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Brexit snapshot:

Automotive & Mobility

Do you work in the automotive & mobility industry in the UK? Do you manufacture or sell vehicles, or parts of vehicles, in the UK? Are your manufacturing activities, suppliers, customers or contracting parties located in the UK?

Brexit will affect you. What should you do now?

What is the latest on Brexit?

Unless there is an extension of Article 50, the UK will leave the EU at 11.00pm UK time on 29 March 2019.

Currently, the UK is still part of the EU and EU law still applies in the UK. On leaving, the UK will become a “third country”.

EU law will be transposed into UK law.

The UK Government plans that the European Union (Withdrawal) Act will transpose all EU law directly into UK law. Assuming that happens on day one after Brexit, the law in the UK will still be the same as it is currently and the same as in the EU. Post-Brexit, the UK Government can then decide whether it wishes to make changes to that UK legislation.

But it's not that simple in practice.

Transposing over 40 years of legislation is not straightforward. There are numerous references in EU law to a company or person needing to be present within the EU, or the involvement of an EU institution or agency, or access to an EU system or database, which cannot simply be transposed. The UK cannot unilaterally legislate to continue participating in those EU bodies and systems. Depending on the outcome of negotiations with the EU, the UK may need to set up new bodies and systems to enable parts of UK legislation to operate post-Brexit.

The withdrawal terms are agreed in part.

The EU27 and Theresa May have reached agreement on a draft Withdrawal Agreement, which sets out the terms on which the UK will leave the EU. It includes provision for a “transition period” after the UK leaves to give businesses time before the new arrangements apply. The Withdrawal Agreement cannot take effect unless it is approved by UK Parliament known as the “meaningful vote”. This sets out what will happen to existing products and licences in the UK and EU27 on withdrawal. However, the UK and EU27 are still discussing some key provisions, such as the role of the ECJ.

Possible extension of Article 50.

On 20 March 2019 Theresa May requested an extension of Article 50 to 30 June 2019, so that MPs have more time to consider the UK Government's deal.



To keep up to date with new developments, visit our Brexit hub and subscribe to our Brexit bulletin: hoganlovells.com/brexit

The impact of Brexit on the automotive & mobility industry

The key areas affected are trade, supply chain, people and regulation

Ensuring the continued supply and safety of automotive & mobility products is paramount.

The UK automotive & mobility industry relies particularly heavily on unrestricted access to the EU single market, with the UK's supply and trade channels being intrinsically linked with those of the EU27. This means that Brexit has particularly far-reaching consequences for the UK automotive & mobility industry. Delays at the new UK-EU border and the additional administrative requirements associated with trading outside the single market are major concerns.

Trade tariffs and rules of origin

The majority of cars produced in the UK are exported to the EU and 79% of all parts used in the manufacture of UK cars are imported from the EU. Following Brexit, without any other preferential arrangement, tariffs on components or finished vehicles – set at WTO level or other level - will apply for EU/UK trade. This could result in an overall cost increase of c. 15% for automotive manufacturers in the UK. To minimise costs to businesses and consumers while protecting the automotive industry, the UK has designed a temporary tariff regime that will allow car components to be eligible to duty-free access to the UK market. Finished automotive vehicles, however, will be subject to payment of customs duties. Additionally, EU FTAs, such as the EU-South Korea FTA, the EU-Japan Economic Partnership Agreement or the EU-Canada Comprehensive Economic and Trade Agreement, will cease to apply to the UK. As a result, trade between the UK and those countries will be based on “WTO terms” rather than on preferential origin terms.

Customs delays: the principle of “just in time manufacturing”

Any customs controls at the border following Brexit would jeopardize the principle of “just in time manufacturing” (JIT), on which the success of the UK automotive & mobility industry hinges. To mitigate the impact of delays at the UK border, the UK has put in place customs facilitation measures for goods coming from the EU in case of a no-deal Brexit: the Transitional Simplified Procedures (TSP) and the exemption of Entry Summary Declarations (ESD). Conversely, the EU 27 are announcing different customs processes to facilitate border controls in case of a no-deal Brexit. France for instance announced that it would introduce a smart border system to streamline customs controls on trade between France and the UK.

Key people risks

Any restriction in the free movement of people would also pose a significant challenge to the industry as EU nationals make up at least 10% of the UK's manufacturing workforce. Brexit could impact the ability for businesses to recruit and access EU talent.

Key regulatory risks

Given that the automotive & mobility industry is subject to a wide range of EU regulations spanning issues such as technical, safety and environmental standards, the industry will experience heavy disruption if regulatory alignment is not maintained. Therefore, the UK Government and industry are seeking close co-operation for limited regulatory divergence.

Possible regulatory implications may include:

Type approvals: Type approvals issued by the Vehicle Certification Agency will become invalid in the EU27. This means that in order to sell vehicles in the EU, companies holding such type approvals are required to apply for type approvals to be re-issued by another body which is authorised by the EU. Manufacturers would have to cease production until type approvals are obtained. Note that products that have been “placed on the UK market” before Brexit day will continue to benefit from free movement to the EU market.

Environmental standards: UK law may begin to require vehicle manufacturers to adhere to different limits for exhaust emissions than those set by the EU. This would require manufacturers to produce slightly different vehicles, which could increase costs.

What should you do now to prepare?

For detailed advice on how to identify areas of legal and commercial business risk created by Brexit and contingency planning, visit our Brexit toolkit: hoganlovellsbrexit.com/brexit-toolkit

Much about Brexit remains unclear so deciding what changes to make and when is challenging. However what is clear is that you should make sure you have identified potential impacts and have a contingency plan in place so you are in a position to move quickly.

Specifically, automotive & mobility companies should consider and assess:



The Impact of additional customs procedures at the UK/ EU27 border (e.g., whether their contracts include penalties for potential border delays or late delivery; whether they would need to increase their inventory/ buy additional storage space prior to Brexit date).



The impact of additional customs tariffs at the UK/ EU27 border (e.g., whether their contracts addresses who would bear the cost of such additional tariffs; the effect of additional tariffs on their costs of production).



The impact of the new rules of origin in the UK FTAs (e.g., whether their products would qualify for preferential origin; whether the components that they source would qualify for preferential origin).



Reviewing any regulatory arrangements and supply chain operations that involve the UK, including manufacturing activities, distribution and import sites and personal data processing.



Conducting a gap analysis of any contracts involving the UK to identify any risk and opportunities created by Brexit and ensure they are aligned with any regulatory changes.



Considering the wider business impact of any changes as a result of regulatory requirements. For example any tax or transfer pricing implications or significant IT systems and business process changes of relocating assets or activities to a company in the EU27.



Monitoring Brexit developments and engaging with government and industry associations in the UK, Brussels and the EU27 to optimize the landscape for your business.

How can we help you?

We can:

Carry out a gap analysis to identify and prioritise the steps that you should be taking to prepare for Brexit based on a tailored application of our Brexit toolkit.

Advise you on which operations you might need to move and which EU27 countries you might consider moving them to.

Implement changes to your business ranging from relocating entities, activities or people to IT and other operational changes.

Analyse your contracts to identify and mitigate Brexit related risks in both existing contracts and template agreements to minimise future Brexit risks.

Develop an effective strategy to engage with policy makers to support your business priorities.

Train your key stakeholders on the risks and opportunities of Brexit for your business.

Why work with us?

Expertise

We represent over 75% of automotive companies (classified by Forbes as motor vehicle and part companies) and are ranked by *Legal 500* for our Brexit advisory work and commercial contracts.

Brexit focus

We have a dedicated taskforce analysing and alerting businesses to Brexit related issues. Our Brexit Hub covers latest developments and industry specific regulatory analysis.

Policy engagement

Our *Chambers* Band 1-ranked Public Law and Public Affairs practice is experienced in developing strategies to influence business-critical Brexit policy issues.

International integration

Our integrated cross-border team is experienced in developing practical solutions to pan-European issues.

Experience

We are advising a number of our automotive & mobility clients on their preparations for Brexit.

Key contacts



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