Brexit: Critical actions with 50 days to go

November 2020

Building a better working world

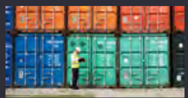
When the Brexit transition period ends on 31 December 2020, the UK will leave the EU's Single Market and Customs Union. It will then begin a new economic relationship with the EU – either with a trade deal or with 'no deal'.

For business planning purposes

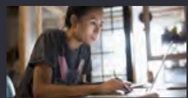
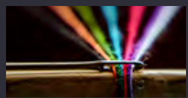
- The limitations on the scope of any Free Trade Agreement (FTA) are known. The published UK and EU draft texts set clear boundaries for the scope of what can, and crucially what can't, be achieved through negotiations.
- 'No deal' would mean the UK reverting to World Trade Organization (WTO) terms. The implications of this outcome are mostly known.

What impacted organizations should be doing in the time remaining

Change is inevitable with either a deal or no deal – both represent significant disruption for business. There is extremely limited time left to prepare. This document sets out the key commercial actions that businesses can still take with 50 days to go and our top 10 recommendations.




Top 10 recommendations

1
Supply chain

Finalize strategies for critical inbound/outbound transport routes that may give rise to logistical pressure points for your key goods flows. These routes will most likely present the highest risk for delayed and disrupted deliveries.

2
Trade in goods and customs

Identify goods flows critical to the continuity of your business and then establish your border responsibilities on a per flow basis. Confirm that all necessary registrations and/or authorizations are in place, you have the master and transactional data you need, e.g., tariff classifications, and you understand how you will meet those requirements operationally.

3
Trade in services

Identify any immediate authorizations or licences required to continue providing services after 31 December 2020.

4
Talent – workforce and people

Ensure your travelers, remote workers, and business stakeholders understand both the vastly different travel landscape after 31 December 2020 from an immigration and pandemic restrictions perspective.

5
Regulations and compliance

Identify 'day one' changes to your compliance obligations under product safety and similar legislation, particularly for UK trade into the EU.

6
Tax and finance

Analyze short-term cash flow and working capital requirements taking into account possible Brexit disruptions as well as registering for additional VAT obligations and update systems accordingly.

7
Legal and contracts

Check material business-critical contract terms to assess risk of termination or significant liability from any inability to perform your obligations and plan accordingly. Claims related to delay penalties, Material Adverse Change (MAC) clauses, force majeure, time being of the essence and specific Brexit clauses could apply on or shortly after 31 December 2020.

8
IT, systems and data

Ensure the IT system and infrastructure changes are well understood – every business change item in this document will almost certainly have an IT impact. Confirm that necessary changes are well underway with a view to completion as close to 31 December 2020 as possible.

9
Commercial and pricing

Identify and engage with priority customers, considering possible increases in costs and border delays and noting that these will likely arise both in a deal and no-deal scenario. Understand impact of changes in costs across end-to-end value chain.

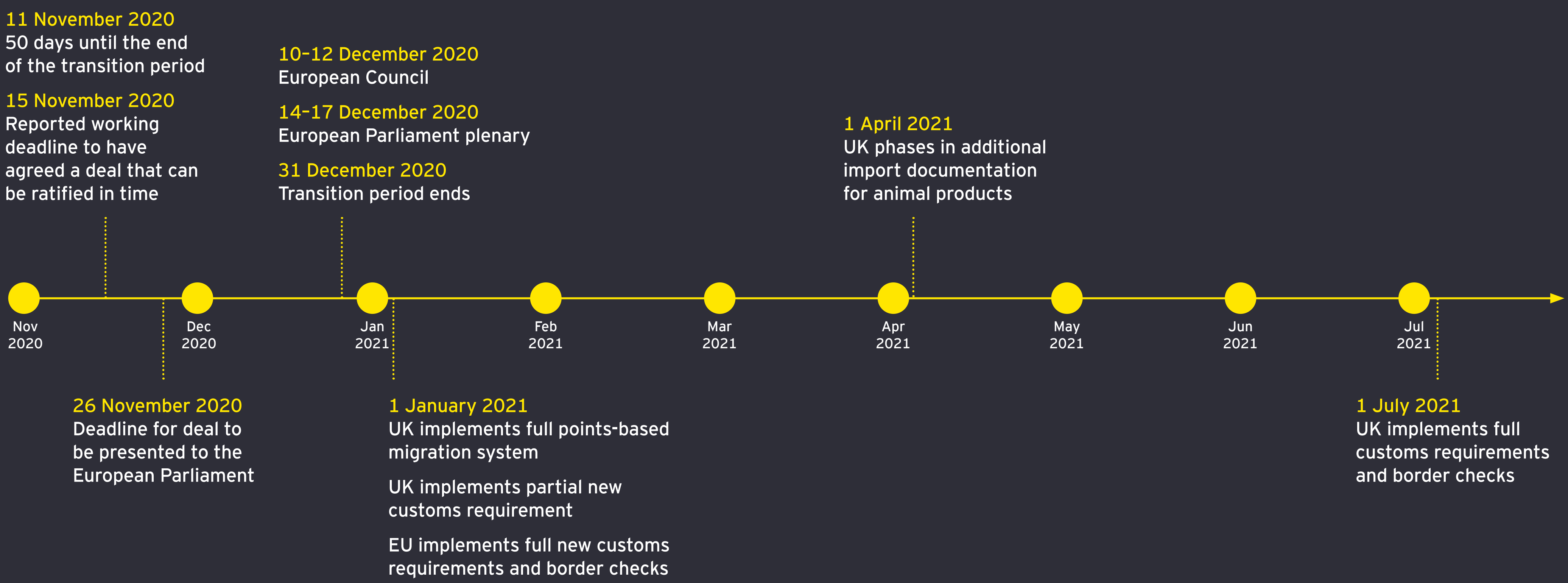
10
Northern Ireland

Continue to check for updates on Brexit guidance on moving goods under the Northern Ireland Protocol, including recent guidance from HMRC on VAT for Great Britain to Northern Ireland movements and EORI numbers.

The path to 31 December 2020

Negotiations between the UK and EU will likely continue until the deadline. If a deal is agreed, it will need to undergo the necessary decision-making processes on both sides, including the European Council and European Parliament in order for the agreement to be ratified and enter into force in time for 1 January 2021.

Against this backdrop, the UK is also in the process of trying to finalize the remaining continuity trade agreements which the EU currently has with third countries as well as launching new trade negotiations with the USA, Australia and New Zealand.



Supply chain

The UK Government's Reasonable Worst Case Scenario forecast is that 40-70% of trucks travelling to the EU might not be ready for new border controls. This could result in queues of approximately 7,000 port bound trucks and delays of up to two days. These delays could also impact goods coming into the UK – not just from the EU – but most particularly goods entering the EU from the UK. This is because the EU has said that it will implement full border formalities from 1 January 2021, whereas the UK is phasing its formalities in over six months.

Businesses which were previously straightforward distributors or suppliers will become the importer and exporter of record for customs purposes and the EU importer for product safety purposes. This comes with many additional regulatory and legal obligations. As a result, those who are unprepared for the changes may experience additional cost and delays along their whole supply chain.

Priority action

- Finalize strategies for critical inbound/outbound transport routes that may give rise to logistical pressure points for your key goods flows. These routes will most likely present the highest risk for delayed and disrupted deliveries.

Key actions for supply chain

- Ensure that those in your supply chain with responsibility for goods movements are prepared (e.g., INCOTERMS which determine who would be the importer/exporter). Remember that your business might still encounter commercial pressures due to increased costs even if you are not the direct importer or exporter.
- Formalize necessary inbound/outbound shipments due around Brexit cut-off dates and test infrastructure for end-to-end visibility and closer monitoring of the flow of these goods.
- Finalize and communicate risk mitigation strategies – such as rescheduling or alternate transport options as well as contingency plans for up and downstream supply chain disruption.
- Finalize prioritization of service provision and communicate with key customers, recognizing that you may not be able to service all of your customer base as you might wish.
- Finalize and plan for activation of a 'control tower' to oversee supply chain operations in the run up to 31 December 2020, providing an early warning system to deal with possible disruptions.
- Assess your cost implications based on the latest information, and define or adjust cost containment strategies and interventions.

How EY teams can support

We can help by:

- Accelerating assessment of supply risk and readiness interventions, including contract terms and conditions by leveraging EY's extensive Risk Assessment & Stress Testing playbook and capability to rapidly define relevant risk scenarios, including mitigating action plans.
- Supporting 'control tower' activation and supply chain planning to improve the visibility and efficiency of commercial operations with a focus on customer service levels, considering alternate sourcing, inventory and potential tariff and non-tariff barriers.
- Advising on scenario planning and impact mitigation of likely implications for production, cost, cash and revenues from delays and/or changes in the supply chain.

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Trade in goods and customs

As a result of the UK leaving the EU Customs Union, there will be additional customs formalities and checks, whether or not there is a deal. This will impact on all goods coming into the UK — not just from the EU — and goods entering the EU from the UK. Applicable customs duties on trade from third countries into the UK will also change, in line with the UK Global Tariff.

Priority action

- Identify goods flows critical to the continuity of your business and then establish your border responsibilities on a per flow basis. Confirm that all necessary registrations and/or authorizations are in place, you have the master and transactional data you need, e.g., tariff classifications, and you understand how you will meet those requirements operationally.

Key actions for trade in goods and customs

- Where your business is responsible for imports into Great Britain (GB) for those critical flows, determine the applicability of the staged customs arrangements announced by the UK Government that may offer you more time to fully prepare.
- When clear on what you need to do and by when you need to do it, directly engage with your supply chain stakeholders to define customs and borders roles and responsibilities to ensure a clear, common understanding of the practicalities and the handovers in the chain to avoid unexpected disruption.
- If duty costs may impact your business continuity, complete a duty impact and mitigation assessment based on the UK Global Tariff for UK imports, and EU Common External Tariff for EU imports.
- Ensure customs brokers are in place where you are required to be the importer and/or exporter.

For all businesses moving goods between the UK and EU:

- At a defined weekly point before 31 December, review customs plans and mitigations against the latest government guidance, both in the EU and UK.
- To facilitate rapid intervention on customs problems, develop and document catch-all procedures to manage unplanned or unplannable issues, including defined escalation paths and supporting collateral with appropriate controls, e.g., a manually editable customs invoice format outside of the ERP system.
- Aligned with your supply chain 'control tower,' form a customs cutover team and establish early warning indicators to resolve issues before they necessitate the direct involvement of customs authorities.
- Plan customs support and procedures to match with commercial cutover plans for 'day one,' including goods in transit.

How EY teams can support

We can help by:

- Working with you to define your border responsibilities, then rapidly design processes and data improvements implementable in time to reduce 'day one' disruption risk.
- Managing engagement with your stakeholders to explain technical requirements and align commercial expectations.
- Processing of one-off high volume tasks such as mass tariff classification using our dedicated trade centres of excellence.
- Providing frequent updates on the latest guidance specifically tailored to your plans and mitigations.
- Providing a customs helpdesk.

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Trade in services

Services companies will enjoy considerably less access to the EU Single Market under a Free Trade Agreement when compared to membership of the Single Market. Assessing the impact is critical and should be done as soon as possible to give time to adjust.

Businesses most impacted will include regulated service industries (e.g., legal, audit, financial services) and service firms that rely on the movement of people and data to deliver services (e.g., tourism, hospitality, education, and manufacturing repair and maintenance).

Priority action

- Identify any immediate authorizations or licences required to continue providing services after 31 December 2020.

Key actions for trade in services

- Assess critical services against identified restrictions, for example on establishment.
- Identify key staff who will be most immediately impacted by changing regulatory requirements and travel restrictions, such as those who will be providing services over the end of the transition period.
- Identify key services, in terms of both suppliers and customers, that will need to continue immediately after 31 December 2020 and prioritize preparations for these.
- Plan for potential disruptions due to any operating/legal structure changes required to ensure your business can continue to provide services into your key markets.
- Budget for additional cost and time required for your employees or your business to obtain any new relevant professional qualifications, authorizations, licences or certifications after 31 December 2020.
- Engage with priority customers to understand immediate concerns on continuity of service provision and manage expectations.

How EY teams can support

We can help by:

- Setting up internal triage processes to respond to 'day one' issues.
- Identifying jurisdictions in which immediate action will be required to continue trading after 31 December 2020.
- Carrying out sector-specific analyses and advise on how the market might respond.
- Advising on essential restructuring that may be required as a result of changes in the legal and regulatory environments.

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4 Talent – workforce and people

The UK Government has now provided full details of the UK's new points-based immigration system, which will start to take effect from 1 December 2020. Businesses can now prepare with certainty. EU and EEA citizens resident in the UK before 31 December 2020 will have the right to settle, provided that they apply to the EU Settlement Scheme before 30 June 2021. EU Member States are continuing to open application processes for UK nationals, but operations are being strained by the impact of the COVID-19 pandemic.

All businesses should consider their talent and mobility plans and be prepared for delays to processing and border restrictions due to the pandemic, restricted rights to work, changes to rules on business travel and social security.

Priority action

- Ensure your travelers, remote workers, and business stakeholders understand both the vastly different travel landscape after 31 December 2020 from an immigration and pandemic restrictions perspective.

Key actions for workforce and people

Immediate actions:

- Support EU (in UK) and UK (in EU) employees in complying with the applicable immigration registration and legal requirements.
- Ensure increased cost is built into financial planning for 2021 – impact will hit immediately.
- Ensure A1 certificates extensions into 2021 are in place before 31 December 2020 and monitor ongoing developments on social security cooperation.
- Brexit-prepare your cross-border remote work/'work anywhere' models. Brexit will straddle the holiday period – businesses must communicate the different rules that apply on either side of 31 December 2020.

Focus on long-term mitigation through strategic workforce planning, including:

- Workforce risk analysis identifying any key personnel or material numbers of employees, where talent retention/ mobility is at risk.
- Alternative workforce supply models.
- Strategic immigration solutions.
- Feasibility of expediting any recruitment of key roles or talent moves before 31 December 2020 – there is still time if you act now.
- Ensure adequate right to work checking is in place that 'lean-in' to available government flexibilities.

How EY teams can support

We can help by:

- Supporting immigration and visa processes for personnel moving across the UK/EU borders, and pandemic travel restrictions.
- Providing a Brexit immigration helpdesk over the holiday period for employees and HR.
- Developing Brexit-proof 'work anywhere' policies.
- Reviewing immigration strategy and workforce planning to improve where and how employees are deployed across Europe.
- Designing 'effective use' business travel models.
- Assisting manage social security and other remuneration costs.
- Devising communication strategies, policies and contracts to analyze workforce fears and concerns, and to reduce/limit against individual and corporate regulatory risk.

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Regulations and compliance

A large body of guidance has been issued by the UK Government and relevant regulatory agencies (such as the Medicines and Healthcare products Regulatory Agency and Health and Safety Executive) on the non-tariff requirements for trading in the EU, GB and NI markets from 1 January 2021. Whilst it is possible some of these requirements could be overtaken by an agreement between the UK and EU, it is unlikely, given the time remaining, that there will be significant movement, particularly given the UK's departure from the Single Market.

These non-tariff barriers include new licensing obligations, type approvals, labelling and marking requirements, conformity assessments and so forth. The UK is allowing a number of easements on timing for compliance but these do differ depending on sector and product type. The EU guidance on similar matters has been in place for some time and generally requires full compliance from 1 January 2021 and businesses should expect the EU to fully enforce compliance from this date, no attempt to comply has been made.

Priority action

- Identify day one changes to your compliance obligations under product safety and similar legislation, particularly for UK trade into the EU.

Key actions for regulations and compliance

For all UK businesses trading in the EU:

- Product registration – if your finished product, intermediate product or raw material registrations for EU markets need to be held by an EU/UK entity, ensure transfer is actioned before 31 December 2020. Many EU systems will be closed to UK participants after 31 December.
- Product labelling – many product labels will need amending to identify the correct EU established importer or authorized representative after 31 December 2020. Check who this will be and that they are ready to comply with new importer obligations. If you cannot amend labelling/packaging, investigate your ability to 'overlabel'/sticker for a short period. In most cases, product placed on the market before 31 December 2020, can circulate without labelling changes, so investigate whether you can place more product on the EU market.
- Product certificates/testing – if products need re-certifying/tested by a notified body/safety assessor based in EU, this will be generally required for products placed on the market after 31 December 2020. A new notified body should be found without delay.
- Designated persons – where your products need the presence of a designated or qualified person in EU, make the written appointment in readiness for 31 December 2020.
- Review if there is a need to change your corporate structure or supply chains to enable regulatory compliance.

For all EU businesses trading in the UK:

- Be clear when you will need to make any compliance changes and plan accordingly.
- Review if there is a need to change your corporate structure or supply chains to enable regulatory compliance.

How EY teams can support

We can help by:

- Evaluating sector and product/service specific regulatory changes associated with new and altered compliance regimes.
- Quantifying the associated impact, including safety harmonization and conformity checks, labelling, professional qualifications, importer/distributor obligations, notified bodies, and authorized representatives.
- Working with you to transform business models post-Brexit.
- Assisting with identifying alternative locations in which to perform activities.
- Advising on compliance and governance when setting up of new entities and operations.

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6 Tax and finance

The extent of certain tax changes will depend on the provisions of any Free Trade Agreement. However there remain several changes which will apply regardless of what is agreed between the UK and EU, including import VAT, loss of EU VAT simplifications, changes to systems and reporting, and withholding tax.

Priority action

- Analyze short-term cash flow and working capital requirements taking into account possible Brexit disruptions as well as registering for additional VAT obligations and update systems accordingly.

Key actions for tax and finance

- If a UK company currently prepares consolidated financial statements that includes EU entities, there is a specific issue for groups with 31 December year ends. The EU subsidiaries of such a UK parent may be required to prepare consolidated financial statements at 31 December 2020, in place of the UK company. Identify whether this situation applies to you, and if so take steps to ensure that your EU company is ready and able to prepare consolidated financial statements.
- Review plans to obtain UK and EU grants as businesses may not be eligible to continue to claim. Continue to review UK Government policy as the new UK and devolved administration State Aid regime is established.
- Assess future withholding tax costs arising from dividends, interest or royalties payable.
- Prepare for changing VAT reporting and evidence requirements. Great Britain will no longer be treated as part of the EU VAT area for goods, and both Great Britain and Northern Ireland will no longer be treated as part of the EU VAT area for services after 31 December 2020. The impact will be lost EU VAT simplifications which could result in new compliance obligations – firms should consider what obligations they will have. For VAT purposes, intra-community supplies of goods between the EU and Great Britain and domestic supplies of goods between Northern Ireland and Great Britain will be redefined as imports and exports. Firms should review and prepare for the changing reporting and evidence requirements.

How EY teams can support

We can help by:

- Providing tax advice on restructurings and other changes that impact on a business's tax profile.
- Modelling of cash flow and working capital for impact assessments.
- Identifying cash improvement strategies.
- Data analytics to help model pinch points and opportunities.

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7 Legal and contracts

The exact nature of the legal and contractual challenges facing businesses will depend on their corporate structure, regulatory landscape and the provisions of the contracts and legal relationships they have with suppliers, customers and services providers. Delays in supply chains, changes to regulatory laws, or in tariffs, could have unforeseen financial or regulatory implications when understood in light of specific contractual obligations or a corporate structure that, for example, doesn't have EU subsidiaries but only a branch structure.

This is before considering the potential for legal divergence from current EU regimes such as competition and State Aid laws, changes to intellectual property rights, and potential difficulties in enforcing contracts on current jurisdiction clauses.

Priority action

- Check material business-critical contract terms to assess risk of termination or significant liability from any inability to perform your obligations and plan accordingly. Claims related to delay penalties, Material Adverse Change (MAC) clauses, force majeure, time being of the essence and specific Brexit clauses could apply from or shortly after 31 December 2020.

Key actions for legal and contracts

- Consider implications of territorial limitations of the UK's exit from the EU – for example we have heard critical IT/software providers confirm they will not recognize the use of licenses granted for 'EU' use by the UK entities of a global business.
- Update your contracts to include new agreements on replacement INCOTERMS with suppliers/customers which will apply after 31 December 2020.
- Record other discussions on critical contracts with any third parties on which you intend to rely, to ensure evidence is gathered in the event any claims are required.
- Ensure your corporate structure is suitable to be able to meet the regulatory obligations and requirements mentioned in the Regulatory and Compliance section or consider incorporating new companies/branches.
- Review your corporate governance obligations and prepare for any additional filing or reporting requirements.
- Review your intellectual property (IP) rights and licences. Only those EU Trademarks (EUTM) applications completed prior to 31 December 2020 will be cloned to UK marks, so monitor ongoing applications and check for any renewal dates close to 31 December 2020. Identify if licences in or out of the business are sufficient, whether they need amending for territorial reasons and if they need to be extended to new UK Trade Marks (UKTM). Also check whether the licence requires registration and if you are involved in parallel trade, verify whether you require EEA-based IP rights holder's permission to export goods to the EEA.
- Transfer EURid domains to an EU/EEA holder before 31 December 2020.
- Ensure Brexit diligence forms part of any corporate transactions involving companies with cross-border trade (UK/EU or expansion), including on financial impacts on valuation, inclusion of earnouts and MAC clauses.

How EY teams can support*

We can help by:

- Performing contract reviews to identify Brexit-impacted terms.
- Advising on and supporting contract renegotiations.
- Providing corporate structuring and governance advice and support – including creation of new companies/branches, company secretarial support, etc.
- Providing guidance on IP changes and help identifying approaches to reduce risk.
- Assessing the impact of new UK legal regimes and regulations, including in relation to State Aid and competition law.
- Supporting any M&A activities.

* EY member firms do not practice law where not permitted by local law and regulations.

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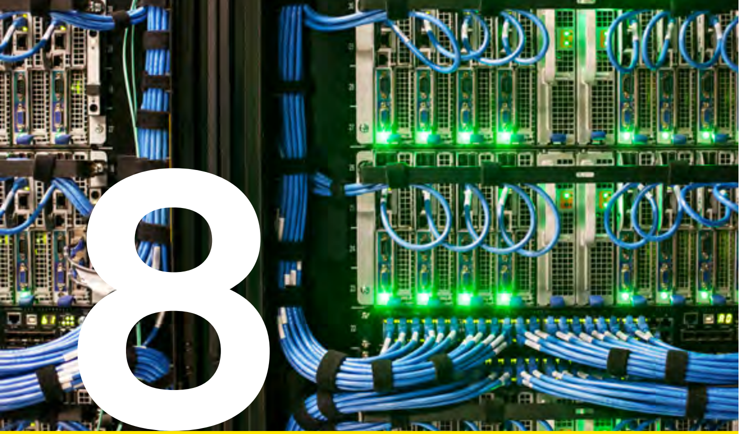

8 IT, systems and data

Companies must look to their IT systems and infrastructure, to assess what additional requirements are needed by various business functions to implement the necessary Brexit changes, e.g., customs, procurement and HR. This includes not just the parent organisation, but also in-scope subsidiaries.

There remains a strong possibility that an adequacy decision for the purposes of personal data flows will not be in place before 2021 for data flowing from the EU to the UK. The key stumbling block is still the Investigatory Powers Act 2016, which allows for broad interception, interference and communications acquisition by the UK Government and UK Security forces, potentially limiting the rights of individuals which some in the EU contend goes against the EU's General Data Protection Regulation (GDPR). Nonetheless, an adequacy decision is currently being considered by the European Commission within the larger framework of the UK-EU negotiations. An adequacy decision would only apply to the UK once it becomes a third country and can be revoked at any point.

Priority action

- Ensure the IT system and infrastructure changes are well understood – every business change item in this document will almost certainly have an IT impact. Confirm that necessary changes are well underway with a view to completion as close to 31 December 2020 as possible.

Key actions for IT, systems and data

- Identify critical IT application or infrastructure updates due to take place near to or after 31 December 2020 and assess viability for rescheduling. Verify for interdependencies with other business changes occurring as a result of Brexit and any new changes to IT systems, process and procedures required in support.
- Prepare your staff for a significant uptick in cyber-attacks against your organization, especially phishing.
- By now, you should have a good grasp on your risks with regard to Brexit data storage and flows. Actions should be under way to mitigate as required.
- In addition to Standard Contractual Clauses and Binding Corporate Rules (or their equivalents), ensure that your IT contracts do not contain any unforeseen issues such as region limited licenses.
- Test your cutover process to ensure that all EU to UK required changes (e.g., Terms and Conditions on a website) will work as you move in to 2021.

How EY teams can support

We can help by:

- Data flow assessments, including updating data protection agreements to enable cross-border flows of data and drafting the appointment of a data representative.
- Reviewing and updating documentation, policies and boiler plate text (e.g., on a website, in contracts, and Terms and Conditions)
- Reviewing IT system readiness, to identify and help implement changes required, including any bespoke tax and customs solutions.
- Providing broad transformation support and management – strategy, gap analysis, planning and implementation support for IT and cyber issues/ changes related to Brexit.
- Providing contract assistance for Brexit required changes.

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Commercial and pricing

Brexit will increase costs for many companies. This increased cost can be broken down into two types including: direct costs related to Brexit (tariffs, immigration fees, etc.) and administrative costs to comply with new Brexit requirements.

Companies will need to look at their cost base and assess whether they can take advantage of mitigation measures; whether the increased cost is going to be absorbed across suppliers, the business, customers and consumers; or a combination. Companies are often working with imperfect data and executing changes of this magnitude (both in terms of scale and time) is unprecedented for many. However, failure to execute will pose a material risk for companies, particularly those who are part of longer value chains or whose competitiveness will be impacted in a fundamentally different way.

Priority action

- Identify and engage with priority customers, considering possible increases in costs and border delays and noting that these will likely arise both in a deal and no-deal scenario. Understand impact of changes in costs across end-to-end value chain.

Key actions for commercial and pricing

- Carry out modelling to determine the extent to which these increased costs can be absorbed in pricing.
- Consider any changes needed to payment deadlines throughout the supply chain, both for suppliers and customers.
- Review and amend invoicing requirements.
- Consider trade-offs between the value of products, origin requirements, and the increased cost of warehousing and logistics.
- Review transfer pricing and intellectual property rights arrangements, particularly where supply chains and contracts may be moved due to changes in the legal or regulatory environments.
- Consider the potential benefits and authorization requirements for the use of customs easements such as inward processing relief.

How EY teams can support

We can help by:

- Evaluating potential cost mitigation approaches, including providing experienced input on customs simplifications and reliefs.
- Carrying out modelling exercises to advise on the extent to which cost adsorption is likely to be feasible.
- Providing sector-specific input on likely competitor strategies and aid with quantifying competitor exposure.
- Advising commercial teams on the execution of new commercial pricing strategies.
- Carrying out wider value-chain analyses to identify potential exposures and cumulative effects throughout the supply flow.

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Northern Ireland

Now is the time to understand what the Protocol on Ireland/Northern Ireland means for businesses operating in Northern Ireland. Organizations need to prepare to comply with the new administrative requirements, formalities and procedures around customs, VAT and regulations, which will align with the EU as well as the UK in many regards.

Priority action

- Continue to check for updates on Brexit guidance on moving goods under the Northern Ireland Protocol, including recent guidance from HMRC on VAT for GB to NI movements and EORI numbers.

Key actions for Northern Ireland

- Certain import and export customs and VAT procedures will be required regardless of a whether an FTA is agreed, make sure you understand the new requirements, including the complexity of different VAT and regulatory regimes for goods and services, and update systems and reporting for businesses.
- As regulatory checks will be introduced for some goods, prepare contingency plans for supply chains in the event of delays to shipments.
- Consider the additional resources required to manage the impact of increased administrative requirements including on working capital and additional staffing.

How EY teams can support

We can help by:

- Providing ongoing updates on key developments.
- Bespoke analytics, to help determine potential impacts and assess improvement opportunities.
- Advice on potential outcomes and their consequences.
- Tax advice on VAT changes and customs issues, e.g., goods which will be determined by the UK-EU Joint Committee as being 'at risk'.
- Cash flow modelling for working capital.

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