



**UK government technical  
notices on no deal Brexit |**  
Impact on key commercial sectors - report

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# Overview

The UK government has published a raft of technical notices outlining the implications of a no deal Brexit on a range of sectors, should the UK leave the EU in March without an agreement.

The technical notices highlight the practical effects that could result from a no deal Brexit. They span a range of issues including public procurement, state aid, competition, trading with the EU and data protection.

The notices are clear that a no deal outcome could have significant consequences for some sectors and may mean that businesses have to trade differently. This might range from the obvious potential for tariffs to be imposed on UK-EU trade alongside changes to customs & excise procedures to the regulation of state aid rules.

Some of the notices contain details of the steps that organisations can take to prepare for a no deal Brexit. In the public procurement area, for example, organisations are advised to continue their procurement activities under certain EU programmes (e.g. under the European Social Fund) and to keep informed on the publication of guidance on the administration of those programmes.

This report aims to provide a brief outline of some

of the implications of a no deal Brexit in some key commercial areas, including:

- Public procurement
- State aid
- Trading with the EU
- Personal data and consumer rights
- Other commercial areas (e.g. competition and energy)

Information on all the technical notices issued by the UK government can be found on the [Brexit web page](#) of the UK government website.

**We hope you find this summary useful. Please do get in touch if you have any specific queries about the implications for your business.**



**Bill Hull**

Head of Commercial

**T** +44 (0)333 006 0321

**E** [bill.hull@TLsolicitors.com](mailto:bill.hull@TLsolicitors.com)

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# Public procurement

The UK government has issued a raft of technical notices on procurement including the following:

- [Accessing public sector contracts if there's no Brexit deal](#)
- [European Regional Development Funding \(ERDF\) if there's no Brexit deal](#)
- [European Social Fund \(ESF\) grants if there's no Brexit deal](#)

## Accessing public sector contracts if there's no Brexit deal

**New e-notification service:** If the UK leaves the EU with no deal in place, the UK will set up its own notification platform for electronic tenders. This platform will be available from exit day and replace the Tenders Electronic Daily (TED) section of the EU Official Journal (OJEU). This means that all relevant contract opportunities will be made available through this notification platform, which will be free to access.

**Contracting authorities and entities:** These organisations will be required to publish their contract notices on the UK notification platform (rather than on OJEU/TED). There will still be a requirement for contracting authorities and entities to advertise in Contracts Finder, MOD Defence Contracts Online, Public Contracts Scotland, Sell2Wales and eTendersNI.

Contracting authorities and entities that place their contract opportunities on to OJEU/TED will be contacted by the UK government before the new notification service becomes operational, to ensure that they are familiar with the new arrangements.

**Suppliers:** Suppliers wishing to continue to have access to contract opportunities from UK authorities and entities can do so through accessing the new notification platform. If they wish to access EU contract opportunities, they can do so via OJEU/TED.

## ERDF and ESF grants

The UK government has stated that, according to the draft Withdrawal Agreement 2018 (which is currently being negotiated between the UK and the EU), ERDF and ESF programmes would continue to apply to the UK until 2023, subject to a final agreement being reached.

In the event of a no deal scenario, the UK government will aim to ensure the application of all EU projects (including ERDF and ESF programmes) that were agreed before the UK's departure from the EU until their closure (for more information on this, see the UK government's [guarantee](#) for EU-funded programmes if there's no Brexit deal).

The UK government has stated that organisations should continue carrying out their procurement activities under current arrangements and keeping up to date with guidance on the administration of ERDF and ESF programmes. This can be found on the relevant web pages for the administration of those programmes, including the [ERDF web page](#) of the Europa website, the [ERDF web page](#) of the UK government website, the [ESF web page](#) of the Europa website and the [ESF web page](#) of the UK government website.

## Other technical notices regarding EU-funded programmes

[Connecting Europe Facility energy funding if there's no Brexit deal](#)

[Delivering humanitarian aid programmes if there's no Brexit deal](#)

[European Territorial Cooperation funding if there's no Brexit deal](#)

[Funding for UK LIFE projects if there's no Brexit deal](#)

[Horizon 2020 funding if there's no Brexit deal](#)

[Funding for British Overseas Territories if there's no Brexit deal](#)



## State aid

In its technical notice on 'state aid if there's no Brexit deal', the UK government sets out the implications of a no deal Brexit for the state aid regime. These include the following (among other issues):

- **Implementation of UK state aid rules:** The UK will implement its own framework for the control of subsidies which will consist of EU state aid rules transposed into UK legislation. This will apply to all sectors, and mirror existing block EU exemptions. This means that UK businesses (and EU businesses operating in the UK) will be able to receive state aid from UK public authorities in accordance with UK state aid rules.
- **UK state aid regulator:** The Competition and Markets Authority (CMA) will become the new regulator for state aid which will take on the role of enforcement and supervision for the UK.
- **State aid notification:** State aid notifications will need to be made to the CMA after the withdrawal of the UK from the EU. State aid approved by the European Commission before the withdrawal will remain valid.
- **State aid complaints:** Any complaints from businesses about unlawful aid or the misuse of aid should be made to the CMA.
- **Further information:** The provisions for the potential implementation of the UK framework will be prepared in secondary legislation which is expected to be published in autumn 2018. Guidance on details about how the CMA intends to operate its state aid regulatory function is expected to be published by the CMA after the legislation has been passed. CMA guidance can be found on the [CMA website](#).

## Personal data and consumer rights

The UK government has issued the following notices on personal data and consumer rights:

- [Data protection if there's no Brexit deal](#)
- [Consumer rights if there's no Brexit deal](#)

### Data protection

The technical notice on data protection clarifies that the UK government does not plan to make any immediate changes to the UK's data protection framework, as the Data Protection Act 2018 would remain in place and the GDPR will be incorporated into UK law (through the European Union (Withdrawal Act) 2018). In addition, personal data transfers from the UK to the EU will continue because the UK will continue at the point of exit to support the adequacy of the EU for those transfers.

The legal framework governing the transfer of personal data from the EU to the UK may however be subject to change. The EU may make an adequacy decision in favour of the UK, allowing the free flow of personal data between the UK and the EU. The EU has not set a timeframe for this decision and stated that it cannot be made until after the UK has exited the EU.

If an adequacy decision in favour of the UK is not made at the UK's point of exit, organisations will need to rely on a legal basis for the transfers of personal data from the EU to the UK. The technical notice suggests that standard contractual clauses would be the most relevant basis for most organisations, but recommends that proactive consideration is given to what action may be required to enable the continued free flow of data.

### Consumer rights

The technical notice on consumer rights covers a number of issues, including the following:

- **Consumer protection and cross border enforcement:** Certain changes will need to be made to UK legislation to ensure that UK consumers will retain the protections they currently have when buying from UK businesses. When buying goods and services from the remaining Member States, there may be an impact on the extent of protection for UK consumers since there may be differing levels of protection and harmonisation as laws evolve. In addition, UK consumers will no longer be able to seek effective redress from EU traders in the UK courts.
- **Alternative Dispute Resolution and Online Dispute Resolution:** The UK government is taking steps to ensure that consumers and businesses will still be able to use the Alternative Dispute Resolution process in the same way when buying and selling in the UK. However, since the Online Dispute Resolution platform is run by the European Commission, the UK will no longer have access to the platform.

### Other data and consumer technical notices regarding personal rights

[Geo-blocking of online content if there's no Brexit deal](#).

# Trading with the EU

The UK government has published a raft of technical notices relating to the issue of trading with the EU in the event of a no deal Brexit. These technical notices span a broad range of issues including (among other issues) the following:

■ **Circulation of goods between the UK and the EU:** If the UK leaves the EU without a deal, the free circulation of goods between the UK and the EU will cease to exist. Organisations importing goods from the EU will be required to follow the customs and excise procedures that are currently applicable in respect of goods moving between the UK and a country outside of the EU. For example, customs declarations would be needed when goods enter the UK, or when they leave the UK. More information on this can be found on the technical notice on [‘trading with the EU if there’s no Brexit deal’](#).

■ **Trade remedies:** The technical notice on [‘trade remedies’](#) describes what a no deal Brexit would mean for organisations suffering from dumped or subsidised products, or unforeseen surges in imports. The UK government intends to operate an independent trade remedies system by the time the UK exits the EU which will be operated by a new arm’s length body, the Trade Remedies Authority (TRA).

UK organisations will be able to submit their complaints to the TRA once it becomes operational. There may be an additional burden to organisations during the transition from existing EU measures because, after the TRA is operational but the UK is still a member of the EU, evidence of injury from unfair trading practices will need to be given to both the TRA and the European Commission.

■ **Sale of non-harmonised goods:** Non-harmonised goods (i.e. goods which are regulated by national law rather than EU wide rules) will cease to benefit from the mutual recognition principle (this allows the sale of goods across the EU if those goods have already been legally sold in another EU country). Therefore, organisations selling goods (such as furniture and textiles) will have to ensure that the goods meet the national requirements of the EU country where they are being sold. More information on importing and exporting non-harmonised goods in the event of a no deal Brexit can be found on the technical notice on [‘trading under the mutual recognition principle if there’s no Brexit deal’](#).

■ **Sale of harmonised goods:** Harmonised goods (i.e. those that are subject to EU product specific rules, such as machinery) need to be certified in order to ensure that they meet certain requirements. Certification is currently conducted through conformity assessments carried out by national notified bodies. After Brexit, if there is no deal, the results of any conformity assessment carried out by UK notified bodies will no longer be recognised in the EU. This means that products tested by a UK notified body will no longer be able to be placed on the EU market without retesting and re-marking by an EU recognised conformity assessment body.

The UK government plans to grant new “approved body” status to all UK notified bodies after Brexit, and to list these bodies on a new UK database. These will be able to continue to assess products for the UK market based on requirements that will be (at least initially) identical to current EU requirements. More information on the sale of harmonised goods can be found on the technical notice on [‘trading goods regulated under the ‘New Approach’ if there’s no Brexit deal’](#).

## Other technical notices regarding trade

[Classifying your goods in the UK Trade Tariff if there's no Brexit deal 23/08/18](#)

[Exporting controlled goods if there's no Brexit deal 23/08/18](#)

[Existing free trade agreements if there's no Brexit deal](#)

Technical notices in relation to importing and exporting can be found [here](#) (under “Importing and exporting”)



# Other commercial areas

## Competition

In its technical notice on 'merger review and anti-competitive activity if there's no Brexit deal', the UK government clarified that the UK merger control and domestic competition law will remain the same, and that in a no deal scenario the UK will not be part of the EU competition law regime but will incorporate EU block exemption regulation into UK law.

The technical notice also indicates that European Commission decisions made before exit will continue to have the same legal status in UK law as now, but the CMA and UK courts will no longer be bound to follow future case law of the Court of Justice of the EU (CJEU).

The UK government also used its technical notice to advise organisations considering mergers in the run up to the UK's scheduled exit from the EU on 29 March 2019 to consider early engagement with both the CMA and the European Commission. More information on a no deal Brexit on competition can be found in the technical notice.

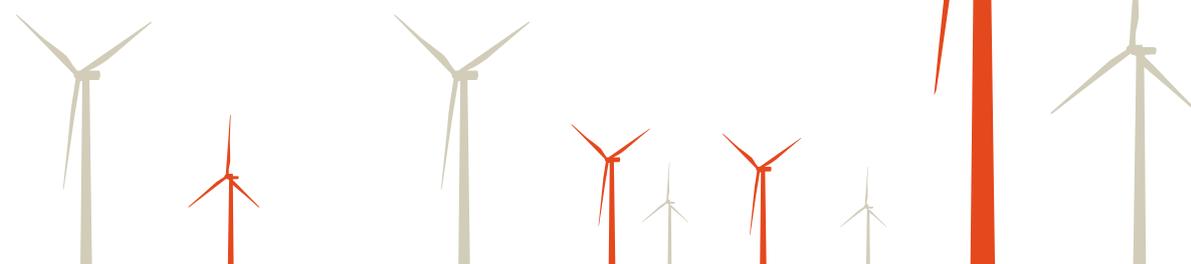
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'In a no deal scenario, the UK will not be a part of the EU competition regime but will incorporate EU block exemption regulation into UK law..'

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## Other energy-related technical notices

- Civil nuclear regulation if there's no Brexit deal
- Nuclear research if there's no Brexit deal
- Running an oil or gas business if there's no Brexit deal
- Trading gas with the EU if there's no Brexit deal
- Trading electricity if there's no Brexit deal



## Energy

The UK government has published a series of technical notices explaining how energy will be regulated in the event of a no deal Brexit, including a technical notice on 'generating low-carbon electricity if there's no Brexit deal'. The technical notice provides information on various issues, including:

- **Renewable energy guarantees of origin (REGOs) issued in the UK:** These will not be recognised in the EU, so UK generators selling to EU suppliers may wish to consider how they market their exports. In terms of REGOs issued in the EU, the government will ensure that these will continue to be recognised in the UK.
- **Renewables Obligation, Feed-in Tariffs and Contracts for Difference:** The government will continue to apply all requirements under both the Feed-in Tariffs Scheme and Contracts for Difference schemes and the Renewables Obligation.
- **UK certification of installers of certain microgeneration technologies:** Installer certification issued in European Economic Area (EEA) countries will continue to be recognised in the UK but UK installers may need certification in an EEA country to continue installing microgeneration technologies in the EEA. As requirements between EEA countries are likely to differ, UK installers should seek advice on the requirements in the EEA countries they operate.

## Intellectual Property and Telecommunications

The technical notices published by the UK government in the area of Intellectual Property address geographical indications (GI), copyright, exhaustion of IP rights, patents, trademarks and designs. Some of the issues considered in the technical notices include:

- The UK will set up its own GI schemes broadly mirroring the current EU regime. Since the UK would no longer be required to recognise EU GI status, EU producers would be able to apply for UK GI status. Those wishing to protect UK GIs in the EU will need to submit applications on a third country basis. More on this can be found on the [‘technical notice on producing food products protected by a ‘geographical indication’ if there’s no Brexit deal’](#).

- EU trademarks and registered Community designs will continue to be protected in the UK by providing an equivalent trademark or design registered in the UK (which will be granted with minimal administrative burden). More on this can be found on the technical notice concerning [trademarks and designs if there’s no Brexit deal](#).

The UK government does not expect significant changes to be made to the UK electronic communications regulatory framework, as the relevant rules that are derived from EU law are implemented in UK law and will be corrected (to ensure they support the UK’s legal framework) by statutory instruments made under the European Union (Withdrawal Act) 2018. More information on how the UK electronic communications framework will be impacted by a no deal Brexit can be found on the technical notice on [‘what telecoms businesses should do if there’s no Brexit deal’](#).

## Other Intellectual Property technical notices

[Copyright if there’s no Brexit deal](#)

[Exhaustion of intellectual property rights if there’s no Brexit deal](#)

[Patents if there’s no Brexit deal](#)

## Business regulations: general

In addition to the technical notice on [‘Structuring your business if there’s no Brexit deal’](#) which relates to the implications for cross border business operations and European specific entities, the following general notices have also been added to the technical notices relating to “Meeting business regulations”:

[Accounting and audit if there’s no Brexit deal](#)

[Providing services including those of a qualified professional if there’s no Brexit deal](#)

## Sanctions

The technical notice on [‘Sanctions policy if there’s no Brexit deal’](#) states that the UK will implement UN sanctions in UK domestic law after the UK leaves the EU (as required by international law).

In the event of a no deal Brexit, the UK will implement all EU sanctions (at the time of the departure) into a sanctions regime through new legislation, in the form of regulations, made under the Sanctions and Anti-Money Laundering Act 2018 (the Sanctions Act).



## About TLT's Commercial team

Our commercial team is one of the largest in the UK, with over 60 specialist commercial lawyers. We have a truly national and international practice undertaking the highest quality commercial work for blue-chip clients, including Sainsbury's, BGL Group (Comparethemarket.com), Metropolitan Police Authority, various clearing banks, Argos and WHSmith.

We provide pragmatic advice on all aspects of commercial law. We advise on a broad range

of agreements, including: distribution, agency, infrastructure, supply agreements, outsourcing, business partnerships and collaborations as well as performance management and service level agreements. We advise on clients' most strategically important commercial arrangements and help them manage 'business as usual' contracts efficiently using products such as [TLT LegalSifter](#) and other mechanisms such as virtual secondments.



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