Among EU and EFTA states and within the EU institutions, changes to national and EU laws are being proposed and implemented in the face of a possible no-deal Brexit. Businesses with operations across the EU will need to be aware of those changes which may impact on their in-country or cross-border operations.

In some sectors, businesses have been proactive in transforming their operating models to adapt to a new set of rules and regulations in a post-Brexit world. Other sectors may just be starting that process.

This briefing has been created to support those businesses seeking to understand what specific changes to the law are currently being considered in light of Brexit at a national level. Working with our network of European offices and partners we have gathered insights from the EU institutions as well as from Belgium, France, Ireland, Italy, Germany, Luxembourg, Spain, Switzerland and The Netherlands.

This guidance should be read along with our briefing on no-deal planning in the UK. For details, please read our guidance at [www.pinsentmasons.com/Brexit](http://www.pinsentmasons.com/Brexit).

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The European Union Institutions

“After Exit Day, the United Kingdom will become a third country. All Union primary and secondary law will cease to apply to the United Kingdom from that moment, unless a ratified withdrawal agreement establishes another date.”

Throughout the negotiations between the EU and the UK on the Withdrawal Agreement, the European Union has also been preparing for any possible outcome. Brexit preparedness notices have been published since 2017 on all impacted sectors. Moreover, in June 2018, the European Council renewed its call to Member States, EU institutions and all stakeholders to increase their preparedness at all levels and for all outcomes. In July 2018, the European Commission published its first Communication on Brexit preparedness and how the developments were going thus far.

The second and third communications, published in November and December 2018, comprised the Commission’s Contingency Action Plan for a no-deal Brexit and an explanation of how it was to be implemented, delivering on the Commission’s promise to adopt all no-deal proposals before the end of 2018. The Action Plan consists of 14 measures in areas in which a no-deal scenario would create major disruption for citizens and businesses in the EU27. From the legislative side, the European Parliament and the Council of the EU are working their way through the Commission’s legislative proposals, except the 2019 budget.

Beyond the European Commission, European Union agencies, authorities and bodies have also published sector-specific guidance on the implications of a no-deal Brexit and how to prepare for it.

A fourth communication focusing on no-deal Brexit, was published on April 10. The communication included further guidance with regards to citizens’ residence and social security entitlement, data protection, medicine and medical devices, police and judicial cooperation in criminal matters, and fisheries. The communication explains that by “reprogramming certain structural funds, activating measures against disturbance of agricultural markets, and using specific instruments such as the programme for Competitiveness of Small and Medium-Sized Enterprises (COSME), the European Globalisation Adjustment Fund (EGF), the Solidarity Fund and the European Fund for Strategic Investment (EFSI), additional dedicated funding can be made available” to help those regions and economic sectors that would be affected more directly by a no-deal scenario.

Due to the domestic situation in the United Kingdom, the European Council agreed on 22 March on the first extension of the Article 50 period. This extension was granted until 22 May on the condition that the House of Commons would have approved the Withdrawal Agreement by 29 March at the latest. In the case of no-approval, the extension would have been until 12 April. As the Withdrawal Agreement was not passed by the UK, the European Council held an extraordinary summit meeting on April 10 and agreed on a flexible extension until 31 October following the UK’s request for a further extension.

As per this agreement, if the Withdrawal Agreement is approved prior to that date, “the withdrawal should take place on the first day of the month following the completion of the ratification procedures or on 1 November 2019, whichever is the earliest”. This extension also means that the UK would remain a full EU Member State until the new withdrawal date. As such, if the UK is still a Member State on 23–26 May, not having ratified the Withdrawal Agreement by 22 May, it will have to hold the elections to the European Parliament. If the UK fails to hold the elections, the extension will cease on 31 May.

Beyond the European Commission, European Union agencies, authorities and bodies have also published sector-specific guidance on the implications of a ‘no-deal’ Brexit and how to prepare for it. More information on the EU’s preparedness measures can be found in the sections below: first, on the European Commission’s guidance to businesses for preparing for a ‘no-deal’ Brexit; second, further information on legislation proposed by the European Commission; and third, sector-specific information on Financial Services, Life Sciences and Energy industries.

Specific advice for businesses
To help businesses, the Commission’s preparedness notices offer guidance on how to prepare for a no-deal Brexit and what to take into consideration. As the possibility of a no-deal Brexit has increased, the Commission has increased its preparatory measures.

In addition, the Commission’s DG for Taxation and Customs (DG TAXUD) has published a general guide for businesses on how to prepare for Brexit. In case of a no-deal, trade relations with the UK will be governed by general WTO rules as of 1 June, which means that customs formalities and duties apply, as well as prohibitions and restrictions on certain goods, and licences and authorisations given by the UK will no longer be valid in the EU. The Commission has called on all businesses to prepare, make all necessary decisions and complete all required administrative actions before 1 June to avoid disruption.

On 18 February 2019, the European Commission launched an awareness-raising campaign in the area of customs and indirect taxation (VAT) to help businesses prepare for a no-deal. To be able to continue trading with the UK, EU businesses should assess whether they have the necessary technical and human capacity to deal with customs procedures and rules, e.g. on ‘preferential rules of origin’; consider obtaining various customs authorisations in order to facilitate their trading activity if the UK is part of their supply chain; and get in touch with their national customs authority to see what other steps can be taken to prepare.

The European Commission has also included in its Market Access Database information on the rules that the UK would apply on its imports from the EU in the event of a no-deal Brexit to help industry prepare. The database includes information on import procedures and customs clearance, among others.
Legislation
As part of its preparations for a no-deal Brexit, the European Commission has proposed legislative acts, both of a primary and secondary nature, to ensure that EU law would be prepared by Exit Day. With these contingency measures, the European Commission is focusing on those areas that would be severely impacted by a no-deal Brexit, including citizens, financial services, air transport, road transport, customs, sanitary/phytosanitary requirements, personal data and EU climate policy. Work has already been concluded on the majority of the legislative proposals: the Plenary vote on the 2019 budget is scheduled for 16 April.

Sector-specific guidelines from the European Union Institutions: Financial services, Life Sciences, Energy

Financial services
Given the UK’s prominent role in the financial services sector, the focus of the EU has been mostly on ensuring the continuation of business under all potential Brexit scenarios. This process has included legislative steps, regulatory and supervisory measures and action to advise those institutions seeking to relocate certain services as well as notices for stakeholders from the Commission. Regarding the latter, DG FISMA has published notices on: statutory audit, credit rating agencies, asset management, post trade services, financial instruments, banking services, insurance and occupational retirement institutions.

On the legislative side, the Commission has sought to introduce secondary legislation in the guise of implementing and delegated acts to cover the areas of: CCP equivalence, CSD equivalence, clearing obligations and margin requirements. Please note that on March 25, the Commission issued a statement on the technical adjustments regarding the CCP and CSD equivalence so as to reflect the decision of the European Council on March 22 to extend the period under Article 50 (3) TEU. This will likely happen again given the further extension granted.

Meanwhile, the EU’s three main financial regulatory authorities, the EBA, EIOPA and ESMA have issued opinions and guidance to assist both stakeholders and national competent authorities. The EBA initially published an Opinion on issues related to the departure of the United Kingdom from the European Union, followed by an additional Opinion on preparations for the withdrawal of the United Kingdom from the European Union. The latter called for the speeding up of preparations. Since then, a call for more action in Brexit-related communication to customers and an opinion on maintaining protection of depositors in case of a no-deal Brexit have also been published. A template for the MoU to facilitate supervisory cooperation between the EU and UK supervisors has also been agreed.

The focus of ESMA has been to ensure a consistent supervisory approach to safeguard investor protection, the orderly functioning of financial markets and financial stability in the context of the UK’s withdrawal from the EU. To this extent, it published a General Opinion, containing general principles to support supervisory convergence as well as sectoral opinions related to areas of: investment firms, secondary markets and investment management, addressing regulatory and supervisory risks in the respective areas. All other related publications are available here. The Securities Authority also published on 7 March 2019 a statement setting out its approach to the application of some key MiFID II/MiFIR and Benchmark provisions in the event of a no-deal Brexit. On 15 March, ESMA clarified the endorsement of UK credit ratings in case of a no-deal Brexit. Finally, on 28 March, ESMA published a new statement, providing an update on its preparations in order to reflect upon a possible no-deal Brexit scenario on April 12.

On 5 March 2019, EIOPA and its members agreed a no-deal Brexit Memorandum of Understanding with the Bank of England and the Financial Conduct Authority. Previously, EIOPA called upon national supervisory authorities to minimise the detriment to insurance policyholders and beneficiaries in case of no withdrawal agreement, called for immediate action to ensure service continuity in cross-border insurance, and issued opinions on disclosure of information to customers, solvency position of insurance and reinsurance undertakings, service continuity and supervisory convergence. For those credit institutions looking to relocate some services, the Single Supervisory Mechanism, which acts as the Eurozone banking supervisor, provided advice on relocating banking activities to the Eurozone. Concerning relocation, the Single Resolution Board stated that all banks active in the Banking Union must meet a specific set of resolvability conditions.

Life Sciences: Health and pharmaceuticals
In terms of Life Sciences, in particular health and pharmaceuticals, the preparations for a no-deal from the European Union’s side are coordinated by the European Commission and the European Medicines Agency (EMA). Both have published notices and guidance for stakeholders. The European Commission, on its side, has published preparedness notices on medicinal products for human and veterinary use, biocidal products, substances of human origin, and clinical trials.
According to the Commission, the main risks posed by Brexit for the pharmaceutical sector include:

- Replacing UK competent authority for centrally and nationally authorised products by a EU27 competent authority;
- Ensuring compliance with EU law requirements;
- Ensuring continuous supply;
- Ensuring continuity for on-going clinical trials; and
- UK substances of human origin will be subject to third country regime.

The preparedness notices underline that according to EU law, marketing authorisation holders are to be established in the EU or EEA and that certain activities, related for example to pharmacovigilance and batch release, are to be performed in the EU. However, the European Commission has explained that limited to certain exemptions, quality controls could, for a limited time, be conducted in the UK. With regards to biocidal products, the Commission advises stakeholders to choose a different evaluating or reference Member State and they should ensure that holders of product authorisations and active substance or product suppliers included in the list referred to in Article 95 of the Biocidal Products Regulation (EU) No 528/2012 are established in the EU, EEA or Switzerland.

Furthermore, any imports of blood and blood components, tissues and cells, and organs will have to be authorised and supervised by an EU27 competent authority and meet the quality and safety requirements as laid down in EU law. As to clinical trials, any third country imports of investigational medicinal products require an authorisation and for the authorisation holder to have a permanent qualified person located in the EU. Sponsors or legal representatives of clinical trials must also be established in the EU, per EU law. As the change of a sponsor usually required notification to the competent authorities, the Commission has advised stakeholders to take necessary measures well ahead of time.

According to the European Commission, the majority of medicinal products concerned by Brexit should be compliant with EU legislation as of the UK’s withdrawal date. However, as there still may be products that will not be compliant in time, the Commission has warned of a risk of medicine shortages. In its communication of 10 April, the Commission explained that in order to ensure a coordinated approach to potential shortages of medicinal products across the EU Regulatory Medicines Network, the Commission together with the EMA and national medicines regulators will build on existing strategies under the Network’s management plan. As to medical devices, the Member States and the Commission have been working together within the Medical Device Coordination Group (MDCG) and the Competent Authority for Medical Devices (CAMD) network to monitor the progress of certificate transfers and identify any critical medical devices that could be at a risk of shortages.

In addition, the Commission has clarified that although batch testing should in general take place in the EU27, it is possible for competent authorities to use the existing exemption in the Directives on human and veterinary medicinal products to allow marketing authorisation holders to rely on quality control testing performed in the UK. However, this can only be done for a limited period of time and based on a duly justification.

**Energy**

In the area of Energy, the preparations for a no-deal are being dealt with by the Commission and the Agency for the Cooperation of Energy Regulators (ACER). The Commission has published preparedness notices to stakeholders on Euratom, Energy Market (IEM) and Energy origin.

In terms of nuclear matters, a no-deal situation will have an impact on nuclear common supply policy, the nuclear common market, nuclear safeguards and nuclear safety, spent fuel and radioactive waste and radiation protection.

As explained in the IEM notice, UK regulators and operators will leave EU agencies and bodies (ACER, ENTSO-E, ENTSOG). Electricity and gas interconnectors can still be used, but the UK will be out of the internal energy market platforms which will have the main impact on electricity interconnectors. Transmission System Operators (TSOs) will also need alternative arrangements as EU-UK interconnectors will no longer be TSOs in the meaning of EU law.

In relation to climate policies, preparedness notices have been published on Emissions Trading System (ETS) and Fluorinated gases. According to the notice published in December 2018, the EU ETS includes all stationary installations in a member state that carry out activities emitting greenhouse gases. As of the withdrawal date, stationary installations in the United Kingdom are no longer within the scope of Union law and the EU ETS.

The Commission also adopted an amendment to a Commission regulation as regards the EU ETS, to which the Council did not object. Without this amendment, the environmental integrity of the EU ETS would be undermined, as the UK operators would not be bound by the obligation to surrender allowances for emissions in 2018, although they would have received free allocation and the UK would have auctioned allowances in 2018. The Delegated Regulation was published in the Official Journal of the EU on 14 March 2019.

Finally, the EU rules on fluorinated gases will no longer apply in the United Kingdom following Brexit, which will impact the quota allocation for hydrofluorocarbons (HFCs) and reporting on fluorinated gases.

For further information on the EU’s Brexit preparations, please consult the annexes listed below.

- Annex I – No Deal Legislation
- Annex II – General Brexit Legislation
- Annex III – Timeline
- Annex IV – Links to EU sources on Brexit
Belgium

1. In what ways are you seeing Brexit impacting on the business environment in Belgium?
Brexit has a lot of consequences for the business environment in Belgium, given the close trading relationships. The United Kingdom will be leaving not just the European Union on Exit Day, but also the Single Market and the Customs Union. If the United Kingdom leaves the European Union without agreement, the United Kingdom will become a third country and all primary and secondary Union legislation will cease to apply to the United Kingdom from that date. Businesses in the European Union should therefore be informed about the impact on customs and indirect taxes such as VAT, preferential rules of origin and import and export licences. In case of a no-deal Brexit, goods coming from or going to the UK will be treated as imports from and exports to a “third country”. This means that customs formalities and controls will apply to imports and exports. Imports will be subject to customs duties, VAT and excise duties, and exports to the United Kingdom will be exempt from VAT.

Even with a divorce deal, Brexit could lead to an increase in customs declarations of 14 percent for imports and 47 percent for exports, the Belgian Federal Public Service Finance, division of Customs and Excises has calculated. Under the tariff schedules published by the United Kingdom’s Exchequer, 20% of the Belgian export of goods to the United Kingdom will be subject to these temporary import duties.

It is reasonable to assume that administrative burdens and costs will increase for companies that operate in both the European Union and the United Kingdom. In September, the government made available an online tool called the “Brexit Impact Scan” to help businesses assess their preparedness for Brexit.

2. How is the Government of Belgium responding to the possibility of a no-deal Brexit?
The Belgian federal government has established a “Brexit High Level Group” on 20 June 2016, to prepare for Brexit. This High Level Group meets multiple times per year, and works in cooperation with the Federal Public Service Economy, the National Bank of Belgium and the Federal Planning Bureau. It has published multiple reports, in which it maps out the consequences of a Brexit, in order to assist the Belgian market with preparations. In addition, the Flemish government has also approved a “Brexit Action Plan” on 16 November 2018.

At the end of March 2019, the Belgian government announced that it has prepared “250 additional measures” in case of a no-deal Brexit in the fields of finance, food safety, medicines and customs. For instance, companies will not be fined in the two months following a no-deal Brexit for not complying with all customs requirements.

3. What steps are the Belgian customs authorities suggesting that businesses take to prepare for a no-deal Brexit?
The Belgian Public Service Economy advises Belgian companies to prepare as soon as possible for the worst-case scenario, i.e. a no-deal Brexit. Without an agreement with the UK, import duties will need to be paid when trading with a company registered in the UK. Companies should prepare for inspections at the border, which will result in longer waiting times and thus higher costs. The Belgian Public Service Economy also warns that product and packing requirements (may) become stricter.

A no-deal Brexit could also have huge consequences in terms of human resources, as it will, for instance, become much more difficult to exercise the right of free movement of people.

The Belgian Public Service Economy has also advised Belgian companies to discuss with their bank the scenario for the Brexit-day. There is a risk that the exchange rate will rise or fall due to Brexit. Including an exchange rate clause in an agreement with UK-companies could be a solution.

More information about the above-mentioned specific topics can be found on the website of the Public Service Economy as well as the website of the European Commission.

The Belgian Federal Public Service Finance, division of Customs and Excises, has published a checklist for Belgian businesses. They inform Belgian businesses that they need an EORI-number, which is based on their company number. They also announced that they have given such a number to around 20,000 (Belgian) companies and sent a direct mailing with more information.

If you are already trading with third countries, i.e. countries that are not part of the customs union, the Federal Public Service Customs and Excises states that you should follow the same steps for business with the UK as business with third countries.

1. The website of the Public Service Economy (information available in Dutch, French and German) can be found here: https://economie.fgov.be/nl/themas/ondernemen/brexit/bereid-uw-onderneming-voor-op.
2. The general website of the European Commission regarding several topics can be found here: https://ec.europa.eu/info/brexit/brexit-preparedness/preparedness-noticias_en.
More information to prepare for a no-deal Brexit can be found on: https://financien.belgium.be/nl/douane_accijnzen/ondernemingen/brexit/nieuw/checklist-brexit (information available in Dutch and French).

4. What legislation has the Belgian government passed in relation to Brexit?

**Flanders Region**

Flanders has adopted the Decree of 22 March 2019 (adopted in the Flemish Parliament on 13 March 2019 and published in the Belgian Official Gazette on 12 April 2019) that ensures that the most serious issues of a no-deal Brexit are mitigated. This Decree provides for a transition period until 31 December 2020, allowing citizens, businesses and administrations to adapt to the new situation and allowing governments to conclude international agreements or make further arrangements.

The basic principles of this decree are as follows:

1. It does not prejudice European law or agreements at European level;
2. It offers UK citizens only temporarily and to a limited extent the same benefits as those resulting from the UK’s membership of the EU;
3. It ensures that the benefits offered to UK citizens are also offered by the UK to Flemish citizens (principle of reciprocity);
4. It aligns the measures with those taken by the federal government and the other Communities and Regions.

The Decree exempts UK nationals who wish to pursue economic activities on the territory of the Flemish Region after Brexit from a work permit or professional card during the transition period, provided their performance is limited to a maximum of 90 days. If their performance exceeds the maximum of 90 days, UK nationals will have to request a work permit or professional card, according to the procedure for third country nationals. However, an accelerated procedure will then be provided.

UK nationals that are already living and working in Flanders before the withdrawal date will be protected by the federal Brexit Act, which provides that these UK nationals keep their right of residence after the withdrawal date until the end of the transition period. The right to work automatically results from this right of residence, and therefore no extra measures are needed on the Flemish level regarding economic migration for UK nationals that are already living and working in Belgium before Brexit.

For the application of the European social security systems in the branches of social security that fall within Flanders’ competence, the UK is assimilated to an EU Member State until the end of 2020. Child benefits (start amounts, selective participation allowances etc.), Flemish social protection and assistance from the Flemish Agency for Persons with Disabilities will therefore be granted to UK citizens in the same way as before the Brexit until 31 December 2020.

The Decree will only enter into force if the United Kingdom withdraws from the European Union without concluding an agreement (a no-deal Brexit). The date of entry into force is the date of the UK’s withdrawal from the EU.

The provisions in the Decree are intended as transitional measures and are therefore temporary. The decree’s expiry date is in principle 31 December 2020. However, since the principle of reciprocity is assumed, the Government of Flanders is empowered to ensure that the transitional measures apply to the extent and for as long as the United Kingdom applies similar measures. The validity period can therefore be adjusted.

**Brussels Capital Region**

The government of the Brussels Capital Region had adopted on 28 March 2019 (published in the Belgian Official Gazette on 5 April 2019) a Decision on the access of UK citizens and Northern Ireland to remunerated labour or to the performance of independent professional activities.

This Decision installs a transition period for the exemption for obtaining a work permit (as an employee) for a period of 90 days, starting at the latest on 31 December 2020, per period of 180 days.

An exemption to obtain a professional card (as an independent) is granted for a period of 90 days starting at the latest on 31 December 2020, per period of 180 days.

The principle of reciprocity is assumed as a condition for both exemptions. The decision enters into force on the day the UK and Northern Ireland, in accordance with Article 50, paragraph 3, of the Treaty on the European Union, leave the Union without an agreement as referred to in Article 50, section 2 of the same Treaty.

**Walloon Region**

The parliament of the Walloon Region has adopted 2 Decrees on 3 April 2019 (not yet published in the Belgian Official Gazette) on the measures to be taken in case of a Brexit without agreement. One Decree covers work migration and the other Decree covers social security coverage.

The first Decree has a provision which exempts UK nationals who wish to pursue economic activities on the territory of the Walloon Region after Brexit from a work permit or professional card during the transition period, provided their performance is limited to a maximum of 90 days.

Further, the other Decree provides in a transition period during which the citizens of the UK and Northern Ireland are assimilated to EU citizens for the application of European and regional legislation on social security legislation coordination and on attribution of benefits.

Again, the principle of reciprocity is assumed as a condition for both exemptions.

The Decrees enter into force on the day the UK and Northern Ireland, in accordance with Article 50, paragraph 3, of the Treaty on the European Union, leave the Union without an agreement as referred to in article 50, section 2 of the same Treaty and cease to apply on 31 December 2020.
Federal level
The Belgian Parliament has adopted an Act on 3 April 2013 (published in the Belgian Official Journal on 10 April 2019) to prepare for a no-deal.

This Act will enter into force if a no-deal scenario becomes reality, to serve as a temporary solution for the most important issues on a federal level. Some of the main issues arising from Brexit on a federal level are discussed, such as:

- Migration and asylum, such as the residence rights for British citizens;
- Energy, supply of gas;
- Employment and social security;
- Finance, including investment services;
- Economy;
- Residence rights: The right of residence of UK nationals and their family members will be maintained even after the entry into force of the Act of 3 April 2019. Residence applications of those nationals and their family members pending at the moment of entry into force of the Act of 3 April 2019 will be treated on the conditions applicable on the day before the date of entry into force. If the validity of a residence permit exprires, then the mayor of the municipality will renew this permit until 31 December 2020;
- Social security: For the application of the European and Federal Belgian social security legislations, the UK is assimilated to an EU Member State until the end of 2020. Benefits will therefore be granted to UK citizens in the same way as before Brexit until 31 December 2020. The social security position of British citizens in Belgium will thus remain unchanged up to 31 December 2020, on the basis of reciprocity between Belgium and the United Kingdom.

For secondments, two situations are possible:

- The first situation concerns the posting of an employee or of a self-employed worker from the United Kingdom to Belgium. The posted worker remains exclusively subject to UK law. To that end, the employee or self-employed worker should contact the competent British authorities. Belgium will recognise posting certificates and the posted worker will not be subject to double contribution payments.
- The second situation concerns the posting of an employee or of a self-employed worker from Belgium to the UK. Both the posted employee and the self-employed worker remain exclusively subject to Belgian law. The existing rules on posting and payment of social security contributions are further applied.

More technical and administrative measures are currently being prepared.

Regarding the UK citizens’ right to work, in case of a no-deal Brexit UK citizens currently working in Belgium as an employee or as a self-employed person will require either a work permit or a professional card as of Exit Day.

In this respect, please note that as of 1 January 2019, highly skilled foreign citizens will be able to obtain their work and residence permits in Belgium and Flanders through a single application form. As such, citizens from outside the EU no longer need to possess a work permit before being able to arrange their stay in the country and region, but can instead obtain both permits simultaneously. The single permit is valid regardless of the employment scenario. This procedure applies both when the migrant worker starts working for a Belgian employer and when he is seconded to Belgium by the employer outside the EEA (such as the UK after Brexit).

Given the fact that applying for a professional card will require an elaborate business case and a more thorough investigation, it will be less time consuming and with higher legal certainty to apply for a work permit, though the procedure may still take up to 15 + 120 days after the application has been sent.

We have learned that the Federal Minister of Work has prepared a draft Royal Decree based on which, in case of a hard Brexit, UK citizens that are working as employees in Belgium, would be entitled to continue working until the end of 2020. However, this transition regime would not apply to UK citizens who only start their employment activities in Belgium after Exit Day.

The Federal Minister of Small and Medium Sized Enterprises is also be preparing a similar draft Royal Decree for self-employed UK citizens.

Please note that neither of these two draft Royal Decrees have been finalised or approved yet.
5. What sector-specific guidance for Financial Services, Life Sciences or other regulated industries has the Belgian government produced in relation to a no-deal Brexit?

Belgium has not provided for any official or governmental guidelines concerning life sciences in case of a no-deal Brexit. Please note that the European Commission has provided some guidance.

However, certain sectoral organisations such as “essenscia“, the Belgian Federation for Chemistry and Life Sciences Industries has come up with a strategy for the Belgian economy with regard to all possible Brexit-Scenarios. This strategy was included in a Report by the Belgian Brexit High Level Group and is mostly intended for Belgian intersectoral Employers’ Federations.

In short, essenscia has analysed the following implications, taking into account the Belgian export of chemical products and life sciences to the UK and the trade agreements that have been made with the UK:

- **Promotion of innovation**: The UK has taken on a science-based and innovation-friendly approach, and this continuation must be ensured by participating in Horizon2020; Industrial Leadership Biotechnology programs, Industrial Leadership Advanced Materials programs and Societal Challenge Environment;

- **Free trade of persons**: considering the global character of life sciences with complex chains of delivery across borders, development is not possible in one single country. Therefore, access to talent (skilled personnel abroad) is paramount;

- **Ensuring supply and production of products and accessibility to patients**: a long transition period will be necessary;

- The impact for Brexit on REACH\(^1\) will for a large part depend on the agreement that will be reached. Should the UK leave the EEA, then every Belgian importer will be considered like an importer under REACH with some important consequences, such as new registration requirements, uncertainty regarding permits and licenses, and restrictions in substances and development thereof during export to and from the UK:
  - New registration requirements will be imposed (as the UK supplier will no longer have a valid registration);
  - There is uncertainty with regard to the permits and licenses that will no longer be valid, meaning the EU customer will have to request new authorisation;
  - Restrictions in substances and development thereof when exported to the UK will have to be discussed to avoid double costs (Belgium-UK).

With regard to financial services, the Belgian government refers its citizens and companies to the preparations as made by the EU Commission, as well as the opinions of the European Banking Authority.\(^3\)

The Belgian Financial Services and Market Authority (FSMA) has also issued an announcement regarding the provision of investment services and/or investment activities in Belgium by companies which are established under the laws of the United Kingdom, on 21 February 2019.\(^5\) This announcement discusses the rules that would be applicable to investment companies which reside under the law of the United Kingdom or Gibraltar after a no-deal Brexit. It also analyses the impact which Brexit will have on the continuity of ongoing agreements.

It is important to note that UK companies will no longer be able to make use of the European Passport, and will therefore need to conform with a separate set of rules in order to exercise their activities. They will in any case need to receive a permit from the Belgian National Bank or the FSMA. The FSMA has advised UK investment companies which are active in Belgium to already notify it in case they wish to continue their activities in Belgium, and whether or not they plan to establish a Belgian branch.

6. Is the Belgian government considering or has it enacted any Brexit-related changes to company law or establishment?

So far, the Belgian government has not enacted any Brexit-related changes to company law or establishment.

7. Are any other changes being made to Belgian law for a no-deal Brexit?

Other than the aforementioned draft bill, the federal government plans the additional hiring of customs agents and Federal Agents for the Safety of the Food Chain (FASFC). Recruitments are also planned in other administrations, such as the FPS Foreign Affairs and the federal police in order to minimise importing delays due to Brexit. The ministers and administrations concerned shall prepare technical and administrative measures.

On a Regional level (i.e. at the level of the Flemish Region, Walloon Region, Brussels Region), some parallel measures will need to be taken by the regions and communities with regard to their respective competences.

The content of this section was provided by Astrea Law. For contact details, please see p.33.

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1. REACH is a regulation of the European Union, adopted to improve the protection of human health and the environment from the risks that can be posed by chemicals, while enhancing the competitiveness of the EU chemicals industry. It also promotes alternative methods for the hazard assessment of substances in order to reduce the number of tests on animals. In principle, REACH applies to all chemical substances, not only those used in industrial processes but also in our day-to-day lives, for example in cleaning products, paints as well as in articles such as clothes, furniture and electrical appliances. Therefore, the regulation has an impact on most companies across the EU.


France

1. In what ways are you seeing Brexit impacting on the business environment in France?

From Exit Day, the United Kingdom will be considered by the EU as a third country. This will have consequences on the business environment in France.

Indeed, in 2016, the UK was France’s 5th client and its 8th supplier. France exported mainly goods and services to the United Kingdom, particularly in the food sector and consumer goods sectors and it imported mainly financial and professional services. In 2017, the UK represented France’s 6th largest international market, accounting for 6% of French exports.

Brexit will have financial and administrative consequences for companies in various sectors, such as customs. French authorities already recommend that companies prepare for all Brexit scenarios and integrate them in their business strategy to mitigate the impacts of Brexit.

2. How is the Government of France responding to the possibility of a no-deal Brexit?

The French government implemented in January a preparation plan prepared for the case of a no-deal Brexit and in this context, Brexit-related legislation has been passed (see Question 4).

The French government advises companies and citizens to anticipate Brexit and has put in place various measures to help them face the consequences of a no-deal Brexit.

In this regard, the Prime Minister has instructed his ministries to inform British and French companies and nationals about the potential impacts of Brexit. The Minister of Economy and Finance has published in January 2019 a plan to help companies to be prepared for a Brexit without agreement (available on the following website: https://www.economie.gouv.fr/entreprises/comment-entreprises-peuvent-se-preparer-brexit).

A government information site was opened on 1 December 2019 to provide information on Brexit to individuals and companies (www.brexit.gouv.fr) and each ministry provides detailed information on Brexit and has a dedicated Brexit contact.

3. What steps are the France customs authorities suggesting that businesses take to prepare for a no-deal Brexit?

In case of a no-deal Brexit, customs formalities and border controls will be re-established for goods. Any exchange of goods between France and the UK will thus be the subject of two customs declarations, i.e. to British and French customs authorities.

The customs authorities have reviewed their organization, and are recruiting additional staff (700 between 2018 and 2020). They have also developed a smart border system based on the anticipation and dematerialization of customs formalities (frontière intelligente). This smart border will be applied from Exit Day to all entry and exit points in Calais and more generally in the Channel-North Sea allowing entities to automate the crossing of the border by heavy goods vehicles.

The main advice of the customs authorities to companies is to prepare and anticipate the consequences of the Brexit. In this regard, all companies required to complete customs formalities must be in possession of a unique community identifier number: the Economic Operator Registration and Identification number (“EORI”). This number will be essential to complete import and export operations with the UK, which will become a third country as of Exit Day. Companies that have never achieved customs formalities will have to register on the pro.douane portal to request an EORI number.

The Directorate General of Customs and Indirect Taxes (Direction Générale des Douanes et des Droits Indirects) published a customs guide to prepare companies to a no-deal scenario. The purpose of this guide is to enable companies to establish a diagnosis of the impacts of a no-deal Brexit on their business and to anticipate the necessary actions they will have to take to maintain the continuity of their activity. In this regards, it describes the impact of a no-deal Brexit on customs and gives advice to companies regarding customs operations for imports and exports. This guide is available on the website of the Directorate General of Customs and Indirect Taxes.

Companies can ask directly their questions to customs authorities by writing to the following email address: brexit@douane.finances.gouv.fr or can call customs call centre agents.
Companies can also contact business advisory units (Cellules-conseil aux entreprises or “CCE”) which can assist companies in the study of the impacts of Brexit on their business. These units are located throughout France within the economic action centres of the regional customs and indirect taxes departments (pôles d’action économique des directions régionales des douanes et droits indirects).

4. What legislation has been published or passed by the French Parliament in relation to Brexit?

In January 2019, the French Prime Minister decided to implement the preparation plan he had requested from his ministers since April 2018 regarding a possible no-deal Brexit.

On 19 January 2019, a law empowered the government to take measures, which normally fall within the competences of Parliament, by order (ordonnance) to respond to the most serious and immediate consequences of a no-deal Brexit.

The six following orders have been issued since January 2019:

- **Border control:** Order No. 2019-36 of 23 January 2019 on various adaptations and temporary derogations necessary for the urgent completion of works required to re-establish border controls with the United Kingdom and Order No. 2019-236 of 27 March 2019 on the derogation from Article L. 551-2 of the Environmental Code, which facilitate the urgent construction of the infrastructure needed to re-establish border controls (customs, sanitary and phytosanitary controls, etc.) of that State’s withdrawal from the European Union facilitates the urgent construction of the infrastructure needed to re-establish border controls (customs, sanitary and phytosanitary controls, etc.);

- **Defence equipment:** Order No. 2019-48 of 30 January 2019 to allow the continued supply of defence-related products and space assets to the United Kingdom enables the continuation of transfers of defence equipment between France and the UK;

- **UK citizens:** Order No. 2019-76 of 6 February 2019 on various measures relating to entry, residence, social rights and professional activity, applicable in the absence of an agreement on the withdrawal of the United Kingdom from the European Union and Decree No. 2019-264 of 2 April 2019 taken for the implementation of Order No. 2019-76, which govern the rights of British citizens in France;

- **Road transport operations:** Order No. 2019-78 of 6 February 2019 on the preparation for the withdrawal of the United Kingdom from the European Union in the field of road transport of passengers and goods and security in the Channel Tunnel and Decree No. 2019-246 of 27 March 2019 taken for the implementation of the EU Regulation No. 2019/501, which enable companies established in the UK to continue to carry out road transport operations in France;

- **Financial services:** Order No. 2019-75 of 6 February 2019 on the preparation for the withdrawal of the United Kingdom from the European Union in the field of financial services ensures the continuity of certain financial activities, in particular insurance;

- **Rail traffic in the Channel Tunnel:** Order No 2019-96 of 13 February 2019 on the preparation for the withdrawal of the United Kingdom from the European Union in the field of railway safety in the Channel Tunnel allows the continuation of rail traffic in the Channel Tunnel.

5. What sector-specific guidance for Financial Services, Life Sciences or other regulated industries has the French government produced in relation to a no-deal Brexit?

**Financial Services**

Order No. 2019-75 of 6 February 2019 on the preparation for the withdrawal of the United Kingdom from the European Union in the field of financial services modified by the Order No. 2019-236 of 27 March 2019, and two orders by the Minister of Economy and Finance (arrêtés) of 22 March 2019 contain seven measures in case of no-deal. For example, it clarifies the powers of the French Prudential Supervision and Resolution Authority (Autorité de contrôle prudentiel et de résolution or “ACPR”) vis-à-vis UK entities that have concluded contracts on the basis of the European Passport scheme or it guarantees the continuity of access for French entities to UK interbank settlement and settlement/delivery systems. More details on the different measures can be found on the following website: https://www.gouvernement.fr/en/various-measures-related-to-the-united-kingdom-s-withdrawal-from-the-european-union.

The ACPR and the French Financial Markets Authority (Autorité des Marchés Financiers or “AMF”) provided some guidance regarding “Over-The-Counter” (”OTC”) transactions following a question from the French Association of Financial Markets (Association française des marchés financiers or “AMAFI”). They confirmed that a third-country company, such as a UK company after the Brexit, will not require an approval if the only investment services or activities it provides or carries on in France consist in the conclusion of OTC transactions on financial instruments for its own account (excluding the execution of transactions on behalf of clients) with France-based credit institutions or investment firms (known as inter-dealer transactions).

The ACPR and the AMF implemented different programs or procedures to help UK entities which intend to operate in France. For example, the 2WeekTicket pre-authorisation facilitates the authorisation procedures for companies which want to set up in France. Eligible companies are those supervised by the FCA and whose scope of activities falls under the AMF remit.
6. Is the French government considering or has it enacted any Brexit-related changes to company law or establishment?
So far, the French government has not enacted any Brexit-related changes to company law or establishment.

7. Are any other changes being made to French law for a no-deal Brexit?
As mentioned in Question 4., France has already taken some national emergency measures (the different orders taken since January 2019). These measures will be complemented by European legislative acts. Please note that some of these European acts are in the process of being drafted.
1. What no-deal planning advice is the German Federal Government issuing for businesses?

The German Federal Government (Bundesregierung) offers information for businesses being affected by a no-deal Brexit. In particular, the Federal Government refers to measures undertaken in order to cushion the consequences of a no-deal Brexit for businesses.

For example, the German Federal Government as well as the competent Federal Ministries set on track a series of legislative projects in order to facilitate the legal and economic effects of Brexit for businesses. In particular, this covers the following areas:

- **Preparing customs for more checks:** In order to prepare for Brexit, the Federal Ministry of Finance and the customs administration are working closely together and making extensive preparations for the impact of the possible Brexit scenarios. The main point to bear in mind is that the customs administration has experience of dealing with goods from third countries. However, it is to be expected that more processing and checks will be needed at times. The work of the customs authorities, particularly at the main international ports and airports that serve as hubs for international postal and courier services, will thus need to be increased as required. Authorities in regions where postal and courier services have operated distribution centres dealing with deliveries to and from the UK will also be affected.

- **Tax law and financial market regulation:** The German Government has introduced legislation creating tax regulations to cushion undue hardship following the UK’s withdrawal from the EU. It also contains transition regulations for the financial market sector aimed at preventing a detrimental impact on financial stability and insurance holders in Germany.

- **Company law:** For German companies that were set up in a British legal form, particularly that of a private company limited by shares (Ltd.), a simplified option for changing the company into another legal form in a regulated manner has been created for a transition period. The aim is to prevent undue hardship. The law entered into force on 1 January 2019.

As the lead ministry, the Federal Foreign Office (Auswärtiges Amt) is coordinating preparations for Brexit in Germany, liaising closely with all other federal ministries and the Federal Chancellery.

The Federal Foreign Office has issued guidelines for both members of the public as well as companies to help them prepare for Brexit.

Within these guidelines, the Federal Foreign Offices also refers to publications by professional associations such as the Federation of German Industries (Bundesverband der Deutschen Industrie) or the Association of German Chambers of Commerce and Industry (Industrie- und Handelskammertag).

The Federal Ministry for Economic Affairs and Energy (BMWi – Bundesministerium für Wirtschaft) has issued guidelines and detailed FAQs for businesses which are facing the consequences of a no-deal Brexit scenario. The guidelines and FAQs contain answers to key questions relating to what happens if the United Kingdom leaves the EU without a deal as well as pointers to further information sources. Further, the BMWi refers to the European Commission which offers further “preparedness notices” covering numerous legal and economic aspects which are affected by Brexit.

2. What advice and specific steps are being advised by the German tax or customs authorities?

Information on Brexit have been made available on the website of the Federal Foreign Office, which is the lead administrative body on Brexit and responsible for coordinating the German Government’s preparations.

The Federal Government has introduced a law to create tax arrangements mitigating potential tax issues solely triggered by the UK withdrawal from the EU. It also contains transitional provisions for the financial market area with the aim of avoiding disadvantages for financial stability and domestic policyholders. To this end, BaFin will be given the opportunity to allow businesses based in the UK which have been active on a cross-border basis in Germany to continue their existing business for a transitional period until the end of 2020 at the latest.
The German customs administration provides Brexit-related information regarding legal repercussions in the context of the enforcement of intellectual property rights and the necessary customs measures. A number of professional organisations in Germany have given guidance regarding the UK’s withdrawal and related issues. The Federation of German Industries (BDI) has published extensive information on the consequences of Brexit for business. The Association of German Chambers of Commerce and Industry (DIHK) has developed a "Brexit checklist" tool which allows users to create their personal checklist as a PDF file.

3. What Brexit-related legislation has been published of passed for by the German Parliament?
In general the government is preparing for the different Brexit scenarios, however the legislation is still in the drafting process and the legislation is not yet in force.

In detail, the following information regarding different topics is available:

**Travelling between the UK and the EU after Brexit - in the event of no-deal**
The EU- Commission published a document named “Seven things you need to know when travelling between the UK and the EU after Brexit – in the event of no-deal”.

The most important facts for UK nationals are listed below:

**Border Checks**
UK nationals will no longer enjoy the facilitations provided for EU/EEA/CH citizens at the outer borders of the EU and will not be entitled to use the separate EU/EEA/CH lanes.

UK nationals will be subject to additional verifications concerning, for instance, duration and purpose of stay.

UK Citizens will need travel documents with a validity of no more than ten years, and valid for at least three months after intended departure from the EU. The EU Commission has proposed to the EU legislator to exempt UK nationals from visa requirements for short term stays (maximum of 90 days in a period of 180 days).

**Health Treatment**
Access to healthcare in the EU will no longer be possible on the basis of a UK European Health Insurance card, and vice-versa. People are advised to verify conditions for reimbursement of emergency medical expenses in third countries and consider taking out private travel insurance.

**Residence in the EU after Brexit – in the event of no-deal**
The Federal Foreign Office gives information concerning the residence status for UK nationals information:

“If the UK leaves the EU without an agreement, the legal status of the UK citizens concerned will change permanently. They will lose their status as citizens of the EU or family members of a citizen of the EU and will become third country nationals instead.”

In the case of a disorderly Brexit, no UK citizen will have to leave Germany immediately. The German Government is planning a transition period, initially for three months, which can be extended if approved by the Bundesrat. This transition period would come into effect via a ministerial ordinance by the Federal Minister of the Interior, Building and Community.

The legal status of UK citizens as regards residence and employment would not change during this period. However, they would have to apply for a residence permit during this time.

**Working in the EU after Brexit – in the event of no-deal**
The Association of German Chambers of Commerce and Industry (DIHK) has developed a "Brexit checklist" tool which allows users to create their personal checklist as a PDF file. Under the headline “Are you ready for Brexit?” the following topics are discussed: Movement of Goods, Transport, Financial Services and Insurance, Personnel and Education/Vocational Training, Contracts, Industrial Property Rights and Standards, Taxes, Company Law, and Reach. Are you ready for Brexit?

The government of the UK gives further details in its Guidance for UK Nationals:

“If you are working in the EU as an employed or self-employed person and you have a UK-issued A1/E101 form, you will remain subject to UK legislation for the duration of the period shown on the form. However, after Exit Day the form may no longer be recognized by the EU country/ies you work in. You should contact the relevant EU country’s authority to see if you need to start paying any social security charges. We are in contact with Member States on changes for UK nationals in a no-deal and will provide updates as and when information becomes available.”

The Federal Foreign Office gives further details, in particular regarding social security questions.
4. What sector-specific guidance for Financial Services, Life Sciences or other regulated industries has the German government provided in relation to a no-deal Brexit?

Financial Services
The Federal Financial Supervisory Authority (BaFin) provides businesses with the opportunity to find out more about Brexit in the area of financial services on its website (information on approval procedures, internal risk models, outsourcing and answers to “frequently asked questions”) and has set up a contact address for businesses who wish to relocate their registered office or business activities to Germany. Enquiries can be sent to access@bafin.de or via a contact form.

The Deutsche Bundesbank has placed an area on its website with banking supervisory information, e.g. for credit institutions considering relocations or expansions (“incoming banks”) in the course of Brexit. In addition, a hotline (+4969 9566 7372) and a central e-mail address (Brexit@bundesbank.de) have been set up for affected credit institutions.

The Federal Government has introduced a law to create tax arrangements to mitigate undue hardship as the UK withdraws from the EU. It also contains transitional provisions in the financial market area with the aim of avoiding disadvantages for financial stability and domestic policyholders. To this end, BaFin will be given the opportunity to allow businesses based in the UK which have been active on a cross-border basis in Germany to continue their existing business for a transitional period until the end of 2020 at the latest.

In the field of financial services, many business associations have a wide range of sector-specific information available, e.g. on banks and insurance companies.

In order to bundle the concerns of the German economy and to summarise as many relevant topics as possible in a kind of reference book, a number of German business associations have compiled a “Brexit Compendium”.

The German-British Chamber of Industry and Commerce provides information on the impact of Brexit.

The EU Commission also provides businesses with a great deal of information in preparation for their withdrawal, in particular for Financial Services and Capital Markets Union.

Life Sciences
Sector specific guidance for IP rights
- The primary source for official Brexit information and guidance are the German Federal Foreign Office and the Federal Ministry for Economic Affairs and Energy.
- The European Union Intellectual Property Office (EUIPO) offers a Brexit Q&A document with the most important questions and answers on EU trademarks and community designs.
- The British Government has offered three guidelines for IP rights in a no-deal scenario. This covers patents, trade marks and designs and the exhaustion of IP rights.
- The German customs administration provides Brexit-related information regarding legal repercussions in the context of the enforcement of intellectual property rights and the necessary customs measures.

Sector specific guidance for life sciences
- The Association of the Chemical Industry e.V. (VCI) and the German-British Chamber of Industry and Commerce provide information on the impact of Brexit. The VCI published a position paper in 2017 on this impact and offers a webinar on Brexit & REACH in March. The Association of German Chambers of Commerce and Industry (IHK) has published a Brexit checklist with some limited information on REACH and contacts to the local chambers that might be able to provide further information;
- German Trade associations launched a whole site on Brexit with publications from associations from all industries.

Resources that cover both sectors
- The European Commission offers Brexit preparedness notices for various sectors including one on REACH and one on trademarks and designs;
- The Federation of German Industries (BDI) has published a compendium of comprehensive guidelines and practical questions to help companies prepare for Brexit. This includes topics on market access and regulations for chemical substances and pharmaceutical products, as well as impacts and consequences on intellectual property rights.

Energy
The European Commission has published a “Notice to Stakeholders – Withdrawal of the United Kingdom and the internal energy market” which contains information on legal issues evolving in a no-deal Brexit event in relation to the energy market. In particular these notes regard:

- Compensation between Transmission System Operators (TSO): EC Regulation No 838/2010 provides that a transmission system use fee is to be paid on all scheduled imports and exports of electricity from all third countries which have not adopted an agreement whereby it is applying Union law. As of the no-deal withdrawal date this provision will apply to imports of electricity from and exports of electricity to the United Kingdom;
- Interconnectivity: As of the no-deal withdrawal date, TSOs based in the UK will cease to participate in the single allocation platform for forward interconnection capacity, the European balancing platforms and the single day-ahead and intraday coupling. UK based NEMOs will become third country operators and will no longer be entitled to carry out market coupling services in the EU,
• **Electricity and gas trading**: As of the no-deal withdrawal date, market participants based in the United Kingdom will become third country participants. As a consequence, according to Article 9(1) of EC Regulation 1227/2011 (“REMIT”), participants based in the United Kingdom who wish to continue trading EU wholesale energy products as of the withdrawal date will need to register with the national energy regulatory authority of a Member State where they are active. According to Article 9(4) REMIT, the registration form has to be submitted prior to entering into a transaction which is required to be reported;

• **Investments in TSOs**: TSOs controlled on the no-deal withdrawal date by investors from the UK are TSOs controlled by persons from a third country. For these TSOs to continue their activity in the EU, they require a certification in accordance with Art. 11 of Directive 2009/72/EC and Directive 2009/73/EC. Member States may refuse certification where granting certification poses a threat to security of supply of the Member State.

In relation to OTC derivative transactions, central counterparties and trade repositories the Regulation 648/2012 (“EMIR”) provides for the regulatory framework with implications to a no-deal Brexit. The European Securities and Markets Authority (“ESMA”) announced on 18th February 2019 that in the event of a no-deal Brexit, three central counterparties (“CCPs”) established in the United Kingdom (UK) – LCH Limited, ICE Clear Europe Limited and LME Clear Limited – will be recognised to provide their services in the European Union (EU) and thus be recognized third-country CCPs in the sense of Art. 25 EMIR. ESMA has adopted these recognition decisions in order to limit the risk of disruption in central clearing and to avoid any negative impact on the financial stability of the EU.

### 5. Is the German government considering any Brexit-related changes to company law or establishment?

German company law and laws pertaining to the establishment of branches of foreign companies are generally not discriminatory against foreign investors. So even though, in the event of a “hard” Brexit the UK would be treated as a third country outside of the EU, the good news from a company law perspective is that there will be little change for UK businesses. Even if English entities operate in Germany, Brexit will not change their legal form and/or treatment under company law, provided these entities are actually managed in the UK. If you are doing business in Germany under a UK legal form and you are certain that your management takes its material decisions in the UK, you may stop reading now.

However, businesses using English legal forms with de facto headquarters or decisive management outside of the UK, e.g. in Germany, and operating in Germany would be hit hard by consequences under German company law. Not being able to rely on the freedom of establishment under Art. 49, 54 of the Treaty on the Functioning of the European Union (TFEU), such companies would be subject to the German doctrine of effective management to determine the legal regime a company operates under. As a result English legal forms, such as private limited companies would cease to exist as such from the point of view of German law.

In practice, this should be primarily an issue for thousands of small German businesses and entrepreneurs which have used English private limited companies in the past to avoid certain requirements for German legal forms. However, depending on management structures, others may be affected as well.

An easy fix does not exist: due to the strict formal requirements under German law, UK entities could not be viewed as their structural German equivalents (e.g. an English private limited company would not become a German Gesellschaft mit beschränkter Haftung (GmbH)).

However, as businesses continue to operate, German law would need to find a way to treat them and it would view them as German organisations which do not require a specific form, such as a branch of the English legal form’s direct legal owner (if there was only one) or as general partnerships (if there was more than one owner: GbR or OHG).

Municipal departments of trade (Gewerbeämter) in Germany have already noticed the situation and started making inquiries with businesses operating under English legal forms to ask for their status. The practical consequences of the change of status are severe: It would mean that the corporate veil limiting the personal liability of the direct owners of such entities would no longer provide cover. This is certainly problematic for individuals, but may not be of grave concern to multinational groups.

Further, a similar risk of personal liability vis-à-vis third parties will arise for the “directors” of such English companies, which is an issue for all businesses affected.

A quick solution to restructure the business may be to simply sell or transfer otherwise the entire business operating under an English company in Germany by way of an asset deal. However, this will often trigger undesired tax effects.

Alternatively, prior to a “hard” Brexit, English private limited companies can still be merged “cross-border” into a German limited liability company even if the process can’t be completed prior to Exit Day. According to a new transitional provision in Section 122m Umwandlungs gesetz (UmWG), such cross-border mergers will be registered despite the UK becoming a third country, provided that the merger plan is notarised before Brexit takes place and that the merger is then filed for entry in the commercial register without delay, at the latest after two years...
Ireland

1. What no-deal planning advice has been issued for businesses by the Irish Government?
The Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Bill 2019 (the “Brexit Omnibus Bill”) has recently been published further to the Irish government’s no-deal Brexit preparations.

When the Bill was published, the Irish Tánaiste Simon Coveney said that he hoped that the legislation would “sit on the shelf” and not come in to force. Taoiseach, Leo Varadkar, has urged businesses to step up their contingency planning for a no-deal Brexit and utilise the supports that are available as “time is now short”.

The Department of Foreign Affairs and Trade has a website dedicated to assisting business plan and prepare for Brexit.

2. What advice and specific steps are being advised to businesses by the Irish tax and customs authorities?
Traders who import or export goods into or out of the EU will be required to obtain an Economic Operators’ Registration and Identification (EORI) number. If traders wish to trade with the UK after Brexit they will be required to register with the UK’s Revenue and Customs, HMRC. Traders may also apply for Authorised Economic Operator status.

Post-Brexit Customs Duty will apply to many goods imported from the UK to Ireland in addition to VAT. Customs Duty will not be recoverable by businesses unlike VAT.

In the event of a no-Deal Brexit, standard rate VAT (currently 23% for ROI) will apply to the import of many goods from the UK to Ireland.

The Minister for Finance has proposed to introduce a legislative change to introduce a system of postponed accounting for a period after Brexit whereby importers will not pay import VAT at the point of entry but will instead account for import VAT through their bi monthly VAT return.

3. What Brexit-related legislation has been published or passed by the Irish Parliament?
The Brexit Omnibus Bill (as defined above) has been recently published further to the Irish government’s no-deal Brexit preparations. The Omnibus Bill is currently before the Irish houses of parliament.

The Brexit Omnibus Bill focuses on measures which are intended to protect Irish citizens and to support the Irish economy, enterprise and jobs, particularly in key economic sectors. It is intended to be consistent with and complementary to steps underway at EU level to prepare for the UK’s withdrawal from the EU.

As currently drafted, the Brexit Omnibus Bill covers, in particular, the following areas:

- Health services – Ireland’s Minister for Health would be given powers to enable necessary healthcare arrangements to be maintained between Ireland and the UK;
- Industrial development – Enterprise Ireland would be given powers to offer enhanced support to companies involved in R&D. Enterprise Ireland would be provided with powers to facilitate additional lending and investment;
- Electricity regulation - the Commission for Regulation of Utilities would be given the power to amend the licences of electricity market participants for a period of one year without recourse to the normal modification and appeal process under existing Irish regulation for the purpose of modifying licences in order to facilitate the continuing operation of the single electricity market;
- Taxation – certain amendments have been proposed to Irish income tax, corporation tax, capital gains tax, VAT, stamp duty and capital acquisitions tax;
- Financial services – settlement finality;
- Insurance – a temporary run-off regime has been proposed for UK insurers and insurance intermediaries that are carrying on business into Ireland on a freedom of establishment basis’ freedom of services basis prior to Brexit. For further information, please cross refer to the Out-Law article of 22 February 2019 (link above);
- Irish legislation concerning the protection of employees in the event of an employer’s insolvency.
Employment and Immigration
The Department of Business Enterprise and Innovation has advised that both the Irish Government and the UK Government are committed to retaining the Common Travel Area.

Tánaiste Simon Coveney said a new bilateral arrangement between the UK and Ireland to protect the Common Travel Area, in existence since the 1920s, is “ready to go”.

In the event of a no-deal the UK would no longer be party to existing EC Social Security Regulations. Part 11 of the Brexit Omnibus Bill enables the Minister for Employment Affairs and Social Protection to make orders with regard to social security arrangements with other States. The Department of Employment Affairs and Social Protection has finalised an agreement in the field of social security with the UK under the Common Travel Area, which effectively provides for the continuation of current arrangements post Brexit. However, the Common Travel Area only applies to UK and Irish nationals and so other EU nationals would not benefit from this arrangement.

Tánaiste Simon Coveney has stated that there will be a memorandum of understanding between the two countries but also a legally binding international treaty on social security.

In a no-deal scenario, once the UK leaves the EU and becomes a third country, employers in a state of insolvency under the laws of the UK would no longer fall within the scope of the Protection of Employees (Employers’ Insolvency) Act unless it is amended. Part 12 of the Brexit Omnibus Bill is to ensure that, in the event of an employer becoming insolvent under the laws of the UK, their employees who work and pay PRSI in Ireland, will continue to be covered by the protections set out in the Act.

4. What sector-specific guidance for Financial Services, Life Sciences or other regulated industries has the Italian government provided in relation to a no-deal Brexit?

Data Protection
The Irish Data Protection Commission has issued guidance providing that in the event of a no-deal Brexit the UK will become a “third country” for data protection purposes. This means that where an entity in the EU is sending personal data to an entity in the UK it will need to put in place legal safeguards. In the vast majority of situations this will mean putting in place EU approved model clauses between the parties. This will be an issue for companies operating across the UK and Ireland, or where service providers in the UK are being used by the company. Irish companies have been putting these model clauses in place with UK service providers and group companies as part of Brexit planning as without them they would be legally prohibited from transferring personal data to the UK in the event of a no-deal Brexit. We at Pinsent Masons published an Out-law article on this issues recently which provides more detail on Irish Data Protection Commissioner’s guidance and its implications.

Financial Services
The Central Bank of Ireland established a Brexit Task Force to ensure that firms are adequately prepared and resilient enough to cope with the possible effects of Brexit. As part of that Task Force, the Central Bank has issued numerous reports designed to mitigate against the risk of Brexit cliff edge risks, through contingency planning and risk mitigation and has issued sectoral specific letters to supervised entities in relation to their approach to contingency planning.

The Central Bank also issued a Brexit related FAQ document (“FAQ”) providing general information to financial services firms relocating their operations from the UK to Ireland as a result of Brexit. The FAQ consolidates the position statements made by the Central Bank in various speeches since the Brexit referendum and has been continually updated since the Brexit referendum.

The FAQ sets the scene by explaining what the Central Bank’s mandate is, how it engages with UK firms considering an Irish presence and the interaction between the Central Bank and EU authorities in the context of the application process. At a high level the following are the main topics that are addressed in the FAQ:

• the Central Bank’s approach to authorisation and substance;
• the role of EU authorities in the context of the application process;
• the Central Bank’s approach to outsourcing back to the UK;
• the Central Bank’s approach to ‘dual-hatting’ of employees;
• how does the Central Bank supervise firms; and
• how will Brexit impact the anti-money laundering requirements?

There is a separate Brexit FAQ specifically aimed at consumers.

Temporary Permissions Regime (TPR) – Financial Conduct Authority (UK)
For any EEA financial services firms and investment funds relying on the established EU passporting regime for the provision of services in the UK, the FCA is operating a temporary permissions regime to apply in the event of a no-deal Brexit. The TPR will allow firms continue UK operations on a temporary basis in the event of a no-deal Brexit.

Settlement Finality – provisions under the Brexit Omnibus Bill
The Brexit Omnibus Bill addresses the settlement finality regime relied upon by EU payment and settlement systems. It proposes to extend protections from Irish insolvency laws for transfer orders and related collateral arrangements as set out in the Irish European Communities (Settlement Finality) Regulations 2010 (the “SFR”). The Brexit Omnibus Bill provides for:
• the temporary designation of settlement systems (including CREST) already designated by the Bank of England under the UK settlement finality legislation. This will mean that existing UK systems with Irish participants will be treated similarly to systems designated under the SFR for a maximum period of 9 months, subject to certain conditions outlined in Section 62; and
• the Minister for Finance having permission to designate a UK system (including CREST) for the purposes of the SFR on a non-temporary basis. This will protect transactions made by Irish participants using systems in the UK when it becomes a third country. The Central Bank of Ireland will be required to assess equivalence of UK laws governing the relevant UK system.

Life Sciences
The Health Products Regulatory Authority (“HPRA”) has a dedicated Brexit section on its website, accessible here, through which it publishes sector specific Brexit updates, and provides contact emails through which life science companies can seek guidance from the HPRA on specific queries relating to human medicines, veterinary medicines and medical devices. The HPRA also issued a guidance paper for stakeholders in relation to human and veterinary medicines (most recently updated in October 2018) (the “Guidance”), accessible here. The Guidance is based on the assumption that the UK will fully exit the current regulatory system on Exit Day, and it covers areas such as medicines availability, joint labelling, licensing for Marketing Authorisation (“MA”) holders, clinical trials, pharmacovigilance and changes to import and export requirements. If the UK becomes a third country on Exit Day, then life science companies who currently use the UK as their reference member state (“RMS”) for medicines authorised through the EU mutual recognition or decentralised procedures, will have to change their RMS to a member state of the EU/EEA. Likewise, the MA holder must be based in the EU/EEA; medicines originating from the UK will require batch testing in the EU/EEA and must be certified by a qualified person in the EEA; and EU qualified persons responsible for pharmacovigilance must be located within the EU/EEA.

The Guidance advises companies on the steps they can take to change their Reference Member State to Ireland; transfer their MAs to Ireland; make variations to their MAs (e.g. changing manufacturing or batch release sites, and changing Qualified Person Responsible for Pharmacovigilance); and the additional authorisations and testing that will be required in order to import finished medicinal products or active substances from companies in the UK. It also seeks to reassure life science companies that Ireland will continue to support them in maintaining medicines supply to the Irish market, including by continuing to accept joint labelling with the UK after Brexit. See our Out-law article on the Guidance here.

Separately, Enterprise Ireland has issued a report here on how Brexit will impact the life sciences sector. This includes advice to medical device manufacturers and exporters. Medical devices must be certified by a notified body based in the EU. As currently, up to 40 percent of medical device products sold in Europe are certified by UK bodies, it will be necessary for medical device manufacturers to put in place alternative arrangements before Exit Day, assuming the UK will become a third country on that date. This requirement will equally apply to Irish companies seeking to continue to export to other EU markets.

5. Is the Irish government making any Brexit-related changes to company law or establishment?
Under the European Communities (Cross-Border Mergers) Regulations 2008 (the “Irish Regulations”), Irish limited companies are permitted to carry out cross-border mergers with limited companies based in different EEA member states, enabling the transfer of all the assets and liabilities of one or more companies to another company with the transferor company then being dissolved without the need to go into liquidation. At present, there is currently no procedure under Irish law that permits cross-border mergers between an Irish company and a non-EEA registered company. While it is not possible to carry out a cross-border merger between an Irish company and a non-EEA company by operation of law, an alternative may be to transfer the business of one company to another and subsequently dissolve the transferor company under local law requirements by way of a contractual arrangement. The downfall of such a contractual arrangement would be that it does not automatically transfer all the rights, title and obligations of the transferor company by way of a single legal act. If the UK leaves the EEA it will no longer be possible to avail of cross-border mergers between Irish and UK companies under the Irish Regulations.

This advice was last updated in March 2019.
Italy

1. In what ways are you seeing Brexit impacting on the business environment in Italy?

The business relationship between Italy and the United Kingdom interests many sectors, among which in particular food, automotive and fashion. They have not suffered significant changes since Brexit was voted and have recorded a steady growth over the last couple of years.

Moreover, according to the Agency for the promotion and internationalisation of Italian companies abroad (ICE), Italy should be among those countries less vulnerable to Brexit. This view is driven by the fact that export of goods and services from Italy towards the United Kingdom is equal only to 5 percent of the overall Italian export.

However, these initial considerations deserve greater attention. 5 percent still represents €23 billion on a total of exported assets equal to €450 billion in 2017 and several medium-small Italian companies highly depend on exports towards the United Kingdom. Moreover, the United Kingdom is considered the fourth market to be targeted by Italian development efforts. Indeed, at the beginning of 2016 an increase in Italian exports towards the United Kingdom was expected at around 5-6 percent. Following the referendum in June 2016, the percentage stopped at 0.1 percent and only reached 3 percent in 2017.

A lot is undoubtedly at stake for Italian businesses, starting from increasing bureaucracy and burdensome administrative expenses, higher fluctuations in foreign exchange rates and high import duties, with a direct impact on selling prices and marketing.

2. How is the government of Italy responding to the possibility of a no-deal Brexit?

The Italian Government has established a Brexit coordination committee made of a delegation of experts from the European Commission. The committee has as its main task the monitoring and coordinating of activities related to Brexit and, in particular, any potential one-to-one negotiations in the event of a no-deal Brexit, the framework of the future relationships between the European Union and the United Kingdom and any precautionary measures in case of emergency (Brexit Task Force).

Moreover, with a view to fostering financial stability and continuity of markets in banking, financial and insurance sectors, the Italian Government issued a law decree no. 22 of 25 March 2019 (so-called Brexit Decree) which set for a transitional period in the event of a no-deal Brexit (please see answer no. 5 for additional details). This Decree also contains some provisions as regards to the protection of Italian citizens living in the UK and UK citizens living in Italy (please see answer no. 4 below for additional details).

The government committee is further considering measures for emergencies management in specific areas such as transport, customs, health, agriculture, research and education.

3. What advice and/or specific steps are the Italian tax or customs authorities suggesting that businesses take to prepare for a no-deal Brexit?

Consistent with the Communications of the European Commission of 13 November 2018 and 19 December 2018 on preparatory and emergency Brexit measures, the Italian Chair of the Council of Ministers (Presidenza del Consiglio dei Ministri) published on 20 February 2019 a paper named “Information on consequences and preparations for a no-deal Brexit” (the Paper), which has been recently updated in April 2019 by the Brexit Task Force. The Paper – which is not a piece of legislation – clearly shows that, following a no-deal Brexit, trades with the United Kingdom will become more complex in terms of customs procedures and VAT application. The Italian Government suggests that Italian companies currently trading with UK companies should get comfortable with EU customs rules, which will be applicable following Brexit, particularly for those Italian companies having limited experience in trading with non-EU countries.

4. What Brexit-related legislation has been published or passed by the Italian Parliament for a no-deal Brexit (e.g. UK citizens’ rights in-country to travel and work)?

In terms of individuals’ rights, the Brexit Decree, in accordance with The Paper, sets the grounds for the Italian legislator to work on preserving the existing legal framework for UK citizens residing in Italy as of Exit Day and registered with the Italian Registry Office (Ufficio Anagrafe) located in their residence municipality as of the date on which Brexit will be effective as well as establishing a set of rules for obtaining a long-term resident status in accordance with Directive 2003/109/EC upon certain requirements being met.
In addition, those not meeting the requirements for the purposes of EU long-term resident status, will have to apply for a residence permit valid for 5 years and renewable upon expiry.

This will allow UK citizens residing in Italy to keep benefitting from medical care, employment, education, social security and family reunification provisions in Italy.

UK citizens working in Italy will also have the right to obtain a recognition of their foreign professional status. For applications pending on the date of exit of the United Kingdom from the European Union, Italy – when ruling on the application – will likely consider all such requests as filed by an EU Member State applicant.

5. What sector-specific guidance for Financial Services, Life Sciences or other regulated industries has the Italian government provided in relation to a no-deal Brexit?

In terms of Financial Services, the Italian Ministry of Economy and Finance (Ministro dell’Economia e delle Finanze) passed the Brexit Decree which is to be applied in the event of a no-deal Brexit.

The intervention essentially aims at ensuring an appropriate transitional period for operations in Italy of UK Intermediaries and Investment companies and operators adhering to Italian stocks and bonds markets save for certain relevant exceptions. In particular, brokers and insurance companies, payment institutions, fund managers, UCIs banks and investment businesses operating under the rules on freedom to provide services will cease their activities on the date on which Brexit will be effective, except for ongoing contracts which will continue to be managed until completion.

The Decree also lists the requirements necessary for UK banks (i) benefitting from mutual recognition provisions, (ii) operating under the rules on freedom to provide services but only for transactions where the relevant counterparty is a qualified professional client and only with reference to derivative contract; (iii) operating through a branch located in Italy; and (iii) collecting savings under the rules on freedom to provide services, to operate during the transitional period and, for those applying, after the elapse of that period.

Furthermore, in line with Brexit Preparedness seminar on Industrial Products of the European Commission⁹, the Paper sets general provisions for British medical retailers, who shall establish their seat in one EU Country in order to keep trading in the EU.

Finally, discussions at Brexit Task Force with the Italian Government are ongoing in order to offer companies assistance and indications on customs, health standards, ports and airports, geographical and agri-food provisions applicable following Brexit.

6. Is the Italian government considering any Brexit-related changes to company law or establishment?

With specific reference to company law, the Italian Government, through the Paper, merely recalls the notice published by European Commission for the event of a no-deal Brexit. According to the notice – if no transitional regime is implemented – UK companies will no longer be able to get into the EU market on a cross-border or branch basis: UK companies will be deemed as non-EU companies and, as a consequence, not automatically recognised in EU Member States pursuant to article 54 of the Treaty on the Functioning of the European Union.

National laws will therefore apply for the recognition of such UK companies.

7. Are there any other Brexit-related changes to Italian law for a no-deal Brexit?

Other than the above, there has not been any additional indication from the Italian public authorities or courts about Brexit-related changes to Italian law.

The content of this section was provided by Nctm LLP.

For contact details, please see p. 33.

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1. Please provide a brief overview of how the government of Luxembourg is responding to the possibility of a no-deal Brexit?

On 28 March 2019, the Luxembourg Parliament adopted the bill of law n°7426 on transitional measures for UCITS and Specialized Investment Funds (SIFs) in the context of Brexit. In addition, on 26 March 2019, the Parliament adopted a bill of law n°7401 on measures to be taken in relation to the financial sector in case of the withdrawal of the United Kingdom and North Ireland from the European Union (EU). Besides this, four other bills of law are currently discussed within the Luxembourg parliament:

- Bill n°7412 allows British nationals to stay in Luxembourg with the same rights as an EU citizen for a transitional period of one year after the date of withdrawal. British nationals resident for five or more years, however, may apply for permanent residency;
- Bill n°7421 protects the rights of British nationals receiving the social inclusion income, or Revis, or income for the severely disabled, if the British parliament does not ratify the withdrawal agreement between the EU and UK before Exit Day;
- Bill n°7406: In the event of a no-deal Brexit, British nationals may still be hired as Luxembourg State employees if Bill n°7406 is passed;
- Bill n° 7409 guarantees the recognition of professional qualifications for certain professions in the event of a no-deal Brexit. If passed, it ensures the qualifications of students studying in specific professions in the UK, which were obtained after the withdrawal, will be automatically recognised.

In addition, in case of a no-deal Brexit, the United Kingdom will be considered as a third-country from an EU perspective. Therefore the EU third-country regulation will apply in terms of VAT, customs, residence permit, work permit and travel rights. In that framework the Luxembourg government directly or via the administration, published guidelines referring to the EU third-country regulation:

- The Luxembourg VAT authorities (AED) have published a short preparedness notice about the VAT related consequences of a British exit from the EU without a withdrawal agreement as of Exit Day;
- The Luxembourg customs authorities (Administration des douanes et accises) have issued guidelines on their website regarding the possibility of a no-deal Brexit;
- The Luxembourg government has published guidelines on its website regarding the possibility of a no-deal Brexit for:
  - British citizens living in Luxembourg and Luxembourg citizens living in the UK regarding driving licences, voting rights, health insurance etc;
  - UK companies operating in Luxembourg and Luxembourg companies operating in the UK regarding data protection and employment.

Regulators have also issued press releases, a circular and information notes in connection with Brexit:

- The Luxembourg financial sector regulator (CSSF) has issued: a press release regarding the applications by fund management companies, a press release regarding the delegation of investment management; and a Circular on substance requirements of fund management companies in Luxembourg (Circular 18/698). The increasing number of Luxembourg alternative investment fund managers, together with the efforts on regulatory convergence in a Brexit context, has led to the creation of this new circular which is not directly linked to Brexit;
- The Luxembourg regulator of the insurance sector (CAA) has very recently issued an information note regarding the temporary permission regime.

2. What advice and/or specific steps are the Luxembourg tax or customs authorities suggesting that businesses take to prepare for a no-deal Brexit?

2.1 VAT

The Luxembourg VAT authorities (AED) have published a short preparedness notice about the VAT related consequences of a British exit from the EU without a withdrawal agreement as of Exit Day. Concerning supplies of goods between EU Member States and the United Kingdom (UK), the intracommunity rules for cross-border supplies and movements within the EU will no longer apply to the UK as of Exit Day. Supplies and movements of goods from and to the UK will therefore be subject to the VAT rules on imports and exports.

The supplies of services between EU Member States and the UK will be subject to the VAT rules on cross-border supplies of services with third countries. As a result, the place of the supply of services will depend on the regime applicable to the specific nature of the services. Despite the withdrawal of the UK, taxable persons have to submit recapitulative statements of their intra-EU supplies of...
goods, triangular operations and their intra-EU supplies of services for which the recipient is VAT liable in the period from 1 January 2019 to Exit Day. The withdrawal of the UK may give rise to issues as regards evidence relating to intra-community supplies and acquisition prior to the withdrawal. Taxable persons should take all necessary steps to ensure that they provide all required evidence in this respect. From the time of the withdrawal, taxable persons will no longer be able to check the validity of the VAT identification numbers of UK customers through the EU VIES system.

Finally, VAT refunds will be made using national procedures as of Exit Day. However, with regards to VAT paid from 1 January 2019 to Exit Day and VAT paid before, for which a refund request has not yet been submitted, this should be done as soon as possible before the withdrawal date. The website of Guichet.lu also provides some useful information with respect to refunds of VAT paid in the UK.

2.2 Customs

From Exit Day, in the absence of a withdrawal agreement, the United Kingdom will no longer belong to the customs territory of the EU and will therefore be regarded as a third country. In the absence of a withdrawal agreement, after Exit Day, a customs declaration for import or export must be presented to the customs in accordance with the customs regulations of the EU. Any trade relationship between the EU and a third country is, from a customs point of view, subject to the possession of a single registration and identification number of economic operators (EORI number). In the absence of a withdrawal agreement after Exit Day, it is strongly recommended to apply for EORI registration with the Customs and Excise Department.

3. What Brexit-related legislation has been published or passed by the Luxembourg Parliament for a no-deal Brexit (e.g. UK citizens’ rights in-country to travel and work)?

On 26 March 2019, the Luxembourg Parliament adopted the bill of law n°7401. The bill of law n°7401 (the “Bill”) has been issued on measures to be taken in relation to the financial sector in case of the withdrawal of the United Kingdom (“UK”) and North Ireland from the EU. Said Bill relates to the scenario where, on Exit Day, no withdrawal agreement has been entered into between the UK and the EU (i.e. no-deal Brexit). In a No-deal Brexit scenario, actors of both the UK financial sector and the UK investment funds sector would no longer be able to rely on the European passport to provide their services to EU clients, neither on a cross-border basis nor by way of the establishment of a branch (or appointment of agents). According to the Bill, this situation could lead to financial instability and market turmoil. Along with other European Member States, the Luxembourg government has adopted the Bill to mitigate these risks. In this context, the Bill notably grants both the Commission de Surveillance du Secteur Financier, the Luxembourg financial supervisory authority (“CSSF”) and the Commissariat aux Assurances, the Luxembourg authority in charge of the supervision of the insurance sector (“CAA”), with a series of powers to take temporary measures (1) and furthermore extends certain protective rules of the Settlement Finality Directive (Directive 98/26/EC) to third country systems (2).

Powers to take temporary measures

The Bill gives the CSSF power to continue to apply for a maximum period of 21 months as of Exit Day (i.e. until end of December 2020), the EU pasporting provisions for the freedom to provide services and the freedom of establishment in favour of UK-based institutions (credit institutions, investment firms, payment institutions and electronic money institutions) when providing their services into Luxembourg. This derogatory regime is only available for (i) contracts concluded before Exit Day and (ii) for contracts concluded thereafter where they have a close link to contracts concluded before Exit Day. The preparatory works specify that such a close link may e.g. exist in case of “life-cycle events” affecting an existing contract. Similar powers have been granted to the CAA in relation to the freedom of services and freedom of establishment of UK-based insurance actors (insurance and reinsurance companies). The Bill is less clear in relation to insurance distributors. As regards the investment funds sector, although the Bill also grants powers to the CSSF to apply the same grandfathering period including the derogatory regime referred to above, the situation is somewhat more complex. As a result, the Bill (which is still subject to comments) might need to be updated as regards the investment funds aspects. Indeed, as regards Luxembourg UCITS management companies and Luxembourg AIFMs, these are governed by a specific set of rules deriving from the UCITS Directive and AIFMD referring in particular to the concept of collective asset management and providing for specific requirements in case of delegation. In this context it is important to note that even without the Bill, the delegation of portfolio management of UCITS/AIFs to UK based investment managers will continue to be possible as a result of a no-deal Brexit MOU with the FCA. Indeed, as ESMA announced on 1 February 2019 that ESMA and the EU/EEA securities regulators agreed on a no-deal Brexit MOU with the FCA (which will only take effect in case of a no-deal Brexit scenario), this shall mean in practice with respect to Luxembourg UCITS and AIFs, that investment management/portfolio management functions may continue to be delegated to UK based entities on behalf of such Luxembourg UCITS and AIFs.

Extension of the settlement finality directive protections to third country systems

The protection of payment and securities settlement systems (« Systems ») against the insolvency of a Luxembourg participant as provided for in the Settlement Finality Directive in favour of EEA systems will be extended to third country systems which are admitted to a list managed by the Luxembourg Central Bank. Admission to such list is granted by the Luxembourg Central Bank upon request of a participant or a system provided the latter (i) meets the criteria of the first indent of the definition of « system » of the Settlement Finality Directive, (ii) is governed by the laws of a third country and (iii) is supervised or subject to the oversight of a supervisory authority of a State whose central bank holds an equity stake in the Bank for International Settlements. Third country systems will also be treated alike EEA systems for purposes of the Luxembourg law enacting the Bank Resolution and Recovery Directive (Directive 2014/59/UE).

On 28 March 2019, the Luxembourg Parliament adopted the bill of law n°7426 on transitional measures for UCITS and Specialized Investment Funds (SIFs) in the context of Brexit. Its core aim is to introduce into Luxembourg legal framework provisions that might mitigate disruptions generated by the exit of the UK from the EU. Proposed measures concern potential passive breaches of the UCIs’ investment limits that might arise once the UK becomes a third
country, while another set of measures deals with the marketing of UK funds in Luxembourg in the post-Brexit environment (with or without any agreement).

To ensure the smooth functioning and stability of the financial markets and the protection of the investors, the law grants the relevant UCIs a transitional period for the adjustment of non-compliance regarding their respective investment policies and rules. The law includes three situations:

- The fund is a UCITS or part II fund managed by a Luxembourg ManCo with delegation/outourcing to the UK. The law proposes a grandfathering period to adapt the fund investment policies governance to the Luxembourg compliance regime as soon as possible and within one year from the Brexit date to mitigate any potential adverse impacts from markets on investors;
- UK UCITS marketed to Luxembourg based clients benefit from a one year grandfathering period after which they might not be eligible anymore as UCITS for retail investors;
- UK UCITS managed by another member state ManCo will be authorized for marketing in Luxembourg provided that the ManCo has an AIFM license as these funds will be AIFs from the date of Brexit. This principle might apply for SIF funds to remedy the adverse impact on their compliance resulting from Brexit.

Besides, 4 other bills of law have been discussed since 21/03/2019 within the Luxembourg parliament:

- Bill n°7412 allows British nationals to stay in Luxembourg with the same rights as an EU citizen for a transitional period of one year after the date of withdrawal. British nationals resident for five or more years, however, may apply for permanent residency;
- Bill n°7421 protects the rights of British nationals receiving the social inclusion income, or Revis, or income for the severely disabled, if the British parliament does not ratify the withdrawal agreement between the EU and UK before the scheduled Exit Day;
- Bill n°7406: In the event of a no-deal Brexit, British nationals may still be hired as Luxembourg State employees if Bill n°7406 is passed;
- Bill n° 7409 guarantees the recognition of professional qualifications for certain professions in the event of a no-deal Brexit. If passed, it ensures the qualifications of students studying in specific professions in the UK, which were obtained after the withdrawal, will be automatically recognised.

4. What sector-specific guidance for Financial Services has the Luxembourg government provided in relation to a no-deal Brexit?

In addition to the Bill detailed in point 3, the Luxembourg financial sector regulator (CSSF) has issued:

- A press release regarding the applications by fund management companies;
- A press release regarding the delegation of investment management; and
- A Circular on substance requirements of fund management companies in Luxembourg (Circular 18/698). The increasing number of Luxembourg alternative investment fund managers, together with the efforts on regulatory convergence in a Brexit context, has led to the creation of this new circular which is not directly linked to Brexit.

Both press releases have been transcribed in Annex V, as well as our analysis of the Circular.

The content by Arendt & Medernach. For contact details, please see p.33.
1. What Brexit-related legislation has been published by the Spanish government for a no-deal Brexit?

The Royal Decree-Law 5/2019 of March 1 sets out a range of emergency measures should the United Kingdom and Northern Ireland exit from the European Union without reaching an agreement provided by Article 50 TEU. The purpose of the decree is the undertaking of measures to amend the Spanish legal framework in order to deal with the consequences of UK exit from the European Union without previous agreement under article 50.2 TEU.

Within the next two months, in case British authorities do not comply with the reciprocity of the measures implemented by RDL 5/2019 for persons and legal entities, said measures shall be suspended.

2. What does the law say about citizenship in Spain in a no-deal Brexit scenario?

The scope of the section 2 applies to every UK national citizens and their family members. Residence in Spain may be proved: (i) Through registry certificate issued prior Brexit and EU family card for foreign family members; (ii) throughout any probatory means admitted by law.

UK citizens and their families living in Spain prior Brexit may be authorized to have a long term residence if they have lived legally and steadily for at least 5 years.

UK citizens, who prior Brexit obtained a permanent registry certificate or a familiar permanent card from the EU, will have to request Foreigners Identity Card for long term residence before the police authorities by providing: (i) passport in force; (ii) printed evidence of fees payment and (iii) photography.

UK citizens living out of Spain who had the condition of cross-border employees in the Brexit date shall request relevant documentation on this regard as evidence. The request and formalities of said documentation as cross-border employee shall not be an obstacle in their activity, which shall continue in the same conditions.

UK citizens who in the Brexit completion date are working as state employees in Spain (including in cases where it is required to be a EU citizen) may continue exercising their activities in the same terms if they comply with the rest of conditions subject to their job.

Spanish citizens or any other citizen from any other Member State (MS) who in the Brexit completion date are serving as state employees after completing UK or Gibraltar’s requirements may continue exercising their activities in the same terms if they comply with the rest of conditions subject to their job.

Prior the completion of Brexit, UK citizens are entitled to apply to access determined state employment without needing to request nationality dispensation.

UK, Gibraltar and MS citizens temporarily employed in Spain may continue exercising their activities in accomplishment with their contracts upon the completion of Brexit.
5. For the access to benefits for unemployment by nationals of the United Kingdom, periods of insurance credited in any EU Member State prior Brexit, including those carried out under the British social security system, will be taken into account for the calculation of unemployment benefits when contributions are last made in Spain and provided that the right to reside legally in Spain is maintained, which will be applied.

Citizens with health care rights in UK or Gibraltar will receive health care assistance under the Spanish system in the same conditions as prior Brexit, provided that UK provides the same rights to Spanish citizens in the same terms.

Students coming from UK or Gibraltar education systems, during academic years 19/20 and 20/21 may decide to be subject to university access in Spain if they comply with the Spanish academic requirements.

3. What does the law say about Police and Judicial cooperation in Spain in a no-deal Brexit?
Active judiciary cooperation proceedings with UK in corporate and civil issues and active exchange of information procedures will continue and terminate complying with the applicable law. Once the procedure is terminated, its effects shall be ruled by international treaties entered into UK and Spain.

Arrest warrants in force will expire once the completion of Brexit. Active joint investigation teams will remain in force once the completion of Brexit.

4. What specific measures are contained in the law in relation to the Financial Services sector?
Agreements for the provision of banking, securities, insurance or other financial services in which an entity provides services in Spain while domiciled in the United Kingdom or Gibraltar, prior to Brexit, shall remain in force afterwards and, accordingly, the obligations of each of the parties contained therein shall remain in effect. From completion of Brexit, such entities shall be subject to the regime provided for in sectoral legislation for entities from third States.

The Bank of Spain (Banco de España), the National Securities Commission (Comisión Nacional del Mercado de Valores) and the General Management of Insurance and Pensions (Dirección General de Seguros y Fondos de Pensiones) shall issue, within their respective spheres, all measures as appropriate to guarantee legal certainty and to safeguard the interests of users of financial services who may be affected by the exit of the United Kingdom from the European Union.

5. What does the law say about the movements of goods and people in Spain in a no-deal Brexit?
Motor vehicles, used exclusively for the carriage of goods by transport companies based in the UK, may travel in load on Spanish territory to carry out transport operations whose point of departure and point of arrival are respectively in the territory of the UK and Spain or vice versa. However, said vehicles may travel through Spain unloaded if said travel is consequence of a previous activity aforementioned. The British transport companies shall be duly authorized to carry out their activities in UK, except for cases provided under RDL 5/2019.

Buses used exclusively for the carriage of passengers by transport companies based in UK may travel in load on Spanish territory carrying out international passenger transport only when permitted by international treaties to which both the UK and the Spain or the European Union are parties, or when so provided for in the rules of international organizations of which both the UK and the Spain or the European Union are members. Regular passenger transport services currently authorized between UK and Spain may continue to be provided until the end of the period of validity of the authorizations under which they are covered.

The aforementioned companies based in UK shall comply with the labour laws of Spain.

Until 28 February 2020, passengers departing to an airport in the United Kingdom shall be deemed to be departing for an airport in the European Economic Area for the purposes of fixing public service charges for passenger departures and catering services and their updates.

6. What other provisions have the Spanish government made in relation to Brexit?
Economic agents in the United Kingdom or Gibraltar who participate in award procedures and whose procedure file was initiated before the United Kingdom’s exit from the European Union, shall continue to be subject to the rules of the corresponding applicable law and its implementing rules for companies belonging to Member States of the European Union.

Driving licenses issued by British authorities shall enable to their holders to drive in Spain for nine months from the completion of Brexit. Within said period, those citizens complying with Spanish law, may redeem their driving license. On expiry of said period, the system of driving licences issued by the UK authorities shall be that laid down for licences issued in third countries.

Prior authorizations and consents for transfers of arms, explosives, pyrotechnic articles and cartridges issued prior Brexit shall remain valid until the date of expiry of the period laid down in prior authorisations or consents. From the completion of Brexit date, new prior authorizations and consents for transfers will no longer be issued and the general regime for the import, transit and export of goods will apply.
1. In what ways are you seeing Brexit impacting on the business environment in Switzerland?
Due to the strong economic link between the UK and Switzerland, Brexit will have a significant direct or indirect impact on Switzerland and in particular on its export-oriented companies.

Especially delivery delays, additional costs due to increased fees and increased security controls will have an impact on the trade. It can be assumed that Swiss exporters will convert Incoterms to FCA and transfer the risks to the buyers. As a Swiss importer, it is advisable to define Incoterms outside the UK. Especially for top sellers, such as Novartis, stocks in the UK are being increased in order to remain deliverable.

Furthermore, the finance sector wonders whether the UK finance sector will become subject to more competitive regulations after Brexit, thereby increasing competition. The UK leaving the EU will also mean that UK court judgements (e.g. under LMA trade finance agreements) cannot be enforced in Switzerland under the Lugano Convention but will have to be enforced under the (more cumbersome) rules of Swiss international private law.

2. How is the government of Switzerland responding to the possibility of a no-deal Brexit?
In the context of the strategy “Mind the gap”, the Swiss and the British government agree that mutual rights and obligations must be safeguarded beyond the time of Brexit and that legal loopholes in the bilateral relationship must be avoided. Five new agreements CH-UK have been negotiated. In case of a no-deal scenario these agreements will come to force Exit Day. If there is a regulated withdrawal, the agreements will enter into force after the end of the transition period (currently on 1 January 2021 at the earliest).

3. What advice and/or specific steps are the Swiss tax or customs authorities suggesting that businesses take to prepare for a no-deal Brexit?
In case of purchases of goods from the UK, the goods must first be imported into the EU. This triggers income taxes and customs duties in Switzerland. The former can be claimed as import taxes, but customs duties cannot. With regard to services, the question arises as to how the services provided abroad can be proven without the existence of the turnover tax identification number.

If the no-deal scenario happens, the UK represents a third country (outside of the EEA) to Switzerland. Consignments by land or air from Switzerland to the UK must be registered in advance with the Federal Custom Administration (FCA). When importing UK goods to Switzerland by land, the EU will require prior notification and security checks, if necessary. No further custom security measures will have to be taken. If imported goods enter Switzerland by air, they have to be declared to the FCA before crossing the border. Any security checks will take place after the arrival of goods in Switzerland but any further security controls will be waived if the goods are subsequently forwarded from an airport in Switzerland to the EU.
4. What Brexit-related legislation has been published or passed by the Swiss Federal Assembly for a no-deal Brexit (e.g. UK citizens’ rights in-country to travel and work)?

<table>
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<tr>
<th>Agreement on citizens’ rights</th>
<th>Aims to secure the rights of Swiss citizens in the UK and British citizens in Switzerland, which they have attained under the Agreement on the Free Movement of Persons (FMPA).</th>
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<td>Trade agreement</td>
<td>Corresponds to the recent trade agreements with the EU and further schedules dialogues to develop the relationship. For the moment, elements based on harmonisation or recognition of the equivalence of the rules with the EU have not been adopted.</td>
</tr>
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<td>Insurance Agreement</td>
<td>Guarantees freedom of establishment for insurance companies in the area of direct indemnity insurance.</td>
</tr>
<tr>
<td>Road Transport Agreement</td>
<td>Guarantees that no authorisation is required for freight transport between Switzerland and the UK and that reciprocal access for freight and passenger transport by road is maintained.</td>
</tr>
<tr>
<td>Air transport Agreement</td>
<td>Ensures the seamless continuation of existing rights in air transport.</td>
</tr>
</tbody>
</table>

**UK-citizens’ rights in Switzerland:**
Separate contingent of permits (3500) for UK nationals wanting to enter the country for the purpose of work which will be applicable as of Exit Day; on 22 March 2019, the Swiss Federal Council adopted a revision of the relevant ordinance; on the same date, it also decided to exempt UK nationals from a visa requirement to enter Switzerland (including for a lengthy stay); the relevant ordinance has been amended accordingly.15

5. What sector-specific guidance for Financial Services, Life Sciences or other regulated industries has the Swiss government provided in relation to a no-deal Brexit?
A new insurance agreement dated 25 January 2019 was negotiated that secures the freedom of establishment for insurance companies in the area of direct indemnity insurance.

For derivative trading, the Swiss Financial Markets Supervisory Authority issued guidance that certain UK derivatives regulations will be recognized as equivalent as soon as the British parliament passes the EMIR transposition act.16

Further agreements for financial services are being planned.

Moreover, the trade agreement dated 11 February 2019 contains a section on the agriculture industry, pharma and automobile industries. However, an agreement on the machine industry or the admission of bio products was not reached.

In particular, harmonised product regulations for industrial and agricultural goods or the mutual recognition of certification procedures facilitate trade in goods between Switzerland and the EU. Market access therefore depends on how much the UK will align itself with European standards (e.g. the “CE” certification). If the UK processes certified intermediate products in Switzerland and exports the end product to the EU, the EU must recognise the equivalence of the intermediate product.17

6. Is the Swiss government considering any Brexit-related changes to company law or establishment?
At this moment there is no information that the government considers a change of the Swiss company law.

7. What other Brexit-related changes are being made to Swiss law for a no-deal Brexit?
Under the “Mind the Gap”-Strategy of the Federal Council, the possibility of continuing third-country agreements within the framework of the transition period EU-UK is discussed; furthermore, the Trade agreement may serve as a basis for further sectors, such as services, to be included potentially.

The content of this section was provided by Niederer Kraft & Frey. For contact details, please see p. 33.

15 CLAUDIA FEUSI, Mind the Gap: Warenverkehr zwischen Schweiz und Grossbritannien, 2019
16 CLAUDIO WEGMÜLLER, Brexit als Herausforderung für die Schweizer Handelspolitik, 2019
17 FLORIAN HANSILK / ANITA MACHIN, Brexit – und seine Folgen aus zollrechtlicher und mehrwertsteuerrechtlicher Sicht, in Zuger Steuerpraxis, 2016
18 STATE SECRETARIAT FOR ECONOMIC AFFAIRS, Economic relations between Switzerland and the United Kingdom after Brexit (as of 29.03.19)
19 STATE SECRETARIAT FOR ECONOMIC AFFAIRS, Economic relations between Switzerland and the United Kingdom after Brexit (as of 29.03.19)
20 The Swiss Federal Council, Press release, 22 March 2019
21 FINMA Guidance 01/2019: BREXIT: Recognition of UK derivatives regulations, 21 February 2019
22 CLAUDIO WEGMÜLLER, Brexit als Herausforderung für die Schweizer Handelspolitik, 2019
The Netherlands

1. In what ways are you seeing Brexit impacting on the business environment in The Netherlands?

The UK is a very important trading partner of The Netherlands and the most important exporting partner after Germany and the US. Businesses exporting goods to the UK are expected to suffer financial losses from Brexit in a no-deal or similar scenario. The agri- and food sectors, the manufacturing industries and chemical industries will be particularly hit.

On the other hand, Brexit will also create opportunities for The Netherlands. As a consequence of Brexit the European Medicines Agency has moved from London to Amsterdam on 1 March 2019. The Netherlands are also seeing a growing influx of requests for advice from international companies wanting to establish an entity in The Netherlands.

2. Please provide a brief overview of how the Government of The Netherlands is responding to the possibility of a no-deal Brexit.

The Dutch Government has a strong believe that it is of vital importance to prepare The Netherlands as well as for all the possible Brexit scenarios, including a no-deal Brexit. However, the Government also acknowledges that a no-deal scenario will inevitably go hand in hand with some distortions and problems.

The Dutch Government is responding to the possibility of a no-deal Brexit in the following four ways:

- **Raising awareness** - the Dutch Government emphasises that not all efforts with regard to contingency measures and preparedness can come from the Government. Therefore the Dutch Government has spent a lot of time raising awareness of the possible consequences of a no-deal Brexit for businesses, citizens and local authorities. It is important that local authorities, citizens, the business community, civil society organizations, institutions and implementing organizations make timely preparations for a no-deal scenario. The communication to these groups about the preparations will be intensified closer to Exit Day. The raising of awareness has proven to be effective, this is apparent from the first results of a research conducted by Kantar Public on behalf of the Ministry of Foreign Affairs.

Furthermore, in the context of the ongoing preparations, the government continues to offer lots of useful and important information about the Brexit on the websites for citizens, companies and tax and customs.

The Government uses, among others, the following communication channels to inform the above mentioned target groups.

- For businesses: Brexit loket for entrepreneurs, Brexit Impact Scan, Brexit and Customs matters, and Brexit Vouchers;
- For citizens: Brexit loket for citizens;
- For local authorities: Brexit Impact Scan for local authorities.

With this Brexit Impact Scan, companies and local authorities can check what they still need to do in preparation of a no-deal Brexit. The Dutch government is constantly updating the Brexit Impact Scan according to the latest developments.

On 11 March 2019, the new version of the Brexit Impact Scan for all local authorities was launched by Europe decentraal. The content of the scan has been updated, expanded with new information and it now contains much more specific information in the field of internal business operations. In the scan the authority must make a choice for the type of government for which it wants to complete the scan, for example for municipalities or provinces. Local authorities who already did the Brexit Impact Scan are advised by the Dutch government to do it again, because of the updated and new information.

- **Scenario exercises** - in the context of crisis management and crisis preparations in the case of a no-deal Brexit, the Dutch Government practised with several crisis scenarios at the end of January 2019. During these practices, two dilemma sessions were discussed on the basis of fictitious scenarios with regard to responsibilities, powers, substantive contradictions and public opinion. The Government worked with extreme scenarios that are helpful in thinking through what can happen in case of a no-deal Brexit.

- **Legislation and national measures** - the Dutch Government has responded to a possible no-deal Brexit with new legislation (see answer to Question 4). Besides legislation, the Government has taken national measures to secure to mitigate as much as possible the distortions of a no-deal Brexit. These national measures are concern among others: rights of citizens, healthcare, border control, logistics and transport, data and security market access and trade and other specific subjects. All these measures are outlined in an elaborate document of the Ministry of Foreign Affairs from 4 March 2019.

- **Internal operations of The Netherlands** - the Dutch Government realises that a no-deal Brexit can influence its internal operations in various ways. The employees of the Government will be informed through other channels the 'Brexit Impact Scan for local authorities'.

The Dutch government has made a Brexit To-Do List with 12 steps companies can take to prepare for Brexit.
provides a practical overview of issues companies can take into account. Step 12 of the list contains the advice to do the Brexit Impact Scan for a more detailed analysis of the steps the specific company has to take.

2. What advice and/or specific steps are the Dutch tax or customs authorities suggesting that businesses take to prepare for a no-deal Brexit?

Customs is part of the Tax Department of the Ministry of Finance. The Customs Authority is also concerned with raising awareness of business that can be affected by a no-deal Brexit. Raising awareness is important because companies can be affected by a no-deal Brexit with regard to custom matters. The consequence of a no-deal Brexit for custom matters is that mutual trade of goods between the EU and the UK will be regulated by the WTO rules. Falling back on WTO rules means that there will be tariffs and controls for goods traded between the EU and the UK. The UK will qualify as a third country, and all goods from third countries have to comply with the product standards and requirements that apply in the EU. A no-deal Brexit will not only affect the mutual trade of goods but also the provision of services. The WTO agreements in the field of services (GATS) will regulate the provision of services between the EU and the UK. This can have consequences for, among others, market access and the national treatment of service providers.

Customs sent a letter to 72,000 Dutch companies that can be affected by a no-deal Brexit with possible preparations they could take for the Brexit. In addition, one can find information from Customs on how to prepare for the Brexit on the website of the tax authorities. In the preparation for Brexit, several steps can be taken. Which steps and measures a particular person or business should take depend on the nature of the business and its specific activities. Using the services of a customs agent can also lead to different advised measures; however, Customs advises everyone to take the below three steps to prepare for Brexit in any case:

- To do business with Customs after the Exit Day, a EORI-number (Economic Operators Registration and Identification) is needed. It is therefore first of all advisable to acquire such a number;
- A company has to make sure it is able to file a declaration at customs. This can be done by applying a customs agent or by obtaining the necessary software;
- Should a company wants to file the declarations itself, it needs to apply for Registration electronic messaging (Registratie elektronisch berichtenverkeer).

Customs advises people to get a complete view of what to do in specific situations. This means that they should check if they need particular licences or if there are any other formalities that will apply. In other words, Customs advise companies to take action and to delve into the specific consequences of a no-deal Brexit for their business. The website of the Customs and tax authorities goes into more deeply.

The tax authorities also sent letters to 26,000 entrepreneurs with information about the application for a licence of article 23 of the Turnover Tax Act (Wet op de omzetbelasting).

4. What Brexit-related legislation has been published or passed by the Dutch Parliament for a no-deal Brexit (e.g. UK citizens’ rights in-country to travel and work)?

The Collective Act Brexit (Verzamelwet Brexit) was passed by the Dutch Parliament on 29 January and by the Dutch Senate on 26 March. In short, this law contains the necessary adjustments of Dutch legislation in connection with the UK leaving the EU. The Collective Act Brexit is designed to prevent the unacceptable consequences of Brexit for both businesses and citizens. The passing of The Collective Act Brexit included the passing of the more controversial Article X, which provides for regulatory competence in case of an emergency or transitional situation. If necessary, this Article can quickly make the necessary provisions, contrary to higher regulations. The Collective Act Brexit does therefore not just provide for the necessary amendments of regulations at the time of Brexit, but it also provides for amendments that can respond to unforeseeable consequences of Brexit.

This law is the product of an inventory whether and is made on the assumption that the UK loses the capacity of an EU Member State. The fact that some matters do not appear in this law, like the admission and stay of UK-citizens in the EU, does not mean that no measures will be needed in that field. It just means that no measures are needed on the level of legislation in the formal sense.

The Collective Act Brexit contains legislative proposals for the following laws in formal sense: The Formally Foreign Companies Act (Wet op de formeel buitenlandse vennootschappen), Road Traffic Act 1994 (Wegenverkeerswet 1994), Electricity Act 1998 and Gas Act (Elektriciteitswet 1998 en Gaswet), Approval and Implementation Markham-agreement Act (Wat goedkeuring en uitvoering Markham-overeenkomst), Protection of original topographies of semiconductor products (Wet bescherming oorspronkelijke topografieën van halfgeleiderproducten), temporary delegation basis with regards to social security laws and the Long Term Care Act and the Healthcare Insurance Act (Tijdelijke delegatiegrondslag met betrekking tot socialezekerheidszaken en de Wet langdurige zorg en Zorgverzekeringswet).

5. What sector-specific guidance for Financial Services, Life Sciences or other regulated industries has the Dutch Government provided in relation to a no-deal Brexit?

The Dutch Government has not issued separate guidance documents for specific regulated industries. However, they have built an informative website, ‘Brexit loket’. Here people and businesses will find more information and advice on the areas in which Brexit can affect a company. The areas outlined in the Brexit loket are: Digital data and services, transport, staff and services, competition and market, export, import, intellectual property, establishment, supply and purchasers, agriculture and healthcare.
Furthermore, the Government provided a free ‘Brexit Impact Scan’. With this Brexit Import Scan companies can check what they still need to do and see unexpected effects in the case of a no-deal Brexit.

In the field of healthcare, the Dutch Government foresees severe risks with respect to the security of the supply of medicines and medical instruments. The Dutch Government wants to anticipate on these risks and guarantee the availability medical devices for patients, professionals, and healthcare companies. That is why an exceptional and standardized exemption procedure has been drawn up specifically for the Brexit, with specific conditions and enforcement rules. This procedure only applies to the Netherlands and only for medical devices and in-vitro diagnostics, because of the need of the continuity of care. In this procedure manufacturers of medical devices can apply for an exemption for the placing in the market of medical devices in the Netherlands on the Farmatec.nl website of the CIBG (part of Ministry of Health, wellbeing and sports) on the basis of Article 8 of the Medical Devices Act (Wet op de medische hulpmiddelen).

In this respect the Dutch Government published several informational documents dated from 13 March until 2 April at www.rijksoverheid.nl/onderwerpen/brexit/brexit-en-de-zorgsector.

Furthermore, the Dutch Government has set up a special Brexit Care Information Point (Brexit Zorg Informatie Punt). Companies can email to this Brexit Care Information Point (Brexit Zorg Informatie Punt) with any remaining questions after reading the information provided on the website.

6. Is the Dutch Government considering any Brexit-related changes to company law or establishment?

In article 1 of The Collective Act Brexit there is a legislative proposal to alter The Formally Foreign Companies Act (FFCA) (Wet op de formeel buitenlandse vennootschappen). This proposed adjustment is important for British companies because:

- As a result of the UK’s withdrawal from the EU, the Formally Foreign Companies Act will apply in full to companies incorporated in the UK, insofar as they perform all or almost all their activities in The Netherlands and furthermore do not actually have a connection with the UK. Pursuant to article 2 FFCA, directors of such a formally foreign company have a rather extensive duty to declare in the trade register that their company is a ‘formally foreign company’. During the time the directors do not comply with the obligation of article 2, they will be jointly and severally liable for any legal act during their management pursuant to article 4 paragraph 2 FFCA;

- Article 11 FFCA contains the transitional law that applied at the introduction of the law. It stipulates that the company must be registered in the manner prescribed in article 2 FFCA within three months after the law has come into force. The legislative proposal suggests introducing a similar transitional provision for companies from the UK operating in The Netherlands. With this proposed provision it can be ensured that when a company of the UK falls under this act, the directors are not directly jointly and severally liable for any legal act made during their management because of the fact they were not registered under article 2 FFCA. With this provision, the directors are given three months to complete the prescribed registration.

7. Please outline any other Brexit-related changes to Dutch law for a no-deal Brexit?

The recently published document from the Ministry of Foreign Affairs contains an elaborate overview of the identified consequences of a no-deal Brexit per theme with the measures that are taken to mitigate these consequences at national level. This document contains 16 pages of consequences and national measures.

Financial markets

The document also contains a change in Dutch law in the field of financial markets that is not mentioned in The Collective Act Brexit. Since the UK will qualify as a third country in case of a no-deal Brexit, financial services from the UK cannot automatically be provided in the EU. Equally, financial service providers from the EU will not have access to British clearing houses and British settlement systems. Furthermore, the continuity of services on existing derivative contracts will be at risk.

To mitigate the possible adverse effects for financial markets, The Netherlands has adjusted various laws and regulations for settlement systems, the provision of financial services and the performing of investment activities. The Dutch Government has taken the following measures:

- A law as of 12 December 2018 that amends the Bankruptcy Act (Faillissementswet) with respect to rights and obligations regarding participation to payment and securities settlement systems in third countries. This amendment will be important to maintain access to payment and settlements systems in third countries;

- Companies operating from the UK in The Netherlands that provide investment services to or act on their own account with Dutch professional market parties will get a temporary exemption from the license requirement in The Netherlands. There will be a temporary adjustment of the exemption scheme for British investment firms (Vrijstellingsregeling voor Britse beleggingsondernemingen).

The content of this section was provided by Kennedy Van der Laan. For contact details, please see p.33.
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## Annex I – No Deal EU Legislation

<table>
<thead>
<tr>
<th>Legislation</th>
<th>Type</th>
<th>State of play</th>
</tr>
</thead>
<tbody>
<tr>
<td>Air transport (basic connectivity)</td>
<td>Ordinary legislative procedure (simplified procedure)</td>
<td>Vote in Plenary 13/03/2019 to approve provisional agreement</td>
</tr>
<tr>
<td>Air transport (safety)</td>
<td>Ordinary legislative procedure (simplified procedure)</td>
<td>Vote in Plenary 13/03/2019 to approve provisional agreement</td>
</tr>
<tr>
<td>Road transport (basic connectivity)</td>
<td>Ordinary legislative procedure (simplified procedure)</td>
<td>Vote in Plenary 13/03/2019 to approve provisional agreement</td>
</tr>
<tr>
<td>EU general export authorisation (dual use items)</td>
<td>Ordinary legislative procedure</td>
<td>Vote in Plenary 13/03/2019</td>
</tr>
<tr>
<td>Hydrofluorocarbons (reference values)</td>
<td>Implementing act</td>
<td>Procedure completed</td>
</tr>
<tr>
<td>Hydrofluorocarbons (reporting)</td>
<td>Implementing act</td>
<td>Procedure completed</td>
</tr>
<tr>
<td>UK suspension from the Union Registry (EU ETS)</td>
<td>Commission decision</td>
<td>Procedure completed</td>
</tr>
<tr>
<td>Equivalence decision UK CCPs</td>
<td>Implementing act</td>
<td>Procedure completed</td>
</tr>
<tr>
<td>Equivalence decision UK CSDs</td>
<td>Implementing act</td>
<td>Procedure completed</td>
</tr>
<tr>
<td>Geographical breakdown levels (balance of payments) - Annex</td>
<td>Delegated act</td>
<td>Parliament non-objection, Council non-objection</td>
</tr>
<tr>
<td>Regulatory technical standards (clearing)</td>
<td>Delegated act</td>
<td>Parliament non-objection, Council non-objection</td>
</tr>
<tr>
<td>Regulatory technical standards (margins)</td>
<td>Delegated act</td>
<td>Parliament non-objection, Council request for time extension</td>
</tr>
<tr>
<td>Time limit lodging export declarations (UK seas)</td>
<td>Delegated act</td>
<td>Procedure completed</td>
</tr>
<tr>
<td>European Maritime and Fisheries Fund</td>
<td>Ordinary legislative procedure</td>
<td>Vote in Plenary 13/03/2019 to approve provisional agreement</td>
</tr>
<tr>
<td>Fishing authorisations</td>
<td>Ordinary legislative procedure</td>
<td>Vote in Plenary 13/03/2019 to approve provisional agreement</td>
</tr>
<tr>
<td>Erasmus+</td>
<td>Ordinary legislative procedure (simplified procedure)</td>
<td>Vote in Plenary 13/03/2019</td>
</tr>
<tr>
<td>Social security rights</td>
<td>Ordinary legislative procedure (simplified procedure)</td>
<td>Vote in Plenary 13/03/2019</td>
</tr>
<tr>
<td>2019 EU budget</td>
<td>Consent procedure</td>
<td>Vote in Committee 18/03/2019, vote in Plenary 04/04/2019</td>
</tr>
<tr>
<td>Railway safety and connectivity</td>
<td>Ordinary legislative procedure (urgent procedure)</td>
<td>Vote in Plenary 13/03/2019</td>
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</table>
## Annex II – General Brexit EU legislation

<table>
<thead>
<tr>
<th>Legislation</th>
<th>Type</th>
<th>State of play</th>
</tr>
</thead>
<tbody>
<tr>
<td>Relocation of the EMA</td>
<td>Ordinary legislative procedure</td>
<td>Procedure completed</td>
</tr>
<tr>
<td>Relocation of the EBA</td>
<td>Ordinary legislative procedure</td>
<td>Procedure completed</td>
</tr>
<tr>
<td>Car type-approval</td>
<td>Ordinary legislative procedure</td>
<td>Procedure completed</td>
</tr>
<tr>
<td>Apportionment of tariff rate quotas</td>
<td>Ordinary legislative procedure</td>
<td>Procedure completed</td>
</tr>
<tr>
<td>Ship inspection</td>
<td>Ordinary legislative procedure</td>
<td>Vote in Plenary 13/03/2019 to approve provisional agreement</td>
</tr>
<tr>
<td>Realignment of the North Sea – Mediterranean Core Network Corridor (CEF)</td>
<td>Ordinary legislative procedure</td>
<td>In interinstitutional negotiations, debate in plenary scheduled for March 13</td>
</tr>
<tr>
<td>Energy efficiency</td>
<td>Ordinary legislative procedure</td>
<td>Interinstitutional agreement found</td>
</tr>
<tr>
<td>Visas</td>
<td>Ordinary legislative procedure</td>
<td>In interinstitutional negotiations</td>
</tr>
<tr>
<td>Territorial cooperation on the island of Ireland</td>
<td>Ordinary legislative procedure</td>
<td>Awaiting Parliament first reading</td>
</tr>
<tr>
<td>Exemption of the Bank of England from the pre- and post-trade transparency requirements (MiFIR)</td>
<td>Delegated act</td>
<td>Parliament and Council not to raise objections</td>
</tr>
</tbody>
</table>
Annex III - Timeline

April 10
Extraordinary European Council (Art. 50) meeting and approval of second extension

April 18
In case of no-deal, the UK must confirm whether it will make about €7bn of net contributions to the EU’s budget for 2019

April 30
First payments to be made scheduled

May 22
Deadline for the UK to approve Withdrawal Agreement

May 23-26
Elections to the European Parliament

June 1
Brexit day if Withdrawal Agreement not approved and UK has not held elections to the European Parliament

June 20-21
European Council meeting

July 1-4
First Plenary session of the 9th legislature

October 31
End of Article 50 extension

November 1
The next Commission takes office

December 31 2020
Scheduled end of transition period, but could be extended up to December 31 2022

December 31 2022
Entering the backstop if a deal is not in place to avoid a hard border with Northern Ireland
Annex IV – Links to EU sources on Brexit

| European Commission | • Brexit negotiations – All information published by the European Commission on the negotiations  
|                     |   - Negotiation documents  
|                     |   - Guide to negotiations  
|                     |   - Brexit preparedness  
|                     | • Brexit preparedness  
|                     |   - Preparedness notices  
|                     |   - Legislative initiatives and other legal acts  
|                     |   - Other preparedness activities  
|                     | • National Brexit information in Member States  
| European Parliament | • Brexit Steering Group – The purpose of the Brexit Steering Group is to coordinate and prepare Parliament’s deliberations, considerations and resolutions on the UK’s withdrawal from the EU  
|                     |   - Documents  
| Council of the EU   | • Ad hoc Working Party on Article 50  
|                     | • Guiding principles for transparency in negotiations under Article 50 TEU  
| European Central Bank (ECB) | • Relocating to the euro area  
| European Securities and Markets Authority | • Brexit  
| European Medicines Agency (EMA) | • Brexit  

Annex V

Brexit-related applications by fund management companies

In a worst-case scenario, no transition period will be agreed upon Exit Day and the United Kingdom will consequently need to be considered as a third country as from the day of departure. Based on the current state of negotiations, entities need to consider the scenario where a hard Brexit would take place. Therefore, any investment fund manager (alternative investment fund manager or UCITS fund manager) wishing to relocate business in Luxembourg in the context of Brexit will need to be authorised by the CSSF. For the avoidance of doubt, the CSSF highlights that existing entities already authorised by the CSSF, but wishing to receive additional licenses or substantially changing operational models to cope with Brexit-related aspects are also addressed by this press release.

The CSSF reminds entities that the time required for analysing authorisation requests can be substantial and depends on numerous factors. The CSSF consequently wishes to urge investment fund managers addressed by this press release to submit their applications to the CSSF as soon as possible. In this context, reference is made to the opinion issued by ESMA on 13 July 2017. Finally, reference is also made to a public statement issued by ESMA on 12 July 2018, requesting the timely submission of requests for authorisation in the context of the United Kingdom withdrawing from the EU.

Brexit: delegation of investment management; temporary permissions regimes

Delegation of investment management/portfolio management and/or risk management activities to undertakings in the United Kingdom.

The CSSF would like to remind that legal provisions in Luxembourg fund legislation permit the delegation of investment management/portfolio management and/or risk management activities to undertakings in countries outside the EU (“third countries”) under specific conditions. In the particular context of a no-deal Brexit, legislation, in particular Article 110 of the Law of 17 December 2010 on undertakings for collective investments, Article 18 of the Law of 12 July 2013 on alternative investment fund managers and Article 42b of the Law dated 13 February 2007 on specialised investment funds, allow for such delegations to undertakings in the United Kingdom, which would gain the status of a third country in case of a no-deal Brexit, provided that (i) these undertakings are authorised or registered for the purpose of asset management, (ii) are subject to prudential supervision and that (iii) cooperation between the UK FCA as supervisory authority of these undertakings and the CSSF is ensured. The CSSF endeavours that the required cooperation between the UK FCA and the CSSF shall be in place on 29 March 2019 in the event of a no-deal Brexit. On this basis, delegation of investment management/portfolio management and/or risk management to UK undertakings shall continue to be possible without any disruption post-Brexit, under the condition that the UK delegatee continues to fulfil all applicable requirements. Operating and marketing in the United Kingdom by firms and investment funds established in Luxembourg. The CSSF reminds Luxembourg firms and investment funds which passport activities into the UK that a temporary permissions regime (TPR) has been operating since 7 January 2019. Firms and investment funds having notified the FCA under the TPR will be authorised to continue new and existing regulated business within the scope of their current permissions in the UK for a limited period after 29 March 2019 while seeking full FCA authorisation. The regime will also allow inbound marketing of EU funds in the United Kingdom that is currently available, to temporarily continue. Firms and funds will need to notify the FCA that they wish to use the regime by submitting the relevant notification before the end of 28 March 2019. Firms or funds that have not submitted a notification will not be able to use the TPR. A detailed explanation of the process to be followed is provided on the FCA’s website: https://www.fca.org.uk/brexit/temporary-permissions-regime Firms and funds established in Luxembourg that make use of the TPR are required to duly inform the CSSF of any notifications made under the TPR, as soon as they have submitted their notification, by sending an email notification to the dedicated address: opc@cssf.lu. The email notification must include the name of the firm, fund or sub-fund and a detail of the services/activities for which the TPR notification has been submitted as well as the date of the TPR notification. TPR for financial institutions post Brexit: The publication by HM Treasury of a draft of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 (the draft Regulations) providing for a TPR also offers other financial institutions, including banks, to continue operating in the UK for a limited period of time once the UK leaves the EU under a no-deal scenario. The CSSF reminds Luxembourg financial institutions that the foreseen notification window opened on 7 January 2019 and closes on 28 March 2019. At EU and Luxembourg level, the emergency action plan adopted on 19 December 2018 by the European Commission as well as the publications by the European Banking Authority (EBA) and the European Central Bank (ECB) provided 2 appropriate guidance to financial institutions, including banks, to prepare for Brexit and mitigate major “cliff-edge” issues.

Authorisation and organisation of investment fund managers incorporated under Luxembourg law. Specific provisions on the fight against money laundering and terrorist financing applicable to investment fund managers and entities carrying out the activity of registrar agent

Finally, the CSSF has also issued today circular 18/698 concerning (i) the approval process and organisation of Luxembourg fund management companies and (ii) specific requirements applicable to both fund management companies and transfer agents in the fight against money laundering and terrorist financing.

The objective of the CSSF when drafting the new circular was to set out in one single document all substance related aspects concerning both UCITS management companies and alternative investment fund managers. Until now, circular 12/546 of 24 October 2012 set out the regulatory practice of the CSSF concerning the substance of management companies, initially addressing UCITS management companies only. However, the increasing number of Luxembourg alternative investment fund managers, together with the efforts on regulatory convergence in a Brexit context, has led to the creation of a new circular applicable to all Luxembourg fund
management companies, whether UCITS, AIFM or even those known as “Chapter 16 management companies”. The provisions of the new circular mirror, to a large extent, the administrative practice developed by the CSSF in the recent past, but also includes some new requirements which will burden market players.

The main section of the circular sets out detailed rules concerning the shareholders of management companies, the minimum equity requirements, corporate bodies, administrative organisation, internal governance and internal controls. The provisions applicable to the delegation of key functions, including portfolio management, the fund administration and marketing are of particular interest. Further, the circular sets out the provisions applicable to management companies providing discretionary management services on an individual basis and those applicable to management companies providing services on a cross border basis or wishing to prevail of the European passport for the establishment of branches within the European Union.

The circular also includes provisions applicable to the fight against money laundering and terrorist financing. It is therefore also applicable to Luxembourg companies acting as transfer agent for investment funds.

The circular enters into force with immediate effect and repeals circular 12/546. Companies applying for a management company license will therefore have to take into account the requirements of the new circular in their applications. Existing management companies will have to carefully consider the content of the circular in order to ensure that they are compliant with the new requirements going forward.

The Luxembourg regulator of the insurance sector (CAA) has very recently issued an information note regarding the temporary permission regime. Please find below a non-official translation of the text of this information note:

Temporary permission regime in case of a no-deal Brexit
At the invitation of the UK Prudential Regulation Authority (hereinafter PRA), the CAA wishes to inform the industry that in the context of Brexit, EU insurance companies lose their passport rights and that consequently any of them wishing to continue operating in the United Kingdom after 29 March 2019 must, in the event of a disorderly Brexit, have a type 4A authorization within the meaning of the Financial Services and Markets Act 2000.

To minimize the disruption to the economies concerned, the UK Government has introduced the Temporary Permission Regime (hereinafter TPR). The purpose of the TPR is to allow insurance companies to continue their activities in the UK for a limited period of time while seeking to obtain permanent authorization from the UK authorities to operate in the United Kingdom. In the absence of a transitional period after 29 March 2019, this measure ensures that a “back-stop” is in place.