



EU LAW AND BUSINESS: BREXIT IMPLICATIONS

29 November 2018

This guide gives you a framework to understand the implications for businesses of EU law. Much Brexit guidance is concerned mainly with trade in goods, but there are a variety of other areas of EU law that also affect business. This guide is intended to be particularly relevant for services businesses seeking to assess how they are impacted by Brexit.

This is part of a range of practical guidance to help members prepare for Brexit. Read:

- [A framework to prepare your business for Brexit](#) for practical help to get started.
- [Government Brexit guidance](#) to navigate official guidance on preparing for 'no deal'.
- [Goods: how to deal with a border](#) to understand how border controls could affect your business.

How does EU law affect business?

Clearly, businesses with cross-border activities will be more impacted by Brexit than those serving purely domestic customers. The EU law, regulation and initiatives that impact materially on a particular business will depend on the nature of its operations and its individual circumstances. But there are a variety of ways in which businesses might be affected.

It is not possible in a short guide to list all of the EU law that applies to business. The EC provides summaries of the [main aspects of legislation](#), but most businesses will be interested in finding out which of these most impact them. A good place to start is the [government guidance](#) which covers a number of sectors as well as some generic topics where EU law is particularly relevant.

We have set out below a framework to help explain some of the most relevant implications.

Central to the operation of the EU are the 'four freedoms' established in the 1957 Treaty of Rome; the freedom of movement of goods, services, people and capital. These are core to the operation of the single market. It is worth noting that the 'four freedoms' do not rely solely on EU membership; elements of the freedoms are also replicated by members of the EEA (Norway, Iceland and Liechtenstein). Switzerland is outside the EEA but also reciprocates many of the freedoms with the EU on a bilateral basis.

Goods: Goods are covered in [Chartered Accountants and Brexit](#), published jointly with Chartered Accountants Ireland.

Services: The single market for services is much less developed than that for goods. There are many services that cannot be offered freely across the EU; statutory audit is one example. However, there are a range of sectors that over time have been opened up for competition. A widely recognised example are the 'passports' that enable financial institutions to conduct certain

activities across borders within the EEA – see BBA guidance *what is passporting?* Similarly, EU law grants rights for broadcasters registered in one member state to operate across the EEA or for hauliers to perform ‘cabotage’ (moving goods inside or between foreign member states). Whether these rights remain after Brexit depends upon the agreement reached between the UK and the EU.

People: EU citizens can work in any UK member state without the need for a work permit. This means that subject to any restrictions that might prevent the provision of a particular service – for example a registration requirement or licence – UK citizens can otherwise freely work in the EU-27, as EU-27 citizens can in the UK. Similarly, EU citizens can travel freely in the EU for business purposes.

The EC has **announced** that in the event of ‘no deal’, UK citizens will not require a visa for travel to the Schengen area or Romania, Bulgaria, Croatia and Cyprus – assuming such rights are reciprocated. The visa exemption would apply to business or tourism visits of up to 90 out of 120 days. However, to work in the EU a work permit would be required (unless an agreement is reached otherwise). While there is a common visa policy across the Schengen zone, work permits are administered separately for each member state. The **common travel area** between the UK and Ireland means that British or Irish citizens can travel freely between these two countries without seeking immigration permission.

Many services businesses employ workers from the EU-27. The system for immigration into the UK following Brexit has not yet been clarified, but government has stated an intention to reduce overall levels of immigration and to require skills/income criteria for work permits. The criteria for entry and any numerical limits remain uncertain, as do the consequences for the labour market, but it is possible that recruitment becomes more difficult and/or costly for some categories of worker. Some businesses may put more emphasis on staff retention as a result.

Capital: Since 10994, the Maastricht treaty has prohibited restrictions on capital movements or payments across borders within the EEA. However, a number of barriers remain to the integration of capital markets, which the **Capital Markets Union** initiative is aiming to address. The outcome of the CMU and the effects of enhanced EU harmonisation for the UK remain uncertain.

There are a number of other areas of EU law that have grown up to support the single market and ease barriers to transactions. For example:

Insolvency: The European Insolvency Regulation and recast Brussels Regulation provide a common framework for insolvency across the EU. They mean that insolvency procedures and recognition and enforcement of judgments in one member state are automatically recognized across the EU. This makes cross-border insolvency procedures within the EU more efficient, for the ultimate benefit of creditors. In the event of ‘no deal’ these harmonized procedures would no longer be available for cross-border insolvencies between the UK and the EU, with a significant impact on insolvency practitioners.

There may be an impact on other businesses exposed to insolvency risk too. For instance uncertainty on insolvency outcomes may in some cases affect investment decisions or pricing. However, insolvency law itself is essentially national in nature and will not be greatly affected by Brexit. The priority for UK businesses will continue to be to stay in good financial health, which means avoiding insolvency and related risks, including wrongful trading. Businesses will need to continue assessing the credit risks of their suppliers and other counterparties. The risk of potentially lower returns if an EU counterparty becomes insolvent due to higher costs of insolvency

procedures is unlikely to be high up on the agenda in this respect, but may be a relevant consideration in some circumstances.

Intellectual property: Brexit will have an impact on those aspects of intellectual property law (such as copyright, patents, trade-marks and designs) harmonised at EU level and readers might refer to the [Government guidance](#) on brexit in the first instance.

Company law: Some aspects of UK company law have developed with EU law since the UK joined the EU. While existing EU company law will be written into UK law by the withdrawal bill, there will be some changes to reflect the UK's future relationship with the EU. There are implications for corporate reporting and for audit. Further details are contained in our [guidance](#).

VAT: The 'place of supply' for VAT charged on services will remain the same after Brexit; however, there are some specific VAT implications, such as access to the 'mini one-stop-shop' for businesses that use this. [Our guide](#) to the VAT implications of Brexit explores this in more detail.

What could this mean for the UK/EU after Brexit?

Many services businesses do not provide services outside their home country. For domestically-focused UK businesses, the main impact of Brexit might be on recruitment or staff retention, particularly in sectors where a significant proportion of workers are EU-27 nationals. EU nationals resident in the UK have been advised to apply for settled status and the government has provided a [business toolkit](#) to help with this. Beyond December 2020 UK immigration policies might limit the rights of EU-27 nationals to work in the UK unless they have achieved settled status by then. Work permits might be required and these may be targeted at particular skills or income levels.

Many businesses are affected by EU law to some extent, as we have set out above, although it is not necessarily material to their business model. The impact will be greatest on businesses that rely on EU law for market access.

Existing EU law will be written into UK law at Brexit date by the withdrawal bill, adapted as appropriate to reflect the legal relationship between the UK and the EU. Some EU law gives UK businesses access to EU wide arrangements; for example, cross-border insolvency proceedings or competition investigations. These pan-EU arrangements might not be available to UK businesses following Brexit.

There might be implications for grants or subsidies, where these are provided from EU schemes. The relevant [technical notices](#) provide further details.

Some businesses will have benefited from funding from the European Investment Bank. At the time of writing the UK government was considering whether it might remain a member of the EIB or what steps it might take to replace this funding.

Which sectors could be most affected by Brexit?

The sections above consider the different EU laws that apply to business, but to understand which businesses might be impacted most by Brexit it is also important to appreciate the extent to which sectors trade internationally. The UK imports significantly more goods than it exports, both from the EU and the rest of the world, whereas with services the picture is reversed; there are significantly

more exports of services than imports. Consequently, while services comprise 46% of exports they are only 27% of imports.

Figure 1

	2016 £M					
	Exports			Imports		
	Goods	Services	Total	Goods	Services	Total
EU	142,705	97,740	240,445	237,067	77,993	315,060
ETFA	12,472	15,626	28,098	23,913	5,528	29,441
Americas	59,181	66,631	125,812	48,330	34,198	82,528
Asia	61,849	38,514	100,363	96,622	21,551	118,173
Rest of world/unallocated	22,866	39,377	62,243	25,793	16,853	42,646
Total	299,073	257,888	556,961	431,725	156,123	587,848

Source: ONS, [Pink book](#), 2018

In terms of the type of goods that are traded, figure 2 shows that machinery and vehicles are by far the largest category. These differences, and those for services in figure 3, are important as they could influence the motivations of negotiators on both sides.

Figure 2

	2016 £M					
	Exports of goods			Imports of goods		
	EU	Rest of world	Total	EU	Rest of world	Total
Machinery & transport equipment	51,475	71,038	122,513	98,210	70,877	169,087
Chemicals	28,280	25,429	53,709	39,897	14,208	54,105
Miscellaneous manufactures	19,995	22,958	42,953	27,806	42,041	69,847
Material manufactures	14,559	12,431	26,990	25,842	19,934	45,776
Fuels	13,737	7,363	21,100	8,862	25,392	34,254
Food & live animals	9,393	4,048	13,441	24,936	10,891	35,827
Beverages & tobacco	2,730	4,544	7,274	5,521	2,426	7,947
Crude materials	2,052	3,658	5,710	4,811	4,078	8,889
Unspecified goods	484	4,899	5,383	1,182	4,811	5,993
Total goods	142,705	156,368	299,073	237,067	194,658	431,725

Source: ONS, [Pink book](#), 2018

Figure 3 shows that exports of services comprise a wide range of different sectors, with potentially very different implications. It is important to note that some sectors account for more imports than exports which in others the situation is reversed. Professional/business services and financial services account for 57% of services exports both to the EU and in total.

Figure 3

	2016 £M					
	Exports of services			Imports of services		
	EU	Non-EU	Total	EU	Non-EU	Total
Transport	6,081	21,671	27,752	10,812	11,100	21,912
Travel	17,046	18,435	35,481	34,207	19,992	54,199
Construction	1,327	1,202	2,529	979	415	1,394
Insurance & Pension	4,645	14,198	18,843	339	1,162	1,501
Financial	24,192	31,807	55,999	5,796	9,346	15,142
Intellectual Property	6,013	9,166	15,179	2,847	5,897	8,744
Telecomms & information	8,742	10,759	19,501	6,423	4,870	11,293
Other business services	26,278	46,509	72,787	13,615	19,432	33,047
Personal, cultural & recreational	1,199	2,597	3,796	370	2,894	3,264
Government	531	1,994	2,525	1,488	2,306	3,794
Total services	97,740	160,148	257,888	77,993	78,130	156,123

Source: ONS, [Pink book](#), 2018

What can I do now to help my business prepare for Brexit?

Read the government guidance: A good starting point are the government technical notices; they detail the European law that governs activities in each sector and sets out the implications of a no deal Brexit. Specific actions will depend upon your sector and the issues most pertinent for your business.

Familiarise yourself with import/export procedures: Even if the UK establishes a free trade area with the EU, customs documentation may still have to be completed. In the absence of a deal for free trade tariffs may also apply. See our guide [Chartered accountants and Brexit](#).

Assess legal barriers to continuing to provide services in the EU-27: Sector specific issues are set out in the government guidance, with more generic issues outlined above. If any of these materially affects your business model you may wish to seek professional advice on factors such as possibly establishing a legal presence in the EU-27, should this prove necessary.

Download the employer toolkit: Share as appropriate with HR, line management and UK employees who are EU-27 nationals. Consider what you might start doing now to increase staff retention.

Review your contracts: Contracts might need to be renegotiated or terminated as a result of Brexit. Our [checklist](#) provides further guidance on contracts.

Assess how you will register for MOSS: If you are selling online services into the EU-27.

Read our guidance on data protection: Learn how to protect your activities if you process the personal data of EU-27 citizens.

Assess sources of finance: If you believe revenue-generating activities might be affected, map out now your finance options.

Read our guidance: Our framework provides further top tips on how businesses should plan for risks and opportunities before and after Brexit. There is a range of further guidance at [icaew.com/brexit](https://www.icaew.com/brexit).

Further reading

Further resources are available on [icaew.com/brexit](https://www.icaew.com/brexit).

CONTACT US

brexitsupport@icaew.com

© ICAEW 2018

All rights reserved.

If you want to reproduce or redistribute any of the material in this publication, you should first get ICAEW's permission in writing.

ICAEW will not be liable for any reliance you place on the information in this material. You should seek independent advice.

Laws and regulations referred to in this publication are stated as at the date of publication. Every effort has been made to make sure the information it contains is accurate at the time of creation. ICAEW cannot guarantee the completeness or accuracy of the information in this publication and shall not be responsible for errors or inaccuracies. Under no circumstances shall ICAEW be liable for any reliance by you on any information in this publication.

ICAEW is a world leading professional membership organisation that promotes, develops and supports over 150,000 chartered accountants worldwide. We provide qualifications and professional development, share our knowledge, insight and technical expertise, and protect the quality and integrity of the accountancy and finance profession.

As leaders in accountancy, finance and business our members have the knowledge, skills and commitment to maintain the highest professional standards and integrity. Together we contribute to the success of individuals, organisations, communities and economies around the world.

Because of us, people can do business with confidence.

ICAEW is a founder member of Chartered Accountants Worldwide and the Global Accounting Alliance.

www.charteredaccountantsworldwide.com

www.globalaccountingalliance.com.

Chartered Accountants' Hall
Moorgate Place, London

icaew.com/