



Jeremy Cape

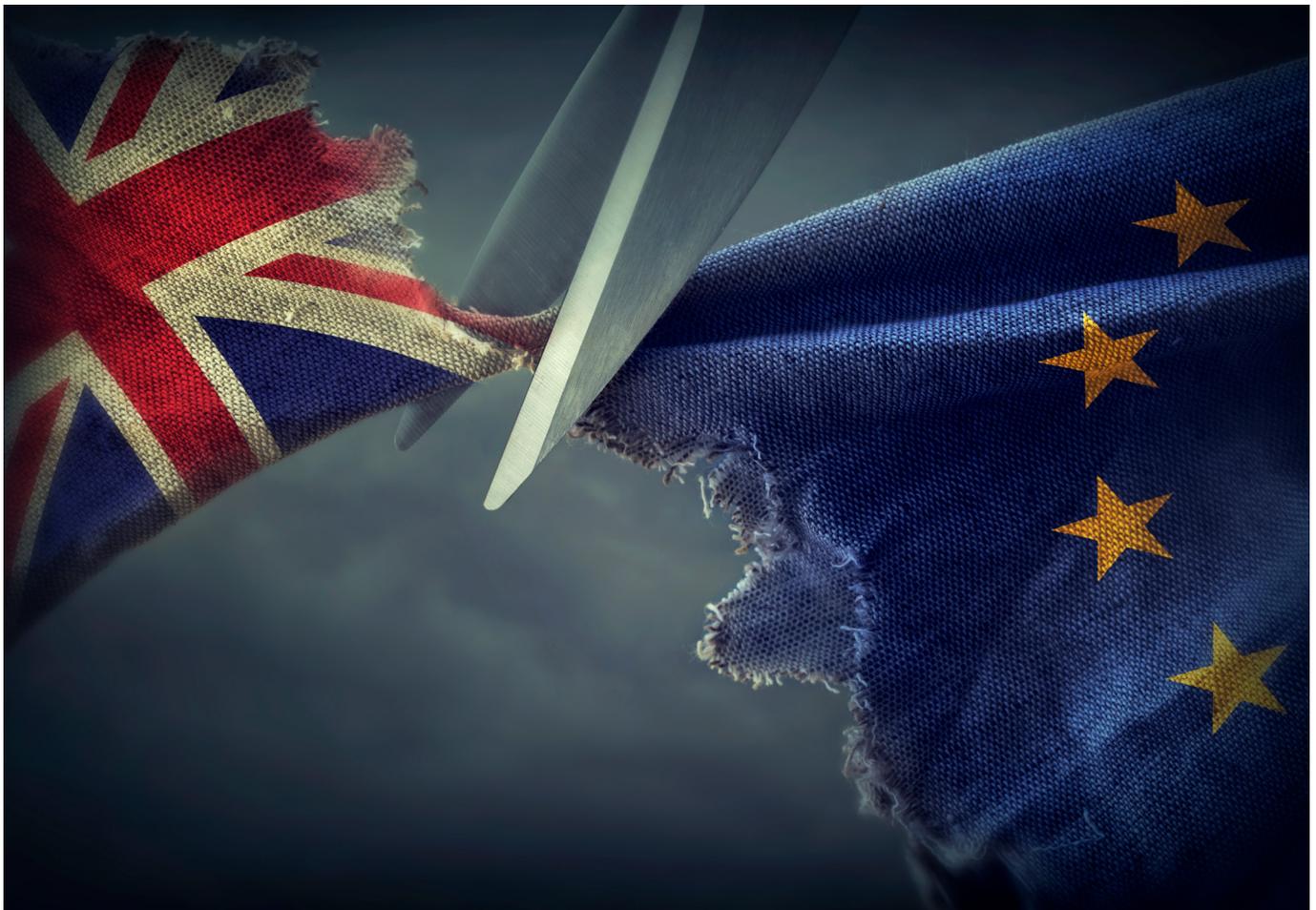
Partner, London
International Tax and Brexit

As we enjoy a brief British Easter holiday respite from the seemingly unending Brexit drama, now seems an opportune moment to take stock of where we are following the agreement of the European Union (EU) to extend article 50 until 31 October 2019.

Whilst nobody can be sure on what terms the UK will ultimately leave the EU (or indeed, if the UK will leave the EU at all), international businesses still need to consider the possible outcomes, and the respective opportunities and challenges they pose.

We have compiled thoughts and insights from a number of our UK, US and European offices to provide a holistic, global perspective of how not only the UK, but also the world, views Brexit. We hope these reflections and examinations will help you form fresh perspectives on how Brexit issues might affect you, and how you can proactively prepare for them.

As always, please reach out to any of the authors or your usual firm contact if you wish to discuss further.



Brexit: What Are the Options for the UK Now?



Matthew Kirk

International Affairs Advisor, London
Public Policy International
Former British Ambassador to Finland

Procedurally, the UK has three options:

1. Ratify the Withdrawal Agreement (with possible accompanying changes to the Political Declaration on the future relationship with the EU) before 22 May, and cancel participation in the European Parliament elections
2. Ratify the Withdrawal Agreement (with possible accompanying changes to the Political Declaration on the future relationship with the EU) before 30 June, and ensure that when the new European Parliament session opens on 2 July, there are no UK members of the European Parliament (MEPs)
3. Take longer over the process, accepting that the UK will elect MEPs who will take their seats in the European Parliament, and run toward the 31 October deadline agreed with the European Council

The only realistic route to either of the first two outcomes lies in the talks between the government and the Labour Party (Labour). Like the government, Labour can accept the Withdrawal Agreement – and the debate between them is over the future relationship and how any agreement would bind a (potentially more pro-Brexit) successor to the Prime Minister.

The central issue in the talks is future customs arrangements (Labour has argued for participation in a Customs Union), but the possibility of a confirmatory public vote (the Labour leadership is split on this, but it is strongly supported by many Labour members of Parliament [MPs] and party members) looms in the background. In Parliament, on 11 April, the Prime Minister indicated that, rather than seeking another “meaningful vote” on the withdrawal package, the government might bring the result of any talks with Labour back to the House of Commons by trying to pass the Withdrawal Act, the implementing legislation, which gives effect to the provisions of the Withdrawal Agreement. Passage of the Withdrawal Act would be enough to enable the UK to ratify the Withdrawal Agreement without having to hold a further “meaningful vote”.

In the event that the government cannot reach agreement on a way forward with Labour, it will seek agreement with Labour on a procedure to put a limited number of options back to Parliament to try to reach agreement on one of them, which the government will try to agree with Labour that both should then support through its passage through Parliament. Labour has not yet committed to this.

The government will hope that the prospect of the UK having to participate in European Parliament elections nearly three years after voting to leave the EU will concentrate MPs’ minds. Certainly, the Conservative Party is in a state of disarray and anger, and the Eurosceptic strand of British politics is mobilising: Nigel Farage (MP) has started a new Brexit Party, which appears to be polling well, and his old UK Independence Party (UKIP) (whose support has collapsed since the referendum) would see it as a chance to re-launch themselves. On the other side of the argument, pro-European parties (e.g. the Liberal Democrats, Scottish and Welsh nationalists, and the new Change UK) will hope that they can mobilise the up to 1 million who marched in London last month, and the 6 million or

so who have signed the Revoke petition online. Of the two major parties, initial polling suggests that the Conservatives stand to do badly, damaged by incumbency, by the messiness of Brexit, and by the Brexit Party/UKIP on one side, and (probably to a more limited extent) Change UK and the pro-European parties on the other. Labour, however, does not look to be so negatively affected. On both sides of the debate, European parliamentary elections are likely to be seen as a proxy for the current state of public opinion. The incentive to avoid this is strongest for the Conservative Party.

If the government does not succeed in agreeing a way forward with Labour, which delivers Brexit in May or June, wider political options may open. The Prime Minister looks determined to carry on, and cannot formally be challenged in the Conservative MPs’ confidence vote until December, but the pressure on her to stand down will grow. The results of the elections will be seen as an indicator of the current state of pro-Brexit and pro-European opinion – recent polling suggests a hardening of “no-deal” Brexit opinion, but also a drift in the overall position towards Remain. The “confidence and supply” agreement between the Conservatives and Northern Ireland’s Democratic Unionist Party (DUP), which gives the government its slim parliamentary majority, is up for renewal in June. A General Election would be a possibility within the 31 October deadline, particularly if there is a new Conservative leader (and Prime Minister), but neither major party really wants one. A second public vote/confirmatory vote is creeping up in likeliness in these circumstances, but while the decision to hold one could be taken before 31 October, the vote itself would take longer and require a further extension to the Article 50 deadline.

Meanwhile, the UK government has formally halted its “no-deal” Brexit preparation, and stood down the 6,000 officials involved.

A Glimpse of the Mood in UK Politics



James Wharton

Senior Advisor, London

Public Policy International

Former Conservative Member of Parliament and Government Minister

The mood in the Conservative Party is bleak. Many of the political challenges with Brexit can be traced back to the 2017 election. Prime Minister Theresa May lost her majority and was only able to retain power by making a deal with the Democratic Unionist Party (DUP) from Northern Ireland.

The arithmetic in Parliament is such that if even a small number of Conservative members of Parliament (MPs) defy their own government, then (alongside the opposition) they can block any progress on almost any matter. For this reason, those at more extreme wings of the Conservative Party, whether for a hard Brexit and or for no Brexit at all, have been able to stall all progress.

This led to Theresa May, in an act of desperation to find the votes in Parliament, reaching out to the opposition. An already besieged and unpopular leader asking for support from her political opponents has gone down extraordinarily badly with many of her own MPs. There is no clear mechanism to remove her as leader, but for the first time, those who seek her crown are openly and properly organising their own campaigns.

It is doubtful whether agreement between the government and opposition is even possible. If it is, it is likely to require so “soft” a Brexit as to infuriate large tracts of the Conservative Party. The much-touted solution of Customs Union membership is far more controversial than some commentators assume. Alongside Labour Party rebels, so many Conservative MPs would defy such a deal that even with the official opposition on board, it might not pass.

With the long extension to October now agreed, Theresa May looks set to attempt to hold on to power. As such, we can expect more drift, infighting and several catastrophic electoral moments for the Conservatives. In the local elections, they are defending seats last fought at the 2015 high watermark. In the now-likely European elections, even some Conservative MPs are openly refusing to say they will vote for their own party.

These moments and many more could finally topple the Prime Minister. But without a clear mechanism to force such an outcome, she could equally continue to cling in defiance of all precedent. The leadership contenders who have geared up in recent weeks could now face a longer campaign than they had hoped. Whether they can maintain momentum, and avoid disaster, remains to be seen.



EU Analysis



Wolfgang Maschek

Partner, Brussels
Public Policy International

The EU-27 member states have been very carefully observing the UK domestic political manoeuvring and posturing this year. The predominant view in the EU-27 is that a managed “deal” scenario is far more preferable to a potentially chaotic “no-deal”. At the same time, precautions have been taken to prepare for a “no-deal” scenario. The EU-27 are not willing to renegotiate the Withdrawal Agreement for fear of never-ending negotiations with the UK. They have instead pointed to further clarifications and changes to the Political Declaration.

The 10 April 2019 EU Summit meeting was contentious – in light of the unclear UK position, a group of moderate voices (including Germany and Ireland) were seeking a longer extension period (of 12 or more months), while other countries, such as France, were advocating for a much shorter extension. Various member states clearly questioned why the EU-27 should provide yet another extension in light of the lack of constructive developments in the UK, and thereby, also take on political and legal risk related to the upcoming EU elections taking place between 23 and 26 May. Some of the critical voices even expressed doubts whether the UK would act in good faith during a lengthy Brexit delay, as critical decisions about the future of the EU need to be taken in the coming months (e.g. regarding the EU budget 2021-2027 or the selection of a new EU Commission President).

Despite such concerns, the fear of being blamed for a hard Brexit scenario led EU-27 leaders to agree on yet another Brexit extension until 31 October 2019. Thus, the moderate voices, led by German Chancellor Merkel, ultimately prevailed with their desire to again aim for a managed “soft” Brexit in light of the negative consequences a hard Brexit would entail for all parties involved.



Insight From the US



Frank Samolis
Partner, Washington DC
International Trade



Ludmilla Kasulke
Associate, Washington DC
Public Policy International

While US policymakers are eager to set out trade relations with the UK post-Brexit, the UK cannot begin its own bilateral talks with trading partners until it has formally exited the EU, as the bloc has exclusive competence over trade matters.

Furthermore, the final form of the UK-EU trade relationship will inform how other trade agreements are structured, including a trade agreement with the US. If the UK opts, colloquially speaking, to remain in the EU's Customs Union, its negotiations with the US would be limited to those areas outside the scope of the union. But in a "no-deal" Brexit, or with changes to the current deal on the Irish border issue, the UK would not be part of the EU's Customs Union, allowing it to negotiate with greater freedom with new trading partners.

President Trump officials have laid the groundwork to begin talks as soon as possible. On 16 October 2018, they notified the US Congress of President Trump's intent to begin trade negotiations with the UK, in accordance with domestic law governing the consideration of trade agreements, Trade Promotion Authority. Many are optimistic that US-UK trade talks could progress more smoothly than US-EU negotiations because of the historical relationship between the two countries. But if the UK chooses to align its regulatory structures with the EU, many of the same challenges could arise.

US congressional leaders have generally voiced strong support for a US-UK trade agreement, and will be active participants as talks get underway in the coming months. However, Speaker of the House Nancy Pelosi recently threatened that if the Good Friday accords are put in jeopardy because of Brexit, "... there will be no chance of a US-UK agreement".



Insight From the EU-27

Czech Republic



Jaroslav Tajbr
Of Counsel, Prague
Intellectual Property & Technology

The Czech government adopted the Act No. 74/2019 Coll., which aims to soften the possible negative consequences of a “no-deal” Brexit. The act is intended to be a temporary measure, and all the instruments within it will last only until the long-term measures are adopted.

The act is to be effective from the day the Treaty on the Functioning of the European Union and the Treaty on the European Union cease to be applicable to the UK and, simultaneously, if no agreement on the terms of the UK’s withdrawal from the EU (i.e. the Withdrawal Agreement) is adopted. Nevertheless, the act sets the deadline to 31 December 2020 at the latest. During this period, British citizens will be guaranteed equal treatment in 18 selected areas as if they were still European Union citizens. The Czech government expects that there will be reciprocity from the British side.

The areas dealt with by the act include regulation of obtaining Czech citizenship; marriage and registered partnership issues; access to the labour market and eligibility for unemployment benefits; income tax; recognition of professional qualifications; and provision of legal services by citizens of the UK and similar.

The Czech Republic’s government favours a Brexit on the basis of the Withdrawal Agreement and is against a “no-deal” Brexit. The Czech government is taking a cautious approach to Brexit: the majority of the government members did not want Britain to leave the EU. The Czech Prime Minister said he would very much like the British to change their minds, and is willing to support a Brexit postponement for up to one year. According to the Prime Minister, Britain would “...be given time to finally organise its inner affairs”. At the same time, the Prime Minister promised that the Czech Republic would not make life difficult.

On the other hand, even though the uncertainty regarding the issue of Brexit can have a negative impact on both the EU and the UK, a non-negligible part of the public in the Czech Republic, including some opposition politicians and economists, supports Britain’s decision to leave the EU and would even welcome a “no-deal” Brexit, as they argue that the UK is pushed too hard by the EU.

The Czech Republic is trying to prepare for all Brexit permutations. A “no-deal” would cause major issues, especially in the trade in goods or services. In the event of Brexit with the Withdrawal Agreement – which would likely keep the UK in the Customs Union – this would likely prevent problems with the import of goods and services. The Withdrawal Agreement is also supposed to continue to protect geographical designations, trademarks and other intellectual property rights. It would also allow for the free movement of judicial decisions and mutual participation in public procurement.

Although a Withdrawal Agreement is expected to be concluded in some form, some potential issues may remain. The agreement would probably give British companies only a limited access to the Czech financial market. From this point of view, setting up an establishment in the EU might be a solution for UK financial institutions.

It is also uncertain whether the mutual recognition of professional qualifications will remain effective once the transition period expires. For this reason, securing local qualifications as early as possible, especially for key employees, is important.

The UK will also exit the European Atomic Energy Community Euratom, which could have some impact on the energy sector. Reviewing and, if necessary, amending supply contracts will be critical. Czech economists are also warning against a possible rise in electricity prices due to expensive emission allowances, which will have a detrimental impact on the manufacturing sector in particular.



Insight From the EU-27

France



Véronique Collin

Partner, Paris
Financial Services

The French Parliament authorised the government to take measures – known as orders (*ordonnance*) – which should otherwise be taken pursuant to law, in order to map out the consequences of a “no-deal” Brexit. The government had either six months or a year to pass those orders, following publication of the law.

The government was authorised to take any measure relating to the control of goods to and from the UK and relating to the administrative status of legal entities established in the UK and carrying out business in France. The orders define the conditions pursuant to which economic activities related to the UK and goods flowing to and from the UK can carry on.

The orders provide, in some instances, pragmatic adjustments to existing French legislation, unusual exemptions, and simplified administrative procedures and shorter delays to allow regularisation of the status of corporates or individuals concerned.

By way of example, the orders cover the following matters:

- The carrying on by the beneficiaries of licences and authorisations for the transfer of products and materials (e.g. satellites, space rockets, etc.) to the UK, delivered pursuant to Articles L.2335-10 and L.2335-18 of the Code of Defense, prior to the exit of the UK, of the supply of such products and materials until the term of such licences and authorisations
- The access of French entities to interbanking payment and settlement and delivery systems of third-party countries (including, of course, the UK) by ensuring the final nature of transactions effected through these systems
- The designation of a competent authority to supervise activities linked to securitisation
- The introduction of specific rules for the management of certain collective investments
- The continuity of the use of framework agreements (typically ISDA documentation) in the realm of financial services
- The “sécurisation” of the conditions in which agreements entered into prior to the loss of recognition of licences granted to UK entities in France will be performed
- The continuity of the transport of persons and goods between France and the UK through the Channel tunnel

The obvious aim of the orders is to preserve the interests of France and the status of French citizens and other persons whom European legislation protects.

Last but not least, a simplified temporary procedural regime is envisaged to enable the carrying out of works needed to build, modify or develop, with a degree of urgency, premises, facilities or port, train, airport or road infrastructures, as required to re-establish a control of goods to and from the UK.

The consequences of these measures could greatly affect not only the property of individuals, but also that of corporates, with a probable impact on their activities, which may not be neglected. Indeed, derogations and adjustments brought changes to the legislation relating to expropriation, urban planning, zoning, preservation of cultural or historical sites, roadway, public domain, public procurement, rules applicable to maritime ports, public consultation and environmental assessment. It is clear that the wording of the orders was dictated by the urgency of the actions to take.

Other issues French corporates will face include:

- The transfer of personal data to the UK
- The export/import of goods
- The access to funding to the extent it used to be provided by UK entities



Insight From the EU-27

Germany



Dr. Jens P. Rinze

Partner, Frankfurt
Financial Services

German legislators have adopted a number of Acts of Parliament in relation to Brexit both on the federal level and on the level of the 16 German states. Some of these regulate the “deal” scenario where the Withdrawal Agreement is ratified by the UK, and some of these regulate the “no-deal” scenario.

The so-called Brexit *Steuerbegleitgesetz* (Brexit Tax Accompanying Act) was adopted on 25 March 2019 and provides for a number of tax contingency rules in the areas of corporate tax, income tax, real estate transfer tax, inheritance tax and transformation tax, as well as contingency rules for the financial services sector, including banks, insurance companies, pension funds, payment services providers and other financial services providers, as well as special rules for German Covered Bond Banks. The act in particular contains a statutory authorisation for the German regulator BaFin to adopt further regulations, which BaFin will, however, only exercise if and once the UK ceases to be a member state of the EU without a deal.

The so-called *Gesetz zu den Übergangsregelungen in den Bereichen Arbeit, Bildung, Gesundheit, Soziales und Staatsangehörigkeit* was adopted on 8 April 2019 and regulates the “no-deal” scenario in the areas of Employment, Education, Health, Social Matters and Nationality.

The federal Brexit *Übergangsgesetz* (Brexit Transition Act) was adopted on 27 March 2019 and provides that in the event the UK ratifies the Withdrawal Agreement, each reference in German federal law to a member state of the European Union and companies and nationals of a European Union member state shall also mean, during the Transition Period pursuant to Articles 126 and 132 of the Withdrawal Agreement, a reference to the UK and companies from the UK. That rule is necessary, as Articles 126 and 132 and Article 127 (6) of the Withdrawal Agreement, which regulate the Transition Period, only apply in respect of European Union law but do not apply in respect of the domestic national laws of the 27 member states of the European Union (see [this article](#) for more analysis of this). The Parliaments of the 16 states of Germany have adopted (or are in the course of adopting) similar Brexit transition acts at state level.

The general principle prevailing in German politics and the economy is still that it favours a potential revocation of the Article 50 notice. The extension to 31 October 2019 has been welcomed. However, there is a growing tension that the ultimate decision to be taken in the UK whether 1) Article 50 is revoked, 2) Britain leaves with a deal or 3) Britain leaves with no deal, should be taken sooner rather than later in order to avoid further uncertainty for businesses and residents.

The current Brexit uncertainty is having an effect on driving competitors out of business, in particular airlines and affected businesses. An airport in northern Germany, for example, declared insolvency because of (amongst other reasons) FlyBMI going out of business. Such vulnerable businesses are, therefore, being circled by opportunistic investors.



Insight From the EU-27

Poland



Peter Swiecicki

Partner, Warsaw
Financial Services

UK financial market entities in Poland – A Polish Brexit bill, passed on 15 March 2019, provides a transition period for the business operations of UK financial market entities in Poland, starting from the date of a “no-deal” Brexit. This period will allow businesses to conduct any legal operations needed to cease legal relationships entered into before the day of “no-deal” Brexit, or to establish a legal basis to continue to operate in Poland (i.e. by obtaining the correct permit). The Polish Brexit bill names specific financial market business types and contains details on permitted and forbidden activities within the transition period. The length of the transition period differs depending on business type, but typically does not exceed 12 to 24 months. The approach of the Polish authorities is intended to create a mechanism for UK entities to cease their activities and allow them time to do this. This is a different mechanism from the one applied, for example, in Germany, according to which, the German financial market supervision authority shall grant the extension of passporting rights resulting from EU laws. The Polish Brexit bill seems to be stricter, but creates a clear and transparent set of rules for the contingency of a “no-deal” Brexit, at least with regard to the time aspect of the transition period for the UK firms.

UK-regulated professionals operating in Poland – A second Polish Brexit bill, also passed on 15 March 2019, provides that decisions issued in Poland recognising the qualifications of regulated professions based on their UK qualifications will continue to be recognised in Poland. A transition period applies for applications for recognitions that are in progress.

Immigration status of UK nationals in Poland – A third Polish Brexit bill, also passed on 15 March 2019, provides that British nationals residing in Poland will have 12 months from the date of a “no-deal” Brexit to confirm their rights by obtaining a temporary residence permit or permanent residence. The right to apply will be granted to all British nationals and their family members, even if they are not British citizens: spouses and children (up to 21 and dependent) and parents (dependent), who had been legally residing in Poland until the day of the UK’s withdrawal from the European Union.

Poland’s government strongly favours a Brexit on the basis of the Withdrawal Agreement and is against a “no-deal” Brexit. The most important issue for the Polish government is the status of Poles living in the UK, which the government states is dealt with satisfactorily in the Withdrawal Agreement. If there were a “no-deal” Brexit, Poland’s Prime Minister has announced that he has an understanding with the UK government that would also protect the rights of Poles living in the UK.

Further, the government has set aside an additional PLN 1.5 billion (c. £304 million/€350 million) in the 2019 budget to pay for the expected increase in member state allocations payable to the EU.

A key aspect is that following Brexit on the basis of the Withdrawal Agreement, Poland’s business with the UK will be regulated on the same basis as that of other EU member states. Thus, the vast majority of the advice provided to Polish businesses is to keep up-to-date on the guidance issued by the European Commission. The key areas of focus for Polish businesses are:

- Prepare for dealing with the transfer of personal data to the UK
- Support for firms exporting to and importing from the UK with regard to customs, tariff and regulatory issues, with particular emphasis on customs duty and VAT registration
- Pharmaceutical companies – follow updates of the European Commission regarding the registration of medicinal products
- Export of agricultural products, plants and plant products to the UK

However, several Polish-specific issues will arise upon Brexit. Polish law restricts the acquisition of real property, as well as stakes in companies holding title to real property, obliging foreigners to obtain a permit for such transaction. The law provides that EEA businesses are exempt from such restrictions. Taking the majority view that the UK will also leave the EEA at the same time as leaving the EU under Article 50, unless there is a specific regulation in this regard, UK citizens and UK business will be subject to restrictions while investing in real property in Poland, as well as acquiring shares in many companies.



Insight From the EU-27

Spain



Rafael Alonso

Partner, Madrid
Corporate

In March 2019, the Spanish government adopted a set of contingency measures in case the UK would leave the EU without reaching an agreement.

In view of the good relationship between the two countries, the Spanish government aims at maintaining the *status quo* of their mutual commercial relationships and at preserving the rights of UK and Spanish citizens and companies operating cross-border.

Spain represents a core market for major UK investors that see opportunities in the Spanish renewable markets, real estate investments and a wide range of industries and professional services sectors.



How We Can Help

We are a full-service global law firm. We are connected, both locally and globally, on key Brexit-related issues. We can provide unique insight at the point where law, business and government meet – and we place our clients at the core of everything we do, giving them a voice, supporting their ambitions and achieving successful outcomes.

Tracking, understanding and adapting to the fundamental changes that face us will be critical. With deep sector knowledge, global legal expertise and a commercial approach, we can help monitor these changes across multiple jurisdictions and anticipate when they will affect you. We are also ready to assist with the implementation of appropriate strategies to ensure you react most efficiently when change comes. We can also support engagement with government and multinational agencies and help formulate appropriate responses to proposals advanced by them.

The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations, nor should they be considered a substitute for taking legal advice.

© Squire Patton Boggs.