

EU Advises Businesses to Ramp Up Brexit Preparations

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BREXIT CONTINGENCY PLANNING: ISSUES FOR BUSINESSES TO CONSIDER

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& Plimpton**

Businesses have been working on contingency plans in preparation for the UK's expected exit from the EU on 29 March 2019. Despite the UK and the EU reaching an agreement in principle on a 21-month transitional period to run until 31 December 2020 (see our [client update, "UK and EU Agree in Principle to 21-Month Brexit Transition Period"](#)), a number of issues remain open, including the nature of the UK's future relationship with the EU and its implications for cross-border trade. With a view to finding common ground on these open issues, on 12 July 2018 the UK government published its [White Paper](#) on "The Future Relationship Between the United Kingdom and the European Union", setting out its negotiation position regarding the EU-UK relationship after 31 December 2020 (for a summary of the White Paper, see our [client update, "No Divorce—A New Cross-Channel Relationship? The Implications for Business of the UK's White Paper on Its Future Relationship with the European Union"](#)). In recent weeks, however, businesses have become increasingly concerned that the UK and the EU may not agree on those open issues in time for the UK's exit from the EU, in part because of disagreements in the UK government on the type of future relationship that it seeks, and that there will be no transitional period and instead a cliff-edge, or "no-deal", Brexit in March 2019.

The European Commission has responded to the uncertainty by advising businesses operating in the EU to move from "contingency planning" towards "preparedness measures" to mitigate the impact of Brexit regardless of whether any transitional arrangements come into force; in its [communication](#) issued on 19 July 2018, the Commission emphasised that "[p]reparation must therefore be stepped up immediately at all levels and taking into account all possible outcomes".

Member States and national and regional authorities will be adapting the legal framework over the coming months to assist with the Brexit preparations being made by businesses. Indeed, several Member States have already developed tools to support

firms' preparations for the UK's withdrawal from the EU, such as the Irish website 'prepareforbrexit.com' that enables SMEs to assess their exposure to Brexit.

Below, we highlight four specific challenges addressed by the Commission in its communication for which all businesses active in the EU should prepare.

Customs. If the UK leaves the EU without customs arrangements in place, it will become a third country subject to the EU's rules for both exports to, and imports from, the UK from 30 March 2019. In contrast to the current situation, the customs formalities that apply to trade with non-EU countries will apply, including the submission of customs declarations for goods shipments and related controls to ensure compliance. Duties and taxes, including VAT, will also apply.

While the Commission is working with customs authorities in Member States to make appropriate changes, businesses (in particular companies that currently only trade within the EU) should prepare for shipments of goods from and to the UK to be subject to customs procedures and controls, including the payment of duties and taxes.

Financial services. In the UK government's recent White Paper on the future relationship between the UK and the EU, the UK government stated for the first time that following the UK's withdrawal from the EU, it "can no longer operate under the EU's 'passporting' regime" on the basis that this is an "intrinsic" part of the Single Market. UK-based market participants who need to have passported access to EU investors from April 2019 should submit appropriate applications to another EU regulator without delay, assuming that they have an EU27-based firm with sufficient substance and qualified personnel to do so.

Personal data. The UK government's White Paper outlined an intention to cooperate with the EU to ensure personal data can continue to transfer freely between the UK and the EU27 post-Brexit. Assuming that no substantive changes are made to the UK Data Protection Act 2018 that recently came into effect to implement the GDPR, the EU is likely to adopt an adequacy decision that permits the transfer of personal data to the UK without restrictions. The EU Commission highlighted, however, that the EU can only take this decision after the UK becomes a "third country". Businesses should therefore prepare for this window between the UK's withdrawal from the EU and the EU's adequacy decision, during which the transfer of personal data from the EU to the UK, as a "third country", will only be possible if specific conditions prescribed by EU law are satisfied.

Professional qualifications. The EU legal framework provides for a facilitated recognition of professional qualifications obtained by EU citizens in other Member States. Professional qualifications obtained in the UK, however, may not be recognised

in some or any of the EU27 Member States following the UK's withdrawal. Affected individuals should consult their relevant national authority to determine whether they should seek to obtain EU recognition prior to 30 March 2019.

In addition to the four specific challenges highlighted above, the EU has already published 68 technical notices covering a broad range of issues, including aviation and other transportation, food exports and pharmaceutical products.

The UK has also been stepping up its preparations, with separate governmental departments expected to publish approximately 70 technical notices in August and September 2018 to help businesses prepare for a "no deal" Brexit. The UK government, however, remains confident that a "no deal" Brexit can be avoided, with the new UK Brexit Secretary, Dominic Raab, suggesting on 22 July 2018 that a deal with the EU could be reached by October 2018.

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Please do not hesitate to contact us with any questions.

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