

Structuring your business if there's no Brexit deal

Summary

How cross border business operations and European specific corporate entities would be affected if the UK leaves the EU with no deal.

Detail

If the UK leaves the EU in March 2019 without a deal, find out how this would affect:

- cross border business operations
- European specific entities

A scenario in which the UK leaves the EU without agreement (a 'no deal' scenario) remains unlikely given the mutual interests of the UK and the EU in securing a negotiated outcome.

Negotiations are progressing well and both we and the EU continue to work hard to seek a positive deal. However, it's our duty as a responsible government to prepare for all eventualities, including 'no deal', until we can be certain of the outcome of those negotiations.

For two years, the government has been implementing a significant programme of work to ensure the UK will be ready from day 1 in all scenarios, including a potential 'no deal' outcome in March 2019.

It has always been the case that as we get nearer to March 2019, preparations for a no deal scenario would have to be accelerated. Such an acceleration does not reflect an increased likelihood of a 'no deal' outcome. Rather it is about ensuring our plans are in place in the unlikely scenario that they need to be relied upon.

This series of technical notices sets out information to allow businesses and citizens to understand what they would need to do in a 'no deal' scenario, so they can make informed plans and preparations.

This guidance is part of that series.

Also included is an [overarching framing notice](<https://www.gov.uk/government/publications/uk-governments-preparations-for-a-no-deal-scenario>) explaining the government's overarching approach to preparing the

UK for this outcome in order to minimise disruption and ensure a smooth and orderly exit in all scenarios.

We are working with the devolved administrations on technical notices and we will continue to do so as plans develop.

Purpose

This notice explains the implications for businesses which are legal entities operating across the UK-EU border, or who have taken the form of a European specific entity, in the unlikely event that the UK leaves the EU in March 2019 with no agreement in place. For the purpose of this notice, 'UK company' means a company incorporated in the UK and includes a subsidiary incorporated in the UK regardless of the nationality of its parent but does not include a UK branch of a company incorporated elsewhere. An 'EU company' means a company incorporated in the EU regardless of the nationality of its parent but does not include an EU branch of a company incorporated elsewhere. This notice covers:

- cross border business operations
- European specific entities

Before 29 March 2019

The UK currently follows the EU rules and regulations that fall under the area of company law, which set out how companies and other legal entities operate within the Single Market, how they register and how they operate across country borders in the EU.

This is reflected in UK law mainly through the Companies Act 2006 and regulations made under that Act. For other types of legal entities which have their own specific legislation, this generally mirrors the legislation for companies (albeit with modifications) and therefore much of this notice will be relevant to these entities also.

However, this notice is expressed in terms of the effect for companies as this is the most commonly used corporate form.

EU law also provides frameworks for certain EU specific entities to form and operate: European Economic Interest Groupings, European Public Limited-Liability Companies (or Societas Europaea), and European Groupings of Territorial Cooperation.

After March 2019 if there's no deal

The government will ensure that the UK continues to have a functioning regulatory framework for companies and that, as far as possible, the same laws and rules that are currently in place continue to apply. This will be done by using the powers in the EU Withdrawal Act 2018 to correct deficiencies in our statute book arising from our exit from the EU.

The UK government will continue to work with the Scottish Government, Welsh Government and the Northern Ireland Civil Service, to ensure the future company law regime works across the UK.

Cross-border business operations

For companies incorporated in countries outside of the EU, operating by way of branches within the UK, the regime applying to them will remain substantially the same. Such companies are currently third country businesses in relation to the EU, and that will remain the case. In the UK, such companies are currently subject to the overseas companies regime and the requirements relating to them as non-EU companies will not change. The overseas companies regime is in the Overseas Companies Regulations 2009, SI 2009/1801.

However, there will be changes to the cross-border regimes for UK companies operating in the EU, because the UK will no longer be an EU member state. These companies will become third country businesses in relation to the EU.

European specific entities

The European Economic Interest Groupings and European Public Limited-Liability Companies (or Societas Europaea) frameworks require that the entities are registered within an EU member state. On exit day the UK will no longer be an EU member state and the consequences of this are set out in the sections below.

Implications

Cross-border business operations

There will be no change in who can be an owner, senior manager or director of a UK company, as the UK doesn't apply any nationality restrictions to owners or managers of UK companies.

EU companies that operate branches in the UK are currently subject to the overseas companies regime, but the requirements applicable to them will change. They will become subject to the same information and filing requirements as any other third country's companies' branches. However, those additional requirements are minimal. Guidance on the current requirements can be found [here](<https://www.gov.uk/government/publications/overseas-companies-in-the-uk-registration-filing-and-disclosure-obligations>).

An EU company with a branch in the UK that is required by its parent law to prepare, have audited and disclose accounts will be required to file in the UK accounting documents which will include the accounts, any annual report of the directors, any report of the auditors on the accounts, and any report of the auditors on the directors' report. Parent law in this context will be the law of the EEA state where the company is incorporated.

An EU company with a branch in the UK which does not meet this description will, after exit day, have to comply with the provisions of Part 15 of the Companies Act 2006 that have been applied (with modifications) to overseas companies by the Overseas Companies Regulations 2009.

UK citizens may face restrictions on their ability to own, manage or direct a company registered in the EU, depending on the sector and EU member state in which the company is operating. This could involve meeting additional requirements on the nationality or residency of individuals allowed to act as senior managers or directors and/or limits on the amount of equity that can be held by non-nationals.

Further information on the requirements in EU member states can be found via the [European e-Justice Portal](<https://e-justice.europa.eu/home.do?action=home>). Information on restrictions in particular service sectors in other countries including EU member states can be found via the [Organisation for Economic Co-operation and Development](<http://www.oecd.org/tad/services-trade/services-trade-restrictiveness-index.htm>).

UK businesses that own or run business operations in EU member states will likely face changes to the law under which they operate, depending on the sector and EU member state. For example, this could involve meeting additional requirements in order to acquire real estate and/or requiring additional approvals to operate. Restrictions may be more burdensome for branches or representative offices, as opposed to subsidiaries which have their own legal identity and are incorporated in the EU member state concerned.

UK companies and limited liability partnerships that have their central administration or principal place of business in certain EU member states may no longer have their limited liability recognised. This is the case in certain jurisdictions that operate the 'real seat' principle of incorporation.

Cross-border mergers involving UK companies will no longer be able to take place under the EU Directive 2005/56/EC - cross-border mergers of limited liability companies (although they can be structured through private contractual arrangements). As the UK will no longer be an EU member state, the remaining EU member states will no longer be required to give effect to cross-border mergers that do not complete prior to the UK exiting the EU.

UK investors in EU businesses (whether these are individuals, businesses or investment funds) may face restrictions on the amount of equity that they can hold in certain sectors in some EU member states. For example, a UK audit firm could no longer be the majority owner of an EU audit firm because it would no longer be recognised among the majority of qualified owners or managers that an EU audit firm is required to have under EU law.

European specific entities

European Economic Interest Groupings, European Public Limited-Liability Companies (or Societas Europaea) and European Groupings of Territorial Cooperation will no longer be able to be registered in the UK. Those that remain registered in other EU member states after exit will still be able to trade in the UK as now.

UK members of European Economic Interest Groupings registered in other EU member states will be unable to continue to participate in the European Economic Interest Grouping unless the contract under which they are formed allows them, or is amended to allow them, to do so.

For Societas Europaea and European Economic Interest Groupings that are registered in the UK and have not made alternative arrangements before exit, the government will put in place a way of automatically converting them into a new UK corporate structure so that they will have a clear legal status post exit. For Societas Europaea this will include maintaining the employee involvement provisions.

The European Groupings of Territorial Cooperation regime already has an option allowing public authorities of non-EU countries to participate and the government will keep this.

Actions for businesses and other stakeholders

Cross-border business operations

UK citizens operating in the EU may wish to seek professional advice or contact the government of the country in which they own, manage, or direct a company for more information.

UK businesses operating in the EU may wish to seek professional advice or contact the government of the country in which they operate for more information.

UK companies and limited liability partnerships that have their central administration or principal place of business in an EU member state may wish to consider whether they need to restructure to satisfy the requirements for incorporation in that EU member state.

Any UK companies that are undertaking a cross-border merger will need to ensure that they can complete the merger before exit and may want to seek legal advice on their individual case.

UK investors in EU businesses may wish to make themselves aware of any restrictions that might be placed on them within the EU member state in which they are operating.

Further information on the requirements in EU member states can be found via the [European e-Justice Portal](<https://e-justice.europa.eu/home.do?action=home>). Information on restrictions in particular service sectors in other countries including EU member states can be found via the [Organisation for Economic Co-operation and Development](<http://www.oecd.org/tad/services-trade/services-trade-restrictiveness-index.htm>).

European specific entities

Before exit, European Economic Interest Groupings registered in the UK may want to consider transferring their official address to another EU member state and should make themselves aware of the timeframes for so doing. European Economic Interest Groupings with their official address in other EU member states can have an establishment in the UK; they will need to ensure that they comply with the registration requirements within the regulations.

Societas Europaea have the option of converting to a UK public limited company (plc) provided they have been registered as a Societas Europaea for at least 2 years or have had 2 sets of annual accounts approved. They may also want to consider whether they wish to move their seat of incorporation to another EU member state. They will need to consider the relevant timeframes for either course of action.

Owners of Societas Europaea and European Economic Interest Groupings may wish to maintain awareness of the further information that will be published on the automatic conversion of their entities to a new UK structure by ensuring that the contact details held by Companies House are up to date.

After exit, Societas Europaea registered in EU member states will need to register their existing and any future UK establishments/branches with Companies House.

More information

For further information, please also see:

- [Companies House](<https://www.gov.uk/government/organisations/companies-house>) for information on companies and other corporate entities, including how to set up company, filing requirements and publication requirements
- [Overseas Companies in the UK Registration and Disclosure Obligations](<https://www.gov.uk/government/publications/overseas-companies-in-the-uk-registration-filing-and-disclosure-obligations>) for information on the registration and disclosure requirements for overseas companies in the UK
- The technical notice on [Accounting and audit] [ADD LINK]

- The technical notice on [Providing services including those of a qualified professional] [ADD LINK]

This notice is meant for guidance only. You should consider whether you need separate professional advice before making specific preparations.

It is part of the government's ongoing programme of planning for all possible outcomes. We expect to negotiate a successful deal with the EU.

The UK government is clear that in this scenario we must respect our unique relationship with Ireland, with whom we share a land border and who are co-signatories of the Belfast Agreement. The UK government has consistently placed upholding the Agreement and its successors at the heart of our approach. It enshrines the consent principle on which Northern Ireland's constitutional status rests. We recognise the basis it has provided for the deep economic and social cooperation on the island of Ireland. This includes North-South cooperation between Northern Ireland and Ireland, which we're committed to protecting in line with the letter and spirit of Strand two of the Agreement.

The Irish government have indicated they would need to discuss arrangements in the event of no deal with the European Commission and EU Member States. The UK would stand ready in this scenario to engage constructively to meet our commitments and act in the best interests of the people of Northern Ireland, recognising the very significant challenges that the lack of a UK-EU legal agreement would pose in this unique and highly sensitive context.

It remains, though, the responsibility of the UK government, as the sovereign government in Northern Ireland, to continue preparations for the full range of potential outcomes, including no deal. As we do, and as decisions are made, we'll take full account of the unique circumstances of Northern Ireland.

Norway, Iceland and Liechtenstein are party to the Agreement on the European Economic Area and participate in other EU arrangements. As such, in many areas, these countries adopt EU rules. Where this is the case, these technical notices may also apply to them, and EEA businesses and citizens should consider whether they need to take any steps to prepare for a 'no deal' scenario.