



Department for  
Business, Energy  
& Industrial Strategy

## EU EXIT Business Readiness Forum: Summary of Questions & Answers

14 February 2019

Delivering the deal negotiated with the EU is the government's top priority. However, a responsible government must prepare for every eventuality, including a no deal scenario.

This document is a summary of the question and answer discussion on Organisational Compliance and Data Protection that took place during the EU Exit Business Readiness Forum on 14 February 2019.

The purpose of the forum was to provide information to trade and representative bodies, and other business intermediaries in order that their members and businesses in their networks may prepare.

For further information please visit [euexit.campaign.gov.uk](http://euexit.campaign.gov.uk)

### Organisational Compliance

**Question: How will the current arrangement for insolvencies across jurisdictions change in a 'no deal' situation?**

**Answer:** The EU Insolvency Regulation (EUIR) regulates insolvency practices and processes where there is a cross border element with the EU. For example, where a UK insolvent company has assets in another EU Member State and the insolvency practitioner needs to be able to access those assets for creditors. The EUIR allows for the practitioner to be automatically recognised in another EU member State without having to go to the court in that country, where the proceedings are qualifying insolvency proceedings. The same is also true for any insolvency commenced in another EU Member State, they are therefore automatically recognised in the UK.

This essential reciprocity element is what makes the EUIR work and so has been replicated into the Withdrawal Act, on the basis that the UK will exit the EU with a deal. In a no deal scenario however, automatic recognition of UK insolvency proceedings in EU Member States will cease as the EUIR will no longer apply, but the UK courts will still have to recognise EU based insolvencies so creating an uncompetitive balance for the UK's insolvency sector. In addition, certain safeguards found in the EUIR safeguards will no longer apply to us.

The Insolvency (Amendment) (EU Exit) Regulations 2019 therefore remove the reciprocity elements of the EUIR. Transitional provisions within those regulations do allow for those insolvencies that started before the UK exited the EU to continue using the full provisions of the EUIR, however, there is a power for UK courts to disapply the EUIR should some material prejudice occur as a result of the UK no longer being an EU member State.

In the absence of the EUIR and its reciprocity element, UK insolvency proceedings will initially rely on the individual Member States' domestic insolvency legislation in order to deal with assets in the EU. New EU insolvencies will need to seek recognition under the UK's Cross-Border Insolvency Regulations 2006. These Regulations, and the equivalent Regulations in Northern Ireland, implement the UNCITRAL Model Law on Cross-border Insolvency. They contain safeguards to ensure that the interests of UK creditors are not prejudiced.

However, only a small number of the EU member states have currently implemented the UNCITRAL model law on insolvency.

## Data Protection

**Question: You've explained that if you are UK organisation exporting to the EU and don't have an EU subsidiary, then you will need to set up an EU representative. If you're an EU organisation exporting to the UK, do you not need to have a UK rep?**

**Answer:** On 29<sup>th</sup> March, there will be two GDPRs - the UK GDPR and the EU GDPR. Both will contain Article 27, which says when you need a representative. So an EU businesses without a subsidiary in the UK, targeting goods or services to people in the UK, will need a UK representative. The arrangement is entirely reciprocal.

**Question: If you are not targeting people [in the EU] yourself, but your products are supplied into the market, e.g. by an online retailer, will you need a representative?**

**Answer:** If you are not targeting yourself, you don't need to appoint a representative. For example, a manufacturer of specialist tools who sells tools in the EU, but doesn't do direct marketing, or process customer data, does not need to appoint a representative. But if they were going to start direct marketing or marketing in trade publications in the EU - then that would trigger the need to appoint a representative.

**Question: There is nothing under Title 7 of the Withdrawal Agreement about how legacy data will be treated. What is the legal basis for legacy data to reside in the UK?**

**Answer:** On March 29<sup>th</sup>, if data is already in the UK and has a legal basis to be there, the legal basis will continue to apply. You do not need to delete this data, as personal data in the UK will still be subject to the requirements of the UK GDPR (though you cannot keep it indefinitely and need to provide the usual safeguards). You will not need to delete it because of any immediate Brexit issue.

**Further answer from ICO:** Remember that we're talking about common personal data rules across EU; If it came to the UK, it would have been under similar rules. So the fact that it is legacy data means that it has been obtained in the correct way, as it would have had to comply.

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7 February 2019

This section is a summary of the discussion on Importing/ Exporting that took place during the EU Exit Business Readiness Forum on 7 February 2019.

## Customs Processes

A question was asked about how to **sign up for email alerts from gov.uk** – you can do this via the following link:

<https://www.gov.uk/government/brexit>

HMRC has sent a series of **letters to VAT-registered businesses** only trading with the EU explaining how to prepare for changes to customs, excise and VAT if the UK leaves the EU without a deal. These letters can be found on the link below and we would appreciate the support of members of the forum in raising awareness of these letters and the actions within them with their members and supply chains.

[HMRC's letters on 'no deal' Brexit advice for businesses only trading with the EU](#)

There were several questions about what businesses would need to do to move goods across the border in the event the UK leaves the EU without a deal.

Businesses will be responsible for making customs declarations for their UK-EU trade in a no deal scenario. Many businesses find the simplest way to make customs declarations is to appoint a customs agent to manage the process for them. The letters above contain the key steps but in particular businesses should **register for an Economic Operator Registration and Identification (EORI) number** if they have not already done so.

[Getting an UK EORI number to trade within the EU](#)

HMRC is introducing new **Transitional Simplified Procedures (TSP)** for customs, to make importing easier for the initial period after the UK leaves the EU, should there be no deal. Once registered for this businesses will be able to transport goods into the UK without having to make a full customs declaration at the border, and will be able to postpone paying import duties. However for controlled goods businesses will have to provide some information before import. You can find out more about TSP and register for it on the link below. You will need an EORI number to do this.

[Registering for simplified import procedures if the UK leaves the EU without a deal](#)

A question was asked about the arrangements the EU is putting in place. Arrangements at the EU border are a matter for the EU and the **European Commission has published a series of preparedness notices** to help businesses prepare.

[European Commission overview of preparedness notice](#)

[European Commission preparedness notices](#)