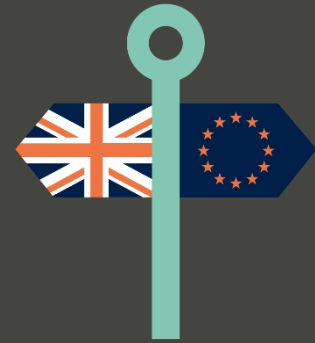


# Are you ready for Brexit?

With the Brexit transition period due to expire on 31 December 2020, there is not much time to left to prepare.

This briefing sets out some of the key questions you need to be able to answer if your business is to be Brexit-ready by the end of the year. It also explains how we can help you meet the challenge of preparing for Brexit at a time of extraordinary economic strain due to COVID-19.

July 2020



## WHY PREPARE AT ALL?

It may be tempting to pin your hopes on successful negotiation of a free trade agreement with the EU, but such an outcome is far from guaranteed. In any event, it is already clear from draft texts circulated by the EU and the UK that the kind of deal being discussed will not resolve many of the practical difficulties for businesses after the transition period ends. Whatever the outcome of the Brexit talks, the end of the transition will lead to a fundamental change in the trading relationship between the UK and the EU, which is likely to have at least some impact on your business.

“ Now is the time to prepare – if you wait for the terms of a deal to emerge, it is likely to be too late. ”

## WHY PREPARE NOW?

Given the pressures of dealing with COVID-19, it may also be tempting to adopt a "wait and see" approach, putting off preparation until a deal has actually been agreed. However, a deal is now unlikely to emerge until later in the Autumn, which leaves little time to make meaningful preparations. In any event, as noted above, many of the practical difficulties faced by businesses will be the same or similar whether there is a deal or not (so it is no longer the case that you are trying to prepare for two materially different outcomes).

### Do we know enough to prepare?

Whilst the uncertainty is frustrating, it does not make meaningful preparation impossible. For example, we can already determine what the position will be if there is no deal and trade with the EU reverts to WTO terms. We also now have details of the UK's planned border operating model. Whilst we do not know the exact terms of any UK-EU deal, it is likely to be similar in many respects to the EU's arrangements with countries such as Canada and South Korea. We already

know the detailed terms of those deals and we have access to the draft texts put forward by the EU and the UK for the proposed UK-EU free trade agreement. As a result, we can give a reasonable indication now of what any EU-UK deal is likely to say in many key areas – which will often be sufficient for planning purposes.

## WHAT TO DO

Many businesses will have carried out substantial preparation work ahead of the original Article 50 deadline in March 2019 (and then again in the run-up to October 2019). However, these plans are likely to need review, as the current UK Government is now reconciled to a much more distant trading relationship with the EU than its predecessor and is not offering the same level of unilateral 'easements' as in 2019.

We are also concerned that in certain areas, such as the ability of individuals to travel to the EU for work purposes (see second bullet under "Services" below), the likely impacts have not received as much attention as they should have done.



## KEY QUESTIONS

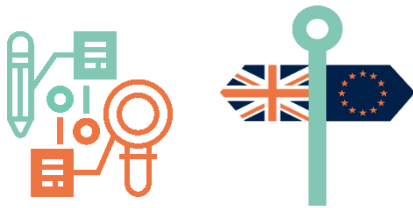
The remainder of this note sets out a selection of the questions that businesses need to be able to answer if they aim to be Brexit-ready by the end of the year.

*NOTE: The questions below are aimed principally at businesses outside the financial services sector. They are not intended to be an exhaustive list. If you would like a more detailed questionnaire against which to benchmark your Brexit preparations, please get in touch (see contacts overleaf).*

### Services

- If you provide services from the UK to customers based in the EU, can you continue such cross-border provision based on the EU's WTO commitments after Brexit? Is a UK-EU free trade agreement likely to improve the position at all?

- If your staff need to travel to the EU to carry out services, do the EU's WTO commitments provide any assurance that this can continue after Brexit? Would such staff need work permits and visas? What are the limits on the amount of time they can work in the EU and the activities they can carry out? How far, if at all, would a UK-EU free trade agreement improve the position?
- If you exchange personal data with businesses in the EEA, how will you ensure that such data flows can continue to take place legally in the absence of an adequacy ruling from the European Commission? *Note: although it is hoped that an adequacy ruling will accompany any deal with the EU, this is not guaranteed - and will almost certainly not be forthcoming at the point of exit in the event of no deal.*



### Workforce / immigration

- If you have a significant number of EU/EEA nationals in your workforce, do you know if they have taken the necessary steps to ensure that they can continue living and working in the UK?
- Similarly, if you have a presence in the EU/EEA, do you know if any UK citizens on your staff have taken the necessary steps to ensure that they can continue living and working in the relevant EU/EEA country?
- If you typically recruit EU/EEA nationals, do you understand the implications (including, critically, the costs) of the immigration points system for such recruitment from 1 January 2021? In particular, do you have a sponsor licence and are your records and systems adequate to meet compliance obligations?



### Goods: imports from (or via) the EU

- If you rely on products imported from or via the EU, do you know how much more these will cost if they were to be subject to tariffs (as is likely in the event of no deal)? *Note that tariffs are usually paid by the importer i.e. you or your UK wholesaler/supplier.*

- What additional costs will you face from increased paperwork requirements on such imports? *Note that these costs are likely to apply even if a deal is reached with the EU.*
- Do these extra costs mean you would be better off buying from UK or other non-EU suppliers?

“ A deal won't remove the requirement for significant additional paperwork and border-related red tape.

- Have you mapped your supply chain and do you know how imported products reach you? For example, if they arrive from China into Rotterdam before being transported to the UK, you could be looking at paying for two sets of tariffs and paperwork – once on entry into the EU and then again when the products enter the UK.
- How well prepared are your suppliers for changes in border red tape? How would you cope if deliveries were held up due to congestion at the border? *Note that whilst the UK's proposed phasing in of import controls may mitigate this risk to some extent, our current view is that some level of disruption to supply chains remains the most likely outcome next year.*



### Goods: exports to the EU

- If tariffs were to apply, how much more would your customers in the EU have to pay? Would this make your goods uncompetitive?
- How well prepared are you or your logistics provider(s) for increased border paperwork and checks? *As noted earlier, these are being introduced whether or not there is a deal.*
- What do your contracts with customers say about: (i) who is responsible for the cost of and compliance with border formalities and payment of tariffs; and (ii) who is responsible for delays (e.g. if your goods are held up at the border)?
- Do you need to appoint an authorised representative in the EEA and/or obtain approval for your products from an EU notified body? Will your product labelling need to be amended?

## Other issues

- **Key trading partners:** How well prepared are your key suppliers for the end of the transition? Do they pose a risk to your preparedness? Are some of your customers exposed to significant Brexit risk and will they buy less from you as a result?
- **Tax:** Have you considered the tax implications, particularly changes to the VAT position after the end of the transition?
- **Contracts:** Are you subject to obligations that may be difficult to meet because of the impact of Brexit (e.g. delivery times etc)? Are you using the appropriate INCOTERMS? Do you understand how Brexit will affect your ability to enforce contracts against counterparties based in the EU?
- **Non-EU trade:** Do you (or others in your supply chain) rely on EU-negotiated free trade agreements with third countries? If so, do you know whether and to what extent the UK Government has managed to roll over those agreements after Brexit?

## HOW WE CAN HELP

If you can't answer some of the above questions, contact us to find out how we can help. We have already advised a range of clients on their Brexit planning across a broad spectrum of issues and continue to do so.

## FOR FURTHER INFORMATION, PLEASE CONTACT



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