



'BREXIT PREPAREDNESS CHECKLIST' FOR COMPANIES DOING BUSINESS IN THE EU

September 2019



This checklist has been developed for information purposes and is meant to help companies doing business in the EU and/or in the United Kingdom (UK) to double-check their state of preparedness for the withdrawal of the UK from the EU without a withdrawal agreement. While care has been taken to address what would appear to be the most common issues and relevant aspects, the list is indicative and should not be considered to deal exhaustively with all matters that may arise as a consequence of a withdrawal without an agreement. Additional guidance should be sought from the 'Brexit preparedness notices' published by the Commission Services and information by national authorities. Some of the notices are referred to, by way of example, in the footnotes of this checklist. All 'Brexit preparedness notices' are available here:

https://ec.europa.eu/info/brexit/brexit-preparedness/preparedness-notices_en

Companies have to ensure full preparedness for the withdrawal date, i.e. the date when the United Kingdom becomes a third country (1 November 2019). It is recalled that, in the absence of a ratified withdrawal agreement, the 'transition period' agreed therein does not apply.

It is also recalled that, even if the Withdrawal Agreement was ratified, business action would be required to prepare for after the transition period, i.e. after 31 December 2020, when the EU rules for the internal market and the EU Customs Union would cease to apply to the UK. Preparedness would thus be required in any case, albeit at a later stage.

This checklist is a dynamic document, which will be updated, as necessary.



1. Placing goods on the EU market; exports

a. Certificates and authorisations

In order to ensure product safety and the protection of public health and the environment, the placing on the EU market of certain products requires a certificate¹ by a body established in the EU or an authorisation by an authority of an EU Member State. This is the case, for example, for the medical devices sector, or the automotive sector^{2 3}.

Post-Brexit, certificates or authorisations issued by UK authorities or by bodies based in the UK are no longer valid in the EU.

⇒ 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?

b. Localisation requirements

In order to facilitate the effective enforcement of EU product rules, certain persons with a regulatory responsibility have to be established in the EU (localisation requirements). This is the case, for example, for the 'responsible person'⁴, the importer, or the registrant⁵ or marketing authorisation holder⁶ of certain goods. In some areas, such as chemicals⁷, this is particularly relevant for the 'downstream use' of goods.

Post-Brexit, persons established in the UK will no longer comply with these localisation requirements.

⇒ Have I ensured compliance with EU-localisation requirements?

c. Labelling and markings

In order to facilitate the effective enforcement of EU product rules, and to strengthen consumer protection, many products placed on the EU market have to be labelled or marked with the name, address, or identifier of the body or person referred to in sections 1.a) and b) of this checklist. This is the case, for example, for industrial products⁸, pharmaceuticals⁹ and medical devices, and food¹⁰ and animal feed.

Post-Brexit, those markings or labelling, when referring to bodies or persons established in the UK, no longer comply with labelling requirements when placed on the EU market¹¹.

⇒ Have I ensured that products placed on the EU market are correctly labelled and marked?

1 https://ec.europa.eu/info/sites/info/files/file_import/industrial_products_en_1.pdf
https://ec.europa.eu/info/sites/info/files/qa_brexit_industrial_products_en.pdf

2 https://ec.europa.eu/info/sites/info/files/file_import/type_approvals-automotive_vehicles_en.pdf

3 This is also relevant for certain product claims, such as 'organic' (see https://ec.europa.eu/info/sites/info/files/eu_food_law_en.pdf) or the EU ecolabel (see https://ec.europa.eu/info/sites/info/files/file_import/eu_ecolabel_en.pdf).

4 https://ec.europa.eu/info/sites/info/files/cosmetic_products_en_2.pdf

5 https://ec.europa.eu/info/sites/info/files/file_import/chemicals-regulation-under-reach_en.pdf

6 https://ec.europa.eu/info/brexit/brexit-preparedness/preparedness-notice_en#sante

7 https://ec.europa.eu/info/sites/info/files/file_import/chemicals-regulation-under-reach_en.pdf

8 https://ec.europa.eu/info/sites/info/files/qa_brexit_industrial_products_en.pdf

9 https://ec.europa.eu/info/brexit/brexit-preparedness/preparedness-notice_en#sante

10 https://ec.europa.eu/info/sites/info/files/eu_food_law_en.pdf

11 The 'Brexit preparedness notices' published by the Commission Services have clarified that a product that has been placed on the EU-27 market before the withdrawal date can continue to be sold through the distribution chain in the EU-27. For details, please refer to the 'Brexit preparedness notices' per sector.

d. Preferential tariffs granted by third countries for EU products

When exporting products to third countries with which the EU has a Free Trade Agreement, the products may enjoy a preferential (i.e. lower) tariff rate if the products have sufficient 'EU content' according to the applicable 'rules of origin', documented with a proof of origin¹². This is relevant, for example, in the automotive sector (incl. car parts or other components) and in the agro-food sector.

Post-Brexit, UK input to the finished product is no longer considered as EU content.

→ Have I examined my supply chains and treated any UK input as 'non-originating' from the EU, with a view to maintaining a preferential tariff for my exports?

e. Customs procedures

In order to enforce fiscal requirements (duties and indirect taxes, such as VAT and excise) and non-fiscal requirements, i.e. the protection of the health, security and safety of Europeans, as well as the environment, all goods entering or leaving the EU are subject to customs supervision, and are subject to a customs procedure¹³. Post-Brexit, this applies to goods entering/leaving the EU from/to the UK. An EORI number issued by the UK customs authorities, as well as customs decisions issued by UK customs authorities in the context of EU customs law (such as authorisations, binding tariff information, and binding origin information) are no longer valid in the EU¹⁴.

→ Am I acquainted with the EU customs formalities and available simplifications¹⁵ that will apply post-Brexit, in particular if I have so far had little or no experience in trading with third countries?

f. Customs duties

In order for certain foreign goods to be released for free circulation in the EU, import duties must be paid. The amount of this duty is calculated based on various factors, including the customs value (i.e. price paid or payable for the good, corrected by other factors), its classification, and the applicable rate¹⁶.

Post-Brexit, certain goods originating in the UK are subject to import duties.

→ Have I assessed whether customs duties will be due post-Brexit (and can I provide the necessary information), in particular if I have so far had little or no experience in trading with third countries?

g. Prohibitions and restrictions

In order to protect in particular the health and safety of EU citizens, as well as the environment, the import to and export from the EU of certain goods is subject to 'prohibitions and restrictions'¹⁷. This concerns very different goods, ranging from waste¹⁸ to medicines¹⁹ and from certain agro-food products²⁰ to rough diamonds, cultural goods²¹ or certain radioactive material.²²

Post-Brexit, the prohibitions and restrictions for imports from third countries, and export to third countries, apply in respect to the UK. Moreover, UK licences for the import/export of goods into/from the EU will no longer be valid.

→ Am I acquainted with the EU rules for prohibitions and restrictions that will apply post-Brexit, in particular if I have so far had little or no experience in trading with third countries?

12 https://ec.europa.eu/info/sites/info/files/file_import/preferential_rules_of_origin_en.pdf

https://ec.europa.eu/info/sites/info/files/file_import/guidance-customs-procedures_en.pdf

13 https://ec.europa.eu/info/sites/info/files/file_import/customs_and_indirect_taxation_en.pdf. See also the dedicated 'Brexit checklist for traders' available here: https://ec.europa.eu/taxation_customs/uk_withdrawal_en#heading_1.

14 https://ec.europa.eu/info/sites/info/files/file_import/guidance-customs-procedures_en.pdf

15 https://ec.europa.eu/taxation_customs/uk_withdrawal_en

16 https://ec.europa.eu/info/sites/info/files/file_import/eu-rules-customs-debt-and-customs-tariffs_en.pdf

17 https://ec.europa.eu/info/sites/info/files/file_import/import_and_export_licences_en.pdf

18 https://ec.europa.eu/info/sites/info/files/file_import/waste_law_en_0.pdf

19 https://ec.europa.eu/info/brexit/brexit-preparedness/preparedness-notices_en#sante

20 https://ec.europa.eu/info/brexit/brexit-preparedness/preparedness-notices_en#sante

21 https://ec.europa.eu/info/sites/info/files/export-cultural-goods_en.pdf

22 https://ec.europa.eu/info/sites/info/files/file_import/euratom_en.pdf

h. Sanitary and phytosanitary (SPS) controls

In order to protect food safety and animal health and welfare and to protect the EU's sanitary and phytosanitary status, live animals²³, food²⁴ and animal products and certain plants and plant products²⁵ are systematically controlled, upon importation, in dedicated facilities (border inspection posts).

→ Have I ensured that the SPS commodities will enter the EU via a Border Inspection Post approved for the relevant commodity?



2. Provision of services in the EU

a. Licences and authorisations

In order to ensure in particular consumer protection and consumer trust, as well as effective enforcement of EU rules, in many economic areas the provision of services in the EU requires a licence or authorisation by an authority of an EU Member State. This is the case, for example, in the transport sector²⁶, in the financial services sector²⁷, in the audio visual sector²⁸, and in the energy sector²⁹.

Post-Brexit, licences or authorisations issued by UK authorities are no longer valid across the EU. In some cases³⁰, validity in a given EU Member State will depend on national law.

→ 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?

b. Cross-border provision of services

The freedom to provide services – a 'fundamental freedom' enshrined in the EU Treaties – allows for EU-wide cross-border provision of services, within the limits of EU law³¹.

Post-Brexit, the provision of services from the UK to the EU will be subject to EU and Member State law, taking account of the access commitments and qualifications made by the EU under WTO law. This is relevant for many business sectors, particularly if EU businesses continue to work with service providers established in the UK.

→ Have I assessed whether I need to rely on services provided by entities established in the UK?

→ Have I assessed whether I can continue to rely on cross-border services from the UK?

23 https://ec.europa.eu/info/sites/info/files/file_import/movements_of_live_animals_en.pdf

24 https://ec.europa.eu/info/sites/info/files/eu_food_law_en.pdf

25 https://ec.europa.eu/info/sites/info/files/eu_food_law_en.pdf

26 https://ec.europa.eu/info/brexit/brexit-preparedness/preparedness-notices_en#move
https://ec.europa.eu/info/sites/info/files/file_import/animal_transport_en.pdf

27 https://ec.europa.eu/info/brexit/brexit-preparedness/preparedness-notices_en#fisma

28 https://ec.europa.eu/info/brexit/brexit-preparedness/preparedness-notices_en#cnect

29 https://ec.europa.eu/info/brexit/brexit-preparedness/preparedness-notices_en#ener

30 https://ec.europa.eu/info/brexit/brexit-preparedness/preparedness-notices_en#fisma

31 https://ec.europa.eu/info/sites/info/files/services-posting_en.pdf

c. Professional qualifications

In order to facilitate the free movement of persons and the provision of services, the recognition, in one Member State, of the professional qualification obtained in another Member State by an EU citizen is facilitated by EU law³².

Post-Brexit, the recognition of professional qualifications obtained in the UK will follow the (national) rules for recognition of third country qualifications. In many cases, this recognition process is more burdensome.

⇒ Have I obtained, ahead of Brexit, the mutual recognition of my professional qualification obtained in the UK?



3. Other aspects

a. Value-added tax (goods and services)³³

The rules for payment and refund of value-added tax (VAT) differ greatly depending on whether the supply/acquisition of goods or services takes place within the EU or cross-border with a third country³⁴.

Post-Brexit, the EU-rules for cross-border supply from a third country apply.

⇒ Am I acquainted with the EU and national rules applicable to cross-border supply to/from the UK? This is relevant for both services and goods.

b. Trademarks and designs, geographical indications, plant variety rights

A unitary trademark and design³⁵, as well as an EU system of geographical indications³⁶ and EU-rules on plant variety rights³⁷ ensure the protection of these intellectual property rights throughout the EU.

Post-Brexit, the protection granted by these rights no longer applies to the UK territory.

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

c. Contracts – jurisdiction clauses

The recognition and enforcement by one Member State of judgements in civil and commercial matters handed down in another Member State is greatly facilitated by EU law³⁸.

Post-Brexit, the recognition and enforcement of UK judgements will be governed by the (national) rules for third country judgements.

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

32 https://ec.europa.eu/info/sites/info/files/file_import/professional_qualifications_en.pdf

33 For excise goods, please refer to https://ec.europa.eu/info/sites/info/files/file_import/guidance-excise-ongoing-movements_en.pdf.

34 https://ec.europa.eu/info/sites/info/files/vat_en.pdf

35 https://ec.europa.eu/info/sites/info/files/file_import/trademarks_and_designs_en.pdf

36 https://ec.europa.eu/info/sites/info/files/eu_food_law_en.pdf

37 https://ec.europa.eu/info/sites/info/files/file_import/plant_variety_rights_en_0.pdf

38 https://ec.europa.eu/info/brexit/brexit-preparedness/preparedness-notice_en#just

d. Personal data

EU law provides for the transmission of personal data across EU Member States without additional requirements³⁹. Post-Brexit, the transmission of personal data from the EU to the UK is subject to the rules for data transfers to third countries. 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?

e. UK-registered companies

EU law provides for the recognition, in a Member State, of a company incorporated in another Member State⁴⁰. Post-Brexit, the recognition of UK-incorporated companies in the EU will depend on (national) law for third country-incorporated companies.

⇒ 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?

f. Direct taxation

National rules on direct taxation of companies have to take account of EU law, including harmonisation measures in certain cross-border situations.

Post-Brexit, the rules for direct taxation of companies in situations involving the UK will be those applicable to third countries.

⇒ Have I taken the necessary steps to ensure compliance with national rules for direct taxation where the UK is involved?

³⁹ https://ec.europa.eu/info/sites/info/files/file_import/data_protection_en.pdf

⁴⁰ https://ec.europa.eu/info/sites/info/files/notice-company-law_en.pdf