



Are you ready for BREXIT?

Countdown until 30 March 2019

On 30 March 2019, Britain will leave the European Union. At the moment it is unclear if there will be a transition phase that keeps the British in the Single Market until 31 December 2020. Should an agreement not be reached with a follow-up solution, trade between Great Britain and the EU would take place under WTO rules only.

It is already clear right now that companies need to prepare for changes. There will be a whole range of changes for the worse, especially in relation to the movement of goods. The preparation for Brexit at companies can be extensive – depending, among other things, on the future involvement in Great Britain, the size of the company and the sector. The enclosed checklist is intended to show where companies need to adapt and adjust. We will gradually expand upon and update the topics in the light of the results of the negotiations. For further questions, companies can contact their local chamber of industry and commerce.

Use of the term “Brexit” on this website assumes that Great Britain is leaving the European Single Market – either on 30 March 2019 or on expiry of the transition phase at the end of 2020.



Movement of goods

After Brexit, the movement of goods with the United Kingdom will proceed as with other third countries. This means that EU customs law as well as national and European export and import rules and regulations will have to be observed. Accordingly, it will be necessary to draw up customs declarations and, where applicable, apply for export/import permits. In addition, customs duties may also apply.

In the event of a free trade agreement between the UK and the EU, it may be possible for reduced rates of duty to be applied. To do this, however, companies will have to work out the preferential origin of goods alongside the relevant rules of origin and apply for or produce corresponding documentary evidence of origin.

On leaving the EU, the United Kingdom could create its own set of rules and regulations on product norms and standards that differ in part from those of the EU-27 (e.g. technical safety / health / hygiene / labelling provisions). Such changes can make fulfilment of the performance obligation between contracting parties substantially more expensive, e.g. through new testing and certification requirements. Consideration should therefore be given to the following, among other things:

Customs formalities

Requirements: We have created the personnel, administrative and technical conditions for drawing up and administering customs declarations in our own company (e.g. EORI number applied for, ATLAS user account for the submission of electronic customer declarations established, elster certificate applied for).

Practice: We have dealt with the practical drafting of customs declarations (stating the goods tariff number according to the EU customs tariff, specifying the relevant codes for customs procedures in accordance with the Customs Declaration Leaflet).

Other documents: We have obtained information with regard to what other documents are required for customs clearance (e.g. IHK certificate of origin, invoice, customs value declaration (import side)).

Customs clearance: We are familiar with the practical customs clearance procedure (presentation to customs, customs control, etc.) at the customs offices responsible.

Value chains: We have considered ways of continuing existing value chains with the UK and, where applicable, covering these through special customs procedures (e.g. inward and outward processing).

Temporary use in the UK: We know that either a formal customs procedure or, alternatively, the ATA Carnet procedure has to be used for temporary goods consignments after Brexit.

We are aware of the possibility of commissioning an external customs service provider to process the aforementioned customs formalities.



Prohibitions and restrictions

Regulations: We have familiarised ourselves with the EU and German control regulations concerning prohibitions and restrictions applying to the movement of goods with third countries (e.g. checking the goods, checking the recipients of the goods, checking the intended use).

Permits: We are aware of the authorities responsible for the notification or approval of exports and/or imports as well as the application process (e.g. BAFA, Federal Environmental Agency, Regional Food Safety Authorities) and the requirements for corporate compliance structures (nominating a person responsible for exports, preparation of working and organisational instructions for export control). We are prepared for British companies no longer being deemed as importers on leaving the EU, meaning that the duty of notification shall pass to the German companies for goods consignments from the UK.

Customs duties and rules of origin

Customs duty rates: We are aware that our products may incur WTO import or export duties if the EU and the UK do not conclude a bilateral free trade agreement.

Rules of origin: In the event of a future free trade agreement between the EU and the UK, we intend to avail ourselves of tariff preferences. We are making preparations in this regard for the calculations of preferential EU origin alongside rules of origin yet to be defined as well as the production of documentary evidence of origin.

Supplier declarations: We are taking into consideration the fact that internal EU supplier declarations (SD) and long-term supplier declarations (LSD) for goods with preferential origin status may not be issued to or by British companies after Brexit.

Primary materials: Our company purchases primary materials from the UK for further processing. After Brexit, these materials will no longer contribute to achieving the preferential EU origin of the final product. In view of the possible loss of the preferential origin relevant to trade with the EU's other agreement partners (e.g. South Korea, South Africa), we have analysed our supplier structures and the possibility of relocating sites from the UK to other EU-27 countries.



Transport

After Brexit, the United Kingdom will also lose access to the Single European Sky. In order to be able to continue flying in the EU, new air transport agreements will have to be concluded with the EU for the airline companies. New air transport regulations will also have to be arranged with other third countries. For example, arrangements like the EU Open Sky Agreement with the USA would no longer apply to British airlines.

According to the rules on European cabotage, only those logistics companies based in the European Union are allowed to deliver to other EU countries without additional permits.

Air transport

Air freight: We have obtained information concerning possible disruptions to flight schedules. We also know that some airlines have already included a Brexit clause in their general terms & conditions of business, under which flight tickets to the UK may lose their validity.

Road transport

We are aware that we should be prepared for increased bureaucracy in relation to road transport deliveries. This will also be associated with significantly longer waiting times at the UK border and at port terminals, etc.

Our company has examined the need to switch to a British forwarding company.



Financial services and insurance

Financial services

Currently, around 90% of derivatives traded in euros, especially interest rate derivatives and currency swaps, are traded in London. After Brexit, for example, the corresponding banks outside the EU will be obliged to provide significantly more equity for risk provision when transactions are settled via clearing houses. The banks having to tie up higher equity amounts will reduce the scope for extending loans while, at the same time, increasing companies' financing costs.

Financial services

We have examined how this could affect us in order to largely avoid any calamities by adjusting our business relations accordingly.



A new investment protection agreement can take time

For German investors, Brexit will result in the removal of protection for European investors under EU law. This protection includes the general requirement of non-discrimination, guarantees regarding market access and prohibition of restrictions on the movement of capital and payments. In addition, there is no bilateral investment protection agreement (BIPA) between Germany and the United Kingdom, which usually offers similar guarantees.

Investments

We are aware that, pending the possible conclusion of a safeguard agreement, there will not be any guarantees regarding market access or prohibition of restrictions on the movement of capital and payments for investments in the United Kingdom.

Checking insurance contracts

British insurance companies will no longer be subject to Solvency II approval, the European insurance supervisory system, for the provision of services in the European Union on account of losing the so-called "EU Passport" and therefore being considered as third-country insurance companies. The Insurance Mediation Directive and future Insurance Distribution Directive will also cease to apply to them, with the result that they will no longer be able to participate in the so-called notification procedure.

Insurance contracts

We have examined our existing contracts in relation to the impact of Brexit on our entitlement to provide insurance services.

Switching providers to an insurer based in the EU has been considered.

Alternatives to British auditors

After Brexit, natural persons recognised by the United Kingdom as auditors (auditors from the United Kingdom), will be regarded as third-country auditors and no longer as statutory auditors within the meaning of the Statutory Audit Directive.

Auditors from the UK

We know that we need to consider alternative auditors in order to minimise any negative consequences.



Personnel and education / vocational training

The free movement of persons is one of the four fundamental freedoms enshrined in EU law. EU citizens may work in the United Kingdom without a residence permit or work permit. EU citizens residing in the United Kingdom at the time of the formal exit on 30 March 2019 will be entitled to a permanent right of residence as well as rights to health care and social and pension benefits. It has not been clarified whether these rights will also apply to EU citizens who commence work in the UK after that date.

Under the Erasmus+ programme, 41% of VET (vocational education and training) students went to the UK last year. This is followed by Spain much further behind at somewhat more than 10%. England, Wales, Scotland and Northern Ireland will no longer qualify as target regions for exchange programmes if an adequate follow-up agreement is not reached after Brexit. The same applies to the Erasmus student exchange programme.

Civil rights

We are aware that termination of the free movement of people between the United Kingdom and the EU is expected to result in residence and work permits being required for people who go to Great Britain after Brexit.

Because we regularly send staff to the United Kingdom, we are aware that we should provide for a fall-back clause in new contracts to cover the resulting additional costs.

We have taken into consideration that a visa may be required for the deployment of staff after Brexit.



Contracts

In new contracts, companies should take into account that Brexit may have an impact on the current contractual relationship, e.g. due to new customs tariffs or possible currency fluctuations. The parties to the contract can take account of this uncertainty by including certain terms and conditions and termination or contract amendment clauses. Another possibility is to enter into shorter term contracts so that the precise economic effects of Brexit can be estimated promptly and be taken into consideration in new contracts.

How to deal with current contracts is far more difficult. If essential circumstances of the contract change after the event, making performance of the contract unreasonable, the contract can, for example, be adapted in accordance with German law. Whether these conditions would also exist at the time of Brexit coming into effect and in what form the contract adjustment would then take place is, however, uncertain from today's perspective. In order to avoid disputes, it can therefore be advisable, as a precautionary measure, to add supplementary provisions to existing contracts in order to compensate for the risks of Brexit in the interests of both parties.

Checking new and current contracts

New and current contracts should be checked carefully in light of the risks associated with Brexit.



Industrial property rights and standards

Existing industrial property right may become problematic, particularly EU trademarks and Community designs. Applications for these can no longer be filed for Great Britain after Brexit. For existing EU trademarks and Community designs, the current proposals provide for these to continue to be valid as national trademarks or designs for the jurisdiction of Great Britain. After Brexit, national industrial property rights will have to be acquired for protection in Great Britain.

The CE marking provides proof that a product meets the safety, environmental and health requirements specified in various European directives. Only then may the product be brought onto the market in all EU Member States. A large number of companies refrain from self-certification, which is possible in many cases, and have a certificate of conformity issued for them by accredited testing institutes. The involvement of a testing centre for conformity assessment is even mandatory for particularly sensitive product groups, such as medical devices.

After Brexit, British institutes will probably no longer be able to carry out conformity assessments that are valid in the EU.

Protection right

We know that, after Brexit at the latest, industrial property rights in Great Britain will have to be registered nationally or via IR trademarks in order to also gain protection rights for the jurisdiction of Great Britain.

CE marking

Our company places CE-labeled products in the United Kingdom market. We will verify if the product safety standards in the United Kingdom will be changed after Brexit. If this is the case, we will adjust our products to the respective product safety requirements.

Product norms and standards

Who has to bear the additional costs for testing and certification requirements is regulated in existing contracts in most cases. In new contracts, our company ensures that the parties split the costs which are already known and are to be anticipated as precisely as possible.



Taxes



The European VAT system is largely harmonised within the EU, thus preventing the double taxation of cross-border deliveries and services. After leaving the EU, the United Kingdom will no longer be obliged to apply the common VAT system directive or comply with the maximum and minimum VAT rates and will no longer have any influence on the continued development of the VAT system.

The United Kingdom has a low corporate tax rate of currently 19% (from 1 April 2020: 17%) and a wide network of bilaterally agreed double taxation agreements. The so-called EU Parent-Subsidiary Directive currently facilitates the cross-border payment of distributed profits between affiliated companies. The EU directive states that no withholding tax may be deducted from the paying company and there must not be any minimum taxation for the receiving company.

Import turnover tax

We are paying greater attention to the documentation requirements and the correct tax mapping of the movements of goods in turnover tax returns.

We are aware that deliveries from Germany to Great Britain will be tax-exempt export deliveries in the future and that (deductible) import turnover tax will be due on imports from the UK. This is expected to increase our costs. Other guarantees of origin will apply. UK companies now have to make applications for input VAT refunds in German. This is subject to a deadline period shortened by three months.

We are aware that, in service transactions, the entrepreneurial status can no longer be provided via the VAT identification number.

Income taxes

We are aware that there will not, for the time being, be any cross-border tax-exempt distributed profits after Brexit, which may lead to additional tax burdens.

We recognise that there will no longer be any cross-border tax-neutral mergers.

We know that residence in the EU/EEA in several places of the Foreign Tax Law (AStG) is a prerequisite for application (deferment of exit taxation, proof of discharge in foreign family foundations, etc.).

We know that the intercorporate privilege will be eliminated for trade tax.

We have been informed that dividends to UK parent companies with a minimum 10% holding in a German subsidiary will no longer be exempt from withholding tax in the future. Consequently, capital gains tax is to be withheld in Germany.

We recognise that interest and licence payments to affiliated companies will be subject to withholding taxes.

We are aware that tax will have to be paid on hidden reserves immediately when transferring assets to Great Britain.

We know that, when disposing of certain assets (e.g. real estate), the profit can no longer be transferred without provision for replacement investments.



Company law

According to the case law of the European Court of Justice on the freedom of establishment, British companies, such as limited companies (private limited company), with their administrative headquarters in Germany are to be recognised here in Germany. After Brexit or expiry of the transition, such a British limited company would be treated as a partnership. The limited liability then no longer applies.

Limited companies

Our company is making endeavours to find alternatives in a timely manner. We know about the possibility of merging a British limited company with its administrative headquarters in Germany with a German legal entity, such as a GmbH (German private limited company), in which case the rights and obligations of the British limited company are transferred to the GmbH. In addition, individual assets of a limited company can be transferred to a German company and/or the limited company can be liquidated.

Our company has examined whether business relations exist with one or more limited companies with administrative headquarters in Germany and is in contact with them where applicable.



REACH

Chemical substances intended for the single market require registration under the REACH regulations from one metric ton per year. Numerous substance registrations originate from the United Kingdom. Substances imported into the EU from third countries also have to be registered here. Many importers use service providers based in Great Britain for this registration with the European Chemicals Agency (ECHA). After Brexit, this procedure could no longer be possible. After the exit of the United Kingdom, companies in Germany must therefore pay greater attention to the valid REACH registration of the substances registered there.

REACH

We have identified the substances purchased by us that were registered by companies in the United Kingdom.

We are aware that we need to regularly check the validity the registration of these substances.