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Final Countdown to Brexit

Compliance and Ethics



The United Kingdom's decision to leave the EU Single Market and Customs Union (aka [Brexit](#)) and end the free movement of persons, goods, capital, and services between it and the European Union will occur on Dec. 31, 2020. As a result, the EU-UK relationship will change significantly for

businesses on both sides moving forward. Regardless of the outcome of the ongoing EU-UK negotiations, these changes are inevitable, and risk exacerbating the economic pressure from the COVID-19 outbreak.

This non-exhaustive checklist aims to help companies doing business in or with the United Kingdom to double-check their state of readiness for the start of the new year.

10. Customs formalities, checks, and controls on goods

As of Jan. 1, 2021, customs rules required under EU law will apply to all goods entering the customs territory of the European Union from the United Kingdom or leaving that customs territory to the United Kingdom. Similarly, UK customs rules will apply for goods entering and leaving the United Kingdom; however, these will be introduced in a staggered basis over the first half of 2021.

Even if an ambitious free trade area is established between the European Union and the United Kingdom, providing for zero tariffs and zero quotas on goods, and with customs and regulatory cooperation, all products traded between the European Union 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.

Additional questions

- Am I acquainted with the EU/UK customs formalities that will apply post-Brexit, in particular, if I have 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?
- Did I review the Incoterms under which goods are sold/purchased? For goods sold under “D” terms do I have the customs agents in place to fulfill the import formalities?
- In the absence of a trade agreement, the applicable tariffs will be those applicable to third countries. Did I check the applicable import tariffs?

9. Rules of origin

Beginning in 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 European Union and its preferential partners is also likely to be affected, as UK content (in terms of both material and processing operations) will most probably become “non-originating” under EU preferential trade arrangements.

Additional questions

- 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?

8. Vat and excise duties

The rules for payment and refund of Value Added Tax (VAT) will change starting next year. All movements will become imports or exports, subject to UK or EU import VAT.

The United Kingdom will introduce a postponed accounting import VAT deferral scheme, so no cash VAT payment has to be made by business importers to UK customs. However, many EU countries do not offer the same scheme for UK businesses importing their goods.

UK e-commerce businesses selling goods to EU consumers will now be subject to import VAT, and UK sellers will have to consider VAT registering in Europe. Similarly, EU e-commerce sellers may now need to register immediately for UK VAT.

Excise duties on excisable goods (e.g., alcoholic beverages, tobacco products, fuels, etc.) will also be due upon importation of goods brought into the European Union or the United Kingdom.

Additional questions

- Am I acquainted with the relevant VAT/excise duties procedures?

7. Certificates, authorizations, markings, or labeling

Marketing authorizations issued by UK authorities are highly likely to no longer be valid for placing products on the EU market once this stage of Brexit is implemented. This means, for instance, that a car with only a type approval issued by the United Kingdom could no longer be sold in the European Union.

Where EU law requires certification by an EU notified body for products such as for some medical devices, machinery, or construction, products certified by UK-based bodies will most likely no longer be allowed to be sold within the European Union. Similarly, markings or labeling of goods placed on the EU market, which refer to bodies established in the United Kingdom, will very likely no longer comply with EU labeling requirements.

Additional questions

- Have I transferred certificates and authorizations 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/UK market are correctly labeled and marked?

6. Chemicals

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

Similarly, substances previously registered under REACH and imported/manufactured within the United Kingdom will have to be registered under the new UK-REACH regime. The UK-Regime, however, provides for the transition period until October 28, 2021.

Additional questions

- Have I ensured that my UK substances are registered with a manufacturer or importer in the European Union, or appointed a person in the European Union who is legally responsible for that import as an official registrant for the substance?
- Did I identify the substances manufactured/imported within the United Kingdom that I need to notify and register under UK-REACH?

5. Provision of services

As of Jan. 1, 2021, authorizations granted by UK authorities to service providers under the EU Single Market framework will no longer be valid in the European Union. This has particular relevance for the areas of financial services, transport, audiovisual media, and energy services.

In order to access the EU market, UK service providers and professionals established in the United Kingdom will need to demonstrate compliance with any rules, procedures and/or authorizations that cover the provision of services in the European Union by foreign nationals and/or companies outside the European Union.

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.

Additional questions

- Have I assessed whether my company can continue to provide services within the United Kingdom and actions required to demonstrate compliance with UK rules?
- Does my business rely on licenses or authorizations issued by UK authorities? Have I applied for similar licenses or authorizations in the EU-27, or transferred such licenses or authorizations issued by the United Kingdom to an EU-27-authority?

4. Contracts — Jurisdiction clauses

EU rules facilitating the cross-border recognition and enforcement of judgments in the European Union and in the United Kingdom during the transition period will no longer apply in 2021. Judgments handed down by a UK court might no longer be swiftly enforceable in the European Union compared to the current regulations. Similarly, judgments rendered by a court within the EU-27 might not be enforceable within the United Kingdom in the same way they can be today.

3. Health and safety

To protect health and safety and the environment, EU rules restrict the import/export of certain goods to and from third countries. This includes, for example, live animals, products of animal origin, and some plants and plant products, such as wood packaging. Imports/exports of certain commodities (e.g., radioactive material, waste, or some chemicals) are subject to specific permits or notifications.

Post-Brexit, goods destined to or coming from the United Kingdom will be subject to these EU rules. You should take the necessary steps to ensure compliance with the EU's import/export prohibitions and restrictions.

Additional questions

- Are any of the goods my company sells subject to specific permits/authorizations?

2. Intellectual property rights

While existing EU unitary intellectual property rights (e.g., 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.

Businesses that have applied for an EU trademark or registered community design that has not been granted at the date the United Kingdom leaves the European Union will have to apply for the new UK right.

1. Personal data

Beginning in 2021, the transmission of personal data from the European Union to the United Kingdom is subject to the rules for data transfers to third countries, as set out in the EU General Data Protection Regulation (GDPR).

If the European Union has not made adequacy decisions in respect of the United Kingdom before the end of the transition period, your organization may need to have Standard Contractual Clauses (SCCs) in place with EU counterparts in order to legally receive personal data from the European Union. This is relevant for many business sectors, particularly if EU businesses continue to work with data-centers located in the United Kingdom.

Additional questions

- If my company transfers personal data to the United Kingdom, have the necessary steps been taken to ensure compliance with EU rules?

Lift-off: Workforce

A new immigration system will apply to people arriving in the United Kingdom from Jan. 1, 2021, and EU citizens moving to the United Kingdom to work will need to get a visa in advance. EU, EEA, or Swiss citizens and their family members who are living in the United Kingdom before Jan. 1, 2021, need to apply to the EU Settlement Scheme to continue living in the United Kingdom after June 30, 2021.

Similarly, UK workers and family will need to apply for a residence status to confirm that they were already resident in the EU country they live in before Dec. 31, 2020. They will have to do so before June 30, 2021.

Visit the [ACC Collection on Brexit](#) for more resources to help prepare your company to do business with the United Kingdom.

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