

Brexit: The Countdown

How will it affect you?

Are you prepared?

How can we help?

Dechert
LLP



Brexit Day is only a matter of months away, and the negotiations have not yet provided any clarity. If you have not done so already, you need to start making plans. Whether this involves reaching out to government and helping shape the outcome of Brexit negotiations, or preparing your business for whatever approach is (or isn't) agreed, you need to advance your plans now, before it is too late. Inaction carries real risks:

- 'No Deal', though unlikely, remains possible;
- the UK's future relationship with the EU and the rest of the world remains uncertain: this will persist for years but, once it becomes clear, it will be too late to influence it.

Ultimately, there will be winners and losers from the Brexit negotiations; those that offer clear, informed and substantiated negotiating positions to UK government will be viewed as credible interlocutors and will be best positioned to influence both current and future government policy.

Therefore, understanding the impact of Brexit on your sector and your business has never been more important to help plan for the future business environment; to manage risks and maximise opportunities; to make clear to your workforce and investors that you are prepared; and to work for the outcome that best meets your needs.

Dechert has a team ideally placed to help, with offices in London, Brussels, Dublin, Frankfurt, Luxembourg and Paris. In addition to deep UK and EU legal expertise, our team has practical and policy experience – including of trade negotiations – developed at the European Commission and Council, the World Trade Organization (WTO) and a range of UK bodies including the Cabinet Office, the Bank of England, HM Treasury and the Foreign Office. Through this, we have an understanding of how the UK and EU institutions operate in practice, the main personalities involved and access to ensure that our clients communicate their positions at the optimum time, to a receptive audience, that maximises the prospect of a successful outcome.

Negotiating Brexit:

The next two years and beyond

AUTUMN 2017

United Kingdom

Great Repeal Bill and other bills

European Union

German elections

Free Trade agreement (FTA)

EU only prepared to negotiate when withdrawal agreement has made 'sufficient progress'

Transitional agreement

Subject to progress on FTA, but required in any event

AUTUMN 2018

United Kingdom

Great Repeal Act; Parliamentary ratification of withdrawal agreement

European Union

Parliamentary ratification

Withdrawal Agreement

Conclude sent for ratification

Free Trade agreement (FTA)

UK wants to conclude; EU claims no conclusion possible before Brexit

Transitional agreement

Conclude?

SUMMER 2017

United Kingdom

Elections

European Union

French elections

Withdrawal agreement

Negotiations begin

Free Trade agreement (FTA)

UK wants to begin

Third Country FTAs

UK informal discussions

JANUARY-JUNE 2018

European Union

Italian elections

Third Country FTAs

Transitional agreements

Free Trade agreement (FTA)

EU only prepared to negotiate when withdrawal agreement has made 'sufficient progress'

Transitional agreement

Subject to progress on FTA, but required in any event

2019 AND BEYOND

29 March 2019

Brexit occurs; Transitional agreement in force, continues until FTA in force; Third Country FTA formal negotiations can begin

Summer 2019

Brexit transition/implementation; European Parliament elections

2020

First FTAs expected to conclude

2022

Next UK general election

How should UK businesses develop a Brexit strategy?

- Reviewing and identifying aspects of your business that rely on, or assume the applicability of, pan-EU arrangements such as EU rules of origin and customs procedures, passporting for financial services, EU-wide licences, etc.
- Understanding the position of the UK, the EU Governments and EU institutions on the contents of the exit agreement, as well as the political declaration on the future UK-EU trading relationship.
- Understanding the potential impact on your business of a ‘No Deal’ scenario and the options for mitigation, taking account of the advice published by both the UK government and the European Commission.
- Establishing what the UK’s baseline obligations in the WTO and other international bodies means for your business.
- Identifying EU laws which currently impact both your operations and that of your wider industry.
- Identifying the nature and extent of interactions with pan-EU agencies.
- Considering a government relations strategy (whether directly or through an industry group). Identify key proposals or considerations. Make these reasoned, evidence-based, granular and ambitious, while taking account of political realities. Respond to government consultations.
- Considering the impact on your supply chains and customer base.
- Looking at the nuts and bolts of your business including your data protection obligations; contractual terms; employment rights; intellectual property plans; and ongoing litigation.

Specific areas to consider:



Tariffs and customs: Consider how the introduction of tariffs on goods traded between the UK and the EU, and between the UK and countries with which the EU has (and may soon have) a free trade agreement, would affect your business and supply chains. Where should the UK government strike a balance between exercising discretion to revise the standards applicable to your products to suit UK interests and, on the other hand, maintaining equivalence with EU standards in order to retain mutual recognition and avoid the need for conformity assessment by EU bodies? Review how you would manage the introduction of customs declarations, inspections, import value-added tax (VAT) payments and (where applicable) licensing and other requirements on UK-EU trade, including compliance with rules of origin requirements. How far do you want the UK to make improvements to the Union Customs Code to suit its national interests, for example by relaxing the criteria for qualification as an Authorised Economic Operator, at the risk of losing mutual recognition of UK customs standards by the EU?



Contractual arrangements: Businesses should review their existing contracts and amend the standard terms to account for when the UK ceases to be an EU member state. Consider if your contract relies on EU regulation applicable to contractual arrangements (Rome I)? How

and where will the contract will be enforced? Does your contract assume the UK is an EU member state and make references to the EU? Does your contract rely on or assume free movement within the EU? Is your contract subject to English law or Scottish law, including EU law?

UK businesses may wish to adjust their usual Material Adverse Change (MAC) clause to include a bespoke Brexit clause. Such provisions could anticipate the emerging negotiations between the UK and the EU, placing breaks in contracts should an unforeseen or undesirable change in the legal framework be agreed.



Data protection. The new EU General Data Protection Regulation came into force throughout the EU in May 2018 and is incorporated into UK law. Businesses should consider their compliance with the new EU Regulation particularly in terms of data rights, cross-border and intra-group transfers and the role of your data protection officer to avoid the anticipated new fines regime. In the long term, the ability of UK businesses to transfer personal data between the EU and the UK will depend on whether the European Commission deems the UK protection of personal data to be adequate post-Brexit.



Employment and free movement: The UK prime minister has made it clear that the UK will ‘regain control of its borders’ in Brexit negotiations, but has pledged to protect EU nationals already working in the UK. UK businesses need to think carefully about the terms of recruiting staff from EU member states, whether they will be able to continue to do so with ease, and whether they are likely to find all the relevant skills from the domestic workforce. They will also need to consider UK staff seconded to EU Member States, which may require additional administrative duties in the long term.



Environmental law: A significant number of the UK’s environmental laws are derived from European Union environmental law and policy, as well as international agreements. Companies should be prepared for the possibility of regulatory changes in the years that follow Brexit.



Intellectual property: Owners of any sort of IP should take steps to ensure that their rights, both in UK and in EU, will continue to be protected after Brexit. EU Trade mark and registered design right owners should consider applying now for UK trade marks, in the event that pan-EU rights cease to extend to the UK. An EU registered design right is likely to be saved albeit as a domestic UK design right, but EU patents are unlikely to continue to be offered UK protection.



Litigation and arbitration: London’s position as one of the world’s leading arbitration centres is unlikely to change – in fact, there may be an opportunity for London to become the go-to neutral forum to resolve intra-EU disputes. UK businesses should be aware however, that Brexit could reinforce the UK’s intra-EU Bilateral Investment Treaties (BITs), reducing investors’ enforcement risk. Businesses intending to make significant investments in countries with which the UK has intra-EU BITs are well-advised to consider structuring their investment so as to benefit from the protections that the UK’s BITs could have to offer.

How Dechert can help

We have already helped industry bodies, companies and governments to develop their positions; to define clear priorities, red lines and concrete bespoke proposals; to translate this into an advocacy strategy that best fits their needs; and to plan for the different potential outcomes to be faced on 30 March 2019.

Our team's previous experience, not only in the UK government and European institutions, but in the products and advocacy we have undertaken since the Brexit vote, offers clear benefits for Dechert's clients and has ensured that many are now in a strong position whatever shape the Brexit negotiations will take in the future. When necessary the team can also call upon both local and internationally-based sectoral experts across Dechert to identify potential steps during the forthcoming negotiations that may help to minimize any risks associated with Brexit while also maximizing opportunities for clients. Three particular areas we recommend:

- Conduct rigorous gap-analysis: based on an understanding of the likely Brexit options, identifying in detail the issues that businesses will face, where further research is required and where key risks and opportunities lie.
- Define priorities and red lines: the objectives should be ambitious while taking account of political realities, based on rigorous analysis and hard data that will stand up to scrutiny.
- Design and implement an effective engagement strategy: develop policy papers and detailed draft treaty language for use with decision-makers in the UK and EU governments and institutions.

Recognition for Dechert's Brexit work

- Dechert is 'the go-to firm' in this space, offering 'cutting-edge and innovative advice' on Brexit-related issues.
- Dechert stands out for 'its deep understanding of the inner workings of government and the Brexit negotiating teams on the UK and EU sides'.

THE LEGAL 500 (UK), 2017

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In an increasingly challenging environment, clients look to us to serve them in ways that are faster, sharper and leaner without compromising excellence.

We are relentless in serving our clients – delivering the best of the firm to them with entrepreneurial energy and seamless collaboration.

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