Briefing: Government guidance on planning for a no-deal exit scenario

With just over three months until the UK exit from the EU, the Government has decided there is a need to accelerate and intensify no deal preparations. This article sets out developments in late December 2018 and how these might impact organisations and their no-deal scenario planning.

What is a "no-deal" scenario?

The UK triggered Article 50 of the Treaty of the European Union on 29 March 2017. The UK has two years to negotiate a Withdrawal Agreement and framework for a future relationship with the EU before the point of the UK's exit from the EU at 11pm GMT on 29 March 2019.

A no-deal scenario is one where the UK exits the EU and becomes a third country without a Withdrawal Agreement and framework for a future relationship in place between the UK and the EU. This scenario means that there would be no agreement to apply any of the elements of the government's proposed Withdrawal Agreement being tabled.

The UK government has been issuing advisory notes for some months for a scenario where there is no UK-EU agreement in place on exit day.

On December 21 2018, the government updated advice published during 2018 to include guidance on proceeding with the government's next phase of no-deal planning.

https://www.gov.uk/government/publications/uk-governments-preparations-for-a-no-deal-scenario

With just over three months until the UK exit from the EU, the government has decided there is a need to accelerate and intensify no deal preparations. Preparing for no-deal is now an operational priority for the government and they will set in motion their remaining no-deal plans.

The government recommends that businesses now ensure they are prepared and are ready to enact their own no-deal plans.

How is the UK government preparing for a no-deal?

According to the government, at the heart of its approach to preparing for a no-deal scenario is a commitment to prioritise stability for citizens, consumers and businesses, to ensure the smooth operation of business, infrastructure and public services and to minimise any disruption to the economy.

Some technical notices already published demonstrate where the government would act unilaterally to provide continuity for a temporary period in a no-deal scenario to protect and minimise disruption for UK citizens and businesses, irrespective of whether the EU reciprocates. The extent of such continuity will vary by area as detailed in specific technical notices, with change happening in different areas over time. According to the government, "such changes will be applied where and when it is best for the UK".

This approach underpins many of the government's no-deal plans that are already public. For instance, the EU Withdrawal Act 2018 ensures that in all scenarios the same rules and laws will apply the day before and after exit, with changes agreed over time by the UK Parliament.

In the event of a no-deal scenario in March 2019, the government will seek to do what it can to make the transition as smooth as possible and allow time to make significant changes.

The continuity approach does not mean that everything will stay the same, but the priority is maximising stability at the point of departure through the Government's action.

For example, the financial services framework will need to be adjusted to reflect the fact that the UK will no longer be inside the EU's framework for financial services. The government's approach to financial services will, in general, be to treat European Economic Area (EAA) states largely as we currently treat other third countries, except where a different approach is necessary to manage the transition to a stand-alone UK regime. For example, the Temporary Permissions Regime will allow EU firms and funds passporting into the UK to continue providing services in the UK for a temporary period after exit.

Next steps

UK government communication with businesses and the wider public about a no-deal scenario will increase as we approach our exit from the EU.

In the coming weeks, the government will also publish further advice on the steps that people, including UK nationals living in the EU and EU citizens living in the UK, may need to take to prepare for our exit.

The government recommend businesses now ensure they are prepared and enact their own no-deal plans.

How is the EU preparing for a "no-deal"?

The European Commission implemented a Contingency Action Plan on 19 December 2018 for a number of specific sectors in the event of a no-deal Brexit, including 14 measures in areas where a no-deal scenario would create major disruption for citizens and businesses of the EU27, including financial services, air transport, customs and climate policy.

https://ec.europa.eu/info/publications/communication-19-december-2018-preparing-withdrawal-united-kingdom-european-union-30-march-2019-implementing-commissions-contingency-action-plan_en

The Commission emphasised that "These measures will not and cannot mitigate the overall impact of a no-deal scenario, nor do they in any way compensate for the lack of stakeholder preparedness or replicate the full benefits of EU membership or the terms of any transition period, as provided for in the Withdrawal Agreement".

The specific areas covered were felt to be those where it was necessary to protect the vital interests of the EU "where preparedness measures on their own are not sufficient".

The role of the risk and insurance professional

These developments present a further opportunity for risk management and insurance professionals to raise their profile with their executive committee and board.

There should be clear consideration of the risks in each organisation and against each category of risk in the organisation.

Our research indicates that the supply chain remains top of mind in most organisations and sophisticated plans are in place. However, risk professionals must ask themselves the following:

- Is sufficient attention being paid to no-deal scenarios? Have contingency plans been fully rehearsed and are they ready to go?
- Are you aware of the 2019 business objectives and budget for your organisation and have you adjusted plans for risk management and insurance to take account of these?
- Are you maintaining a system for tracking Brexit-related developments and associated Government, regulatory, legal and other guidance at UK, EU and industry sector levels?
- Is there clear and on-going consideration of Brexit-related risks and metrics in your organisation at executive committee and board level, and are you at the centre of this process?

Depending on the nature of the organisation, the following are examples of areas to be considered:

Market Risk: Risk professionals should be asking what exposure their business has from a market / investments perspective and what stress testing has been done. For example, what would be the impact of adverse credit spreads and real estate equity shocks and interest rate changes? The same questions apply for foreign exchange risk. For example, what capital is held in British pound versus other currencies, and how could this impact the organisation in the case of a potential sterling devaluation**.**

Operational Risk: For financial institutions, the temporary permissions regime reduces much of the operational risk. There remains, however, a risk that the political situation significantly deteriorates, and it is withdrawn, although this is currently unlikely.

Data protection: At the point of Brexit, the UK will become a "third country" from a General Data Protection Regulation ("GDPR") perspective and data transfer restrictions will apply. Although the GDPR will be written into UK law by the EU Withdrawal Act, the European Commission has not indicated a timetable for making an adequacy determination in respect of the UK and may not be in place by March 2019.

The UK government has stated it will continue to allow the free flow of personal data to the EU (to be kept under review). Transfer of personal data from the EU to the UK will need to be made on alternative legal grounds, the most practical of which is the EU Standard Contractual Clauses. Transfers of personal data from the UK outside of the EU would be subject to the UK Data Protection Act 2018, which permits transfers outside of the EU on the same legal grounds as the GDPR, including the EU Standard Contractual Clauses.

How can members stay up-to-date?

The Airmic and FERMA Brexit Newsletter: Airmic and FERMA have joined forces to issue a Brexit Newsletter, designed to give risk professionals unique insight into Brexit related risks and mitigation strategies. The first Newsletter was issued in December [add link].

Further editions are expected to follow in January and March.

The Airmic Brexit Summit 25 March 2019: Lord Hill will be the keynote speaker, and Neil Sherlock, Brexit advisor to PwC, will moderate a panel of cross-sector business leaders.

To be held at a central London location, the Summit will commence at 4.00pm and conclude at 6.30pm followed by drinks and networking. Reserve your date in your diaries now. A formal invitation to register will be issued shortly.

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