.
Product Regulatory (see separate section below for Pharma) 	<ul style="list-style-type: none"> UK companies no longer qualify as EU importers placing on the market for product regulatory purposes, so related product compliance obligations and liabilities transfer to current EU distributors. UK conformity assessment bodies lose their status as accredited entities for product conformity assessments. UK companies can no longer hold EU chemical (REACH) registrations and companies will need to comply with the new UK REACH regime. Products subject to one of the EU’s CE marking regimes which are not placed on the EU market before Brexit and which are intended for the UK will, post-Brexit, need to obtain a UK Conformity Assessed (UKCA) marking. 	<ul style="list-style-type: none"> Assess supply chain for risk of EU distributors acquiring importer status with related product compliance obligations and liabilities. Make arrangements to transfer to EU-27 conformity assessment bodies. Plan to transfer chemical registrations and compliance (‘only representative’) roles from UK to EU entities. Verify EU and UK supply chains (including where REACH registrations are currently held) to determine whether action is required to ensure continued EU and UK compliance Consider whether UKCA marking is needed for new products placed on the UK market.

Area

Key issues

Recommendations

Immigration



- Under the Withdrawal Agreement that was reached with the EU in November 2018 and the provisions on Citizens' Rights, EU nationals currently living in the UK or who enter at any point during the transition period will be allowed to remain in the UK on a long term basis. They will be able to apply for "pre-settled status" if they have been here for less than 5 years or "settled status" if they have been here for more than 5 years.
- The UK Government has also set out how it intends to deal with EEA nationals (including all EU citizens and Swiss nationals) coming to the UK post-Brexit in the event of Britain crashing out of the EU with no deal. The Home Secretary, Sajid Javid, reiterated that in this situation individuals here before Exit Day will have their right to remain protected by the new EU Settlement Scheme. However, if there's no deal, EEA nationals and their family members arriving after the 29 March won't benefit from this scheme. Instead, for a limited period, they will be able come to the UK for visits, work or study – in much the same way as they do now – but crucially they will only be able to remain here in that capacity for 3 months. In this respect, if they wish to remain for a longer period, they will need to apply for and obtain European Temporary Leave to Remain. Under this new category of leave, which has been created specifically for a "no deal" scenario, EU nationals will be granted permission to remain for a 3-year period. The full details regarding this scheme haven't been released, but the Government has confirmed:
 - Applicants will be subject to identity, criminality and security checks before being granted permission to stay
 - Non-EEA family members wishing to accompany an EEA national under these arrangements will need to apply in advance for a family permit
 - EEA nationals will be able to enter and leave the UK as they do now, using e-gates when travelling on a biometric passport
 - EEA nationals will be granted the initial 3-month period of leave free of charge, but there will be an as yet undisclosed fee to apply for European Temporary Leave to Remain

These provisions fall outside of the special arrangements that exist between Ireland and the UK. Therefore, Irish citizens won't have to apply for European Temporary Leave to Remain and will continue to have the right to enter and live in the UK under the Common Travel Area.

EEA nationals wishing to stay for longer than 3 years will have to make a further application under the new skills-based system. The details of this scheme – which isn't due to begin until 2021 – have yet to be announced, but it is anticipated that it will be similar to the current arrangements that apply to non-EU nationals.

- In its White Paper in December the Government set out its plan to devise a "single immigration system" for skilled talent that will be equally applicable to non-EU and EU migrants alike at the end of the transition period. The aim is to create a system where "it is workers' skills that matter, not which country they come from". This is very much in line with the recommendations earlier in the year of the Migration Advisory Committee, but this is likely to cause difficulty for some employers that are reliant upon low skilled migrants from the EU. The Government plans to expand the current scheme to also include medium skilled roles (in addition to highly skilled workers) although this won't resolve the issue in relation to low skilled migrants. The Government also plans to reduce the impact of losing low skilled migrants from the EU, by allowing low skilled migrants from low risk countries (i.e. the USA, Canada, Australia) to enter the UK for a time limited period of up to one year, but they will then be subject to a "cooling off" period and prohibited from returning to the UK for 12 months.

- Employers should consider reviewing/amending their HR processes to ensure these are fully compliant with the obligations arising under a sponsor licence in case the business has to fall back upon the Points Based System arrangements when hiring EU nationals.
- It is still possible that if a wider trade deal is agreed with the EU that this may include some preferential treatment for EU nationals coming to the UK or British citizens going to the EU, but failing that we will fall back upon the local immigration requirements in each jurisdiction (as there is no EU wide system of immigration control for 3rd country nationals).

BREXIT CHECKLIST: KEY IMPLICATIONS FOR BUSINESS (3)

Area

Key issues

Recommendations

Services – general (includes audio visual)



General

- Under a 'no deal' scenario the UK will be trading services with the EU on the basis of the WTO's General Agreement on Trade in Services (GATS).
- Under WTO rules, impact for businesses will vary depending on which sector they operate. Some sectors will see limited to no change whereas in other sectors there will be additional requirements and standards and even a prohibition in the provision of certain services between the EU and the UK.
- If there is a deal between the EU and the UK, services will most likely be subject to a Free Trade Agreement (FTA) between the EU and the UK and impact will depend on exact content of that FTA.

Audio Visual

- Ofcom licensed broadcasters should consider restructuring their operations to secure an EU-27 broadcasting licence to maintain market access.
- UK broadcasters should secure IP protection for satellite broadcasts in individual EU Member States.
- UK production should quantify the impact of loss of EU financial support and look for alternative funds.

General

- Verify whether GATS removes restrictions in the provision of services in your sector.
- If it does not, check recent EU FTAs with third countries which cover services (like the one between EU and Canada) as an indication of what the EU will be willing to accept in a future EU/UK FTA.

Audio Visual

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Financial Services



- Firms must be ready for a no-deal Brexit, this should be on a worst case basis – if only undertaking the minimum steps.
- For EU-27 businesses that rely on "passports" to access the UK, in a no-deal Brexit, the UK authorities have announced temporary permissions regimes and measures around contractual continuity. For UK-based businesses accessing the EU-27, to date, the EU has announced limited transitional measures concerning derivatives and central depositories. Individual member states are expected to put in place additional measures.
- In the event of a deal with a Free Trade Agreement and an implementation period, businesses will have until (at least) the end of 2020 to prepare. Regarding market access, the UK proposes "enhanced equivalence" in place of passporting, which strengthens the existing EU concept of equivalence, although it will provide inferior access to that available now. Although the Political Declaration on the Framework for the Future Relationship aims to deliver a level of liberalisation in trade in services "well beyond" the WTO commitments, regarding equivalence it simply refers to each bloc's regulatory and decision-making autonomy, and their ability to take equivalence decisions in their own interest.

- Financial services businesses should monitor announcements from relevant authorities and maintain dialogue with supervisors over Brexit planning and contingency measures. The UK FCA has agreed MOUs with ESMA and EU regulators to allow cooperation and exchange of information.
- In the event of a no-deal, UK-based firms accessing the EU-27 should consider "workarounds", such as booking business to certain jurisdictions and using back-to-back transactions. Strategies need to be adopted to address issues around contractual continuity if carrying on regulated activities in the EU-27. Again, take steps to review and re-paper stationery and contractual documentation.
- EU-27 businesses to maintain UK market access should notify their intention to participate in relevant temporary permissions regimes to UK regulators and prepare to apply for UK licences. They should monitor proposed UK no-deal Brexit contingency legislation. Work-arounds for access may also be available (e.g. the UK's relatively generous Overseas Persons Exemption).

Commercial Contracts



- **Governing law:** English law will continue to be a good choice of law for contracts. Post-Brexit this will not change.
- **Forum for Disputes:** choice of English courts to resolve disputes may be problematic. Arbitration will continue to be a good choice as not impacted by Brexit.

- **Governing Law:** continue to use English law for contracts.
- **Forum for disputes:** if entering into a contract with a party in a different EU Member State consider if arbitration is a more appropriate forum to resolve disputes.
- **Defined terms in contract templates:** consider definitions currently used e.g. where territory is 'EU'. Incoterms may need to change if customs duties will be imposed. Reference to compliance with EU laws may need to include new equivalent UK laws.

BREXIT CHECKLIST: KEY IMPLICATIONS FOR BUSINESS (4)

Area

Key issues

Recommendations

Data Protection



- **General Data Protection Regulation (GDPR)** – Post-Brexit the GDPR will no longer directly apply to the UK, however the Data Protection Act 2018 will remain in force which incorporates the GDPR into UK legislation.
- **International data transfers** – if Brexit takes place according to the Withdrawal Agreement, an "adequacy decision" is anticipated to be made for the UK during the transition period (i.e. the EU would recognise that the UK provides an adequate level of data protection), allowing international data transfers between the EU and the UK. In the event of a "no deal", the UK would become a third country, so that any transfer of personal data from the EU to the UK would need to be covered by contractual safeguards such as model clauses. The UK could still get an adequacy decision but, in the interim period, organisations would need model clauses or binding corporate rules. In the absence of an adequacy decision the UK will maintain essentially equivalent levels of protection for personal data.
- In November 2018 the European Commission confirmed that if necessary, it will issue emergency legislation to cover data transfers from the EU to the UK on a temporary basis to avoid the need for contractual clauses.

- Continue to comply with the GDPR.

Intellectual Property



- **Trade marks:** the "UK part" of already registered EUTMs (European Trade Marks) will automatically be cloned into an equivalent UK trade mark registration with no, or (in case of a no deal Brexit) only minimal administrative burden for the owner.
- The remainder of the EUTM will still cover the EU-27. Owners of pending EUTM applications will have to actively apply in the UK for equivalent national UK trade mark protection under a yet to be determined mechanism and within a 9 month priority deadline.
- **Patents:** Brexit will not affect existing patent laws in the UK and Europe (EPC). Brexit could potentially affect the pending Unitary Patent (UP) and Unified Patent Court (UPC). However, the UPC project may be derailed in any case due to a constitutional challenge in Germany.

- Advice is to consider dual filings of UK trade mark and EUTM application from now onwards.
- Any existing and new IP licenses, agreements, etc., which include a definition of the EU (e.g., as the territory) should be checked to see whether this definition refers to the EU as constituted at the date of agreement or as constituted from time to time.

Tax



- **VAT:** The UK will retain a VAT system but, depending on the terms of its continuing relationship with the EU-27, VAT will be operated on the basis that the UK is a third country (subject to any contrary agreement with the EU).
- **Direct Tax:** Much of tax law falls outside the competence of the EU, and relatively few direct tax directives have been adopted by the UK. The UK's status as a holding company location could be affected by the UK losing the benefit of the Parent-Subsidiary and Interest and Royalties Directives, under which payments between EU resident associated companies who meet the relevant conditions can be made free of withholding taxes.

- **VAT:** Companies should carefully review their existing EU supply chain for goods, as movements of goods between the UK and the EU will become subject to import and export procedures and it will be necessary to consider having both a UK and EU import hub for sales in those territories. Distance selling rules will no longer apply to goods moving between the UK and EU.
- **Direct tax:** there could be a withholding tax cost on certain interest, royalty and (to a lesser extent) dividend payments between the UK and the EU-27 where currently there is none (e.g., a 10% withholding tax on interest payments between the UK and Italy), and this could mean that certain multinational structures need to be reviewed.

Export Controls



- There will need to be a new system for licencing of controlled goods moving from the UK into the EU and vice versa.

- Understand how your exports from the UK into the EU and vice versa will be affected by the new licencing requirements.

BREXIT CHECKLIST: KEY IMPLICATIONS FOR BUSINESS (5)

Area	Key issues	Recommendations
Sanctions	 <ul style="list-style-type: none"> UK will have a new sanctions regime. Multinational companies will therefore have to comply with a new set of rules when operating in the EU. 	<ul style="list-style-type: none"> Monitor developments around the introduction of the UK regime so as to be ready when the changes come into place.
Competition	 <ul style="list-style-type: none"> Compliance: the substantive application of competition law will remain essentially the same – the UK has confirmed that it does not intend to make fundamental changes to the existing UK competition law regime. Enforcement: potentially dual antitrust investigations by the UK CMA and EU Commission. There will likely be more cases where both the EU and the UK could in parallel open an investigation and impose fines and other remedies for anti-competitive conduct affecting both the EU and the UK. Merger control: the UK will no longer be part of the EU “one stop shop” for merger control. Large global deals with substantive UK issues may need to be notified separately to the EU and the UK. 	<ul style="list-style-type: none"> Businesses with activities in the UK and EU-27 will need to ensure that their agreements and practices continue to be EU and UK competition law-compliant. Consider cartel leniency strategy in light of potential dual investigations. Consider impact of dual UK and EU merger filings on deal planning and strategy.
Employment	 <p>Changes to current law: Few changes to employment law are expected (at least in short-medium term), whether a deal is reached or not. The main areas we may see changes are:</p> <ul style="list-style-type: none"> European Works Councils – the current EWC regime will only be able to continue with the EU’s cooperation. Employee share schemes – in a no-deal scenario, it is unclear whether exemption(s) from FSMA and Prospectus Rules will continue to be available to companies headquartered or listed in the UK offering share plans to EU employees (and vice versa). In relation to offers made by UK companies to EU employees, the issue is likely to be short-lived, as the EU is implementing an exemption from 21 July 2019 that will apply to such offers. Social security – current rule that employees posted between countries can remain on their home country social security regime for up to 2 years may no longer apply as, unless agreed otherwise, the rules on social security will revert to those already in place between individual countries. 	<ul style="list-style-type: none"> EWCs – Employers should review their EWC agreements to assess what impact Brexit might have and make changes accordingly, e.g. consider moving the EWC’s central management (if currently based in the UK). Employee share schemes – companies should consider whether other exemptions to the prospectus requirements are available or, in the case of UK headquartered companies planning to issue shares to UK employees, consider amending the timing of the offer. Social security – companies should identify any affected employees and, once we have more clarity about what will happen, review its impact on those employees.
Pharmaceuticals and medical devices	 <p>EU Compliance – European Medicines Agency (EMA)/EU Commission position:</p> <ul style="list-style-type: none"> Assume UK = 3rd country from 30/3/2019. Brexit = no excuse for non-compliance (e.g. still fulfilling EU function such as batch-release/using a UK-based Notified Body). <p>UK Compliance – Medicines and Healthcare products Regulatory Agency position:</p> <ul style="list-style-type: none"> Updated “No deal” guidance and draft legislation has been released, covering a much wider range of issues, including providing that the MHRA states it will automatically “grandfather” existing marketing authorisations etc., to be valid under a standalone UK system. 	<ul style="list-style-type: none"> Companies with Centrally Authorised Products (CAPs) held by UK entities or with MRP / DCP products with the UK as the RMS, should be transferring them to the EU-27. Medical device companies using UK notified bodies should check those notified bodies have a presence in the EU-27 or consider transferring to one that does (e.g. BSI).

Urgent next steps: UK Department of Health is engaging with both pharmaceuticals and medical devices companies regarding six weeks' stockpiling to help alleviate any product shortages in event of "no deal". Draft legislation prepared by the government also provides for emergency substitution powers for pharmacists in the event of medicine shortages due to Brexit, and the Health Minister Matt Hancock has said that medicines will be prioritised above food in the event of a chaotic Brexit.



Brexit

How We Can Help

Baker McKenzie's dedicated team can help you assess the impact of Brexit on your business. We have identified the key challenges that you should be considering as part of your Brexit strategy. Please contact one of our specialists for further information.

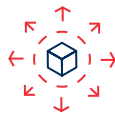
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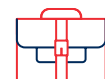
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