



'BREXIT READINESS CHECKLIST' FOR COMPANIES DOING BUSINESS WITH THE UK

August 2020

! YOU NEED TO GET READY FOR 1 JANUARY 2021 !

The United Kingdom's choice to cease to participate in the EU's Single Market and Customs Union and put an end to the free movement of persons, goods and services with the EU as of 31 December 2020 means that the EU-UK relationship will change significantly for businesses on both sides from that date onwards.

These changes are inevitable, regardless of the outcome of the ongoing EU-UK negotiations, and risk compounding the pressure that businesses are already under due to the COVID-19 outbreak.

This checklist aims to help EU companies doing business in the United Kingdom (UK) and/or UK companies doing business in the EU to double-check their state of readiness for 1 January 2021.

It provides an overview of the main areas of change that will take place in any event as of 1 January 2021—irrespective of whether an agreement is reached on a future economic and security partnership. It addresses the most common issues and should not be considered to be exhaustive.

Additional guidance can be found in the Commission Communication 'Getting ready for changes',¹ as well as in sectoral stakeholder 'readiness notices' published by the Commission services and available here:

https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/getting-ready-end-transition-period_en#readiness-notice.

It is essential that all companies prepare for these broad and far-reaching changes and that they take all necessary decisions, and complete all required administrative actions before 31 December 2020.

¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: 'Getting Ready for changes: Communication on readiness at the end of the transition period between the European Union and the United Kingdom, COM(2020) 324 final, 9 July 2020, <https://ec.europa.eu/info/publications/getting-ready-changes-communication-readiness-end-transition-period-between-european-union-and-united-kingdom>.

TRADE IN GOODS²



Importer/exporter obligations

Under EU law, businesses have different responsibilities depending on where they are situated in the supply chain (e.g. manufacturer, importer, wholesale distributor, etc.).

As of 1 January 2021, EU businesses that currently buy goods from the UK and place them on the EU market will become importers while those that currently distribute products to the United Kingdom will become exporters. This means that they will need to comply with a new set of obligations according to the applicable Union rules.

- Am I aware of the obligations of an exporter/importer according to applicable Union rules, in particular if I have so far had little or no experience in trading with third countries?



Customs formalities, checks and controls on goods

As of 1 January 2021, customs rules required under EU law will apply to all goods entering the customs territory of the EU from the United Kingdom, or leaving that customs territory to the United Kingdom. Even if an ambitious free trade area is established with between the EU and the UK, providing for zero tariffs and zero quotas on goods, and with customs and regulatory cooperation, all products traded between the EU and the United Kingdom will be subject to any applicable regulatory compliance checks and controls on imports for safety, health and other public policy purposes.

- Am I acquainted with the EU customs formalities that will apply post-Brexit, in particular if I have so far had little or no experience in trading with third countries?
- Are my supply chains prepared for the longer timeframes resulting from these additional formalities and procedures?



Rules of origin

As of 1 January 2021, companies will have to demonstrate the originating status of goods traded in order for these to be entitled to preferential treatment under a possible future EU-UK agreement. Goods not meeting origin requirements will be liable to customs duties even if a zero-tariff, zero-quota EU-UK trade agreement is put in place. Trade between the EU and its preferential partners will also be affected, as UK content (in terms of both material and processing operations) will become 'non-originating' under Union preferential trade arrangements.

- Am I acquainted with the relevant procedures and documents for the demonstration of the originating status of goods?
- Have I adapted my supplier declarations, including long-term supplier declarations, accordingly?



VAT and excise duties

As of 1 January 2021, the rules for payment and refund of Value Added Tax (VAT) will change. This is relevant for both goods and services. Excise duties will also be due upon importation of goods brought into the VAT territory of the European Union from the United Kingdom for excisable goods (alcoholic beverages, tobacco products, etc.).

- Am I acquainted with the relevant VAT procedures?
- Have I factored in the longer timeframes resulting from these additional formalities and procedures into my supply chain organisation?

² The changes described in this section will not apply with respect to trade between the EU and Northern Ireland, where the Protocol on Ireland and Northern Ireland, which is an integral part of the Withdrawal Agreement, will apply as of the end of the transition period, alongside any agreement on a future partnership – subject to the consent, four years after the end of the transition period, by the Northern Ireland Legislative Assembly to the continued application of the Protocol.



Certificates, authorisations, markings or labelling

As of 1 January 2021, marketing authorisations issued by UK authorities will no longer be valid for placing products on the Union market. This means, for instance, that a car with a type approval issued by the United Kingdom can no longer be sold in the Single Market.

Where EU law requires certification by an EU notified body – such as for some medical devices, machinery or construction products – products certified by UK-based bodies will no longer be allowed to be sold within the Single Market.

Similarly, markings or labelling of goods placed on the Union market, which refer to bodies or persons established in the United Kingdom, will no longer comply with Union labelling requirements.

- ⇒ Have I transferred certificates and authorisations issued by a UK-based body or authority to an EU 27-based body or authority, or sought new ones?
- ⇒ Have I ensured that products placed on the EU market are correctly labelled and marked?



Chemicals

As of 1 January 2021, EU rules on the registration, evaluation, authorisation and restriction of chemicals (REACH) will no longer apply in the United Kingdom. Registrations held by manufacturers and producers established in the United Kingdom will no longer be valid in the EU.

- ⇒ Have I ensured that my substances are registered with a manufacturer or importer in the EU, or appointed a person in the EU who is legally responsible for that import as official registrant for the substance?
- ⇒ As a downstream user, have I checked whether substances I use are properly registered?

PROVISION OF SERVICES

As of 1 January 2021, authorisations granted by UK authorities under the EU Single Market framework will no longer be valid in the EU. This has particular relevance for the areas of financial services, transport, audiovisual media, and energy services.

In order to access the Union market, UK service providers and professionals established in the United Kingdom will need to demonstrate compliance with any rules, procedures and/or authorisations that cover the provision of services in the EU by foreign nationals and/or companies outside the EU. Those requirements are frequently set out in national regimes. EU service providers and professionals established in the Union and operating in the United Kingdom will need to demonstrate compliance with all relevant UK rules.

- ⇒ Have I assessed whether I need to / can continue to rely on services provided by entities established in the UK?
- ⇒ Does my business rely on licences or authorisations issued by UK authorities? Have I applied for similar licences or authorisations in the EU-27, or transferred such licences or authorisations issued by the UK to an EU-27-authority?
- ⇒ As a client/customer, did I check whether my provider has the licence or authorisation required to provide services in the EU?



Financial services

As of 1 January 2021, authorisations to provide services from the United Kingdom across the EU will stop applying. The provision of financial services from the United Kingdom to the EU will be possible subject to the relevant third country rules of the Member State concerned.

- ⇒ Have I assessed whether I need to / can continue to rely on UK financial services providers?
- ⇒ If I have operations in the United Kingdom, am I acquainted with UK rules for the provision of financial services?



Aviation

As of 1 January 2021, air carriers holding operating licences granted by the UK licensing authority for the commercial carrying by air of passengers, mail and/or cargo, will no longer be able to provide air transport services within the European Union. EU air carriers and holders of aviation safety certificates will need to ensure and uphold compliance with EU requirements, including airlines' requirements on principal place of business and EU majority ownership and control, as well as the EU aviation safety *acquis communautaire*.

- ⇒ Am I acquainted and compliant with all the relevant certification requirements?



Road transport operators

As of 1 January 2021, road transport operators that are established in the United Kingdom will no longer hold a Community licence. They will therefore no longer benefit from the automatic access rights to the Single Market that such a licence entails, and namely the right of EU operators to conduct journeys and carry goods across the EU.

Transport and logistics operators will be affected by changes in the formalities required when crossing the UK-EU border.³ Border formalities will also affect drivers as well as passengers and cross-border workers. This includes border checks on persons – entailing the verification of entry and stay requirements, stamping of passports, and visa requirements if applicable.

- ⇒ Am I acquainted and compliant with all the relevant certification requirements?
- ⇒ Have I factored in the longer timeframes resulting from these additional border checks and formalities into my supply chain organisation?



Professional qualifications

As of 1 January 2021, the UK will no longer be covered by EU rules on the recognition of professional qualifications. UK nationals, irrespective of where they acquired their qualifications, and EU citizens with qualifications acquired in the United Kingdom will need to have them formally recognised in the relevant Member State, based on that country's rules for recognition of third-country qualifications. In many cases, this recognition process is more burdensome.

- ⇒ Have I/my members of staff obtained the mutual recognition of my/their professional qualification obtained in the UK?

³ With the exception of Northern Ireland, which, in accordance with the Protocol on Ireland and Northern Ireland will remain aligned to a limited set of Union rules, so as to avoid customs checks and controls on the island of Ireland.

ENERGY



As of 1 January 2021, although electricity and gas interconnectors can of course still be used, the United Kingdom will no longer participate in the Union's dedicated platforms. Alternative fall-back solutions will be used instead to trade electricity on interconnectors with Great Britain.⁴ These should allow electricity trade to continue, although not with the same level of efficiency as within the Single Market today.

⇒ Have I checked whether I rely on trades over electricity interconnectors with Great Britain and taken the necessary measures to adapt to the new regulatory environment?

COMPANY LAW AND CIVIL LAW



UK-registered companies

As of 1 January 2021, UK incorporated companies will be third-country companies and will no longer be automatically recognised. Their recognition will become subject to national law for third country-incorporated companies. Branches in EU Member States of UK incorporated companies will be branches of third-country companies. Subsidiaries of UK companies in the Union are, in principle, EU companies and will continue to be covered by all relevant Union and national legislation.

⇒ If my company is incorporated in the UK, have I checked against national law that having the central administration or principal place of business in the EU suffices to keep an EU company status?



Contracts – jurisdiction clauses

As of 1 January 2021, Union rules facilitating the cross-border recognition and enforcement of judgements in the EU and in the United Kingdom during the transition period will no longer apply.⁵ Judgments handed down by a UK court might no longer be swiftly enforceable in the European Union compared to today's situation.

⇒ Have I re-assessed a choice of UK jurisdiction in my commercial contracts?

OTHER ASPECTS: DATA, DIGITAL AND INTELLECTUAL PROPERTY RIGHTS



Trademarks and designs, geographical indications, plant variety rights

As of 1 January 2021, while existing EU unitary intellectual property rights (EU trademarks, Community designs, Community plant variety rights and geographical indications) remain protected under the Withdrawal Agreement, any new EU unitary rights will have a reduced territorial scope as they will no longer have effect in the United Kingdom.⁶

⇒ Have I taken the necessary steps to ensure continued protection of my intellectual property rights in the UK?

⁴ This does not apply to the electricity interconnectors between Northern Ireland and Ireland, given that under Article 9 of the Protocol on Ireland and Northern Ireland, Northern Ireland will continue to participate in the Integrated Single Electricity Market across the island of Ireland.

⁵ It is also noteworthy that, as of 1 January 2021, the EU Online Dispute Resolution (ODR) platform will no longer be available for the out-of-court resolution of disputes between consumers residing in the European Union and traders established in the United Kingdom.

⁶ Existing unitary rights are safeguarded in the United Kingdom under Articles 54 and 57 of the Withdrawal Agreement by being converted into United Kingdom rights.



Personal data

As of 1 January 2021, the transmission of personal data from the EU to the UK is subject to the rules for data transfers to third countries, as set out in the EU General Data Protection Regulation (GDPR) ⁷ or in the Law Enforcement Directive. ⁸

This is relevant for many business sectors, particularly if EU businesses continue to work with data-centres located in the UK.



Have I taken the necessary steps to ensure compliance with EU rules if I transfer personal data to the UK?

⁷ Regulation (EU) 2016/679, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1594051658864&uri=CELEX:32016R0679>

⁸ Directive (Union) 2016/680, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016L0680>



WHERE CAN I FIND MORE INFORMATION AND WHO CAN HELP ME?

- The European Commission's website has over 70 readiness notices on a wide range of economic sectors. They are meant to help all market participants prepare. These are continuously updated with additional sectors and information, and will be translated into all EU languages.
- Consult the websites of the European Commission's departments and agencies active in the area that concerns you and your business.
- To get additional information and assistance, contact your national authorities, your local Chamber of Commerce and Industry, or your industry association.

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