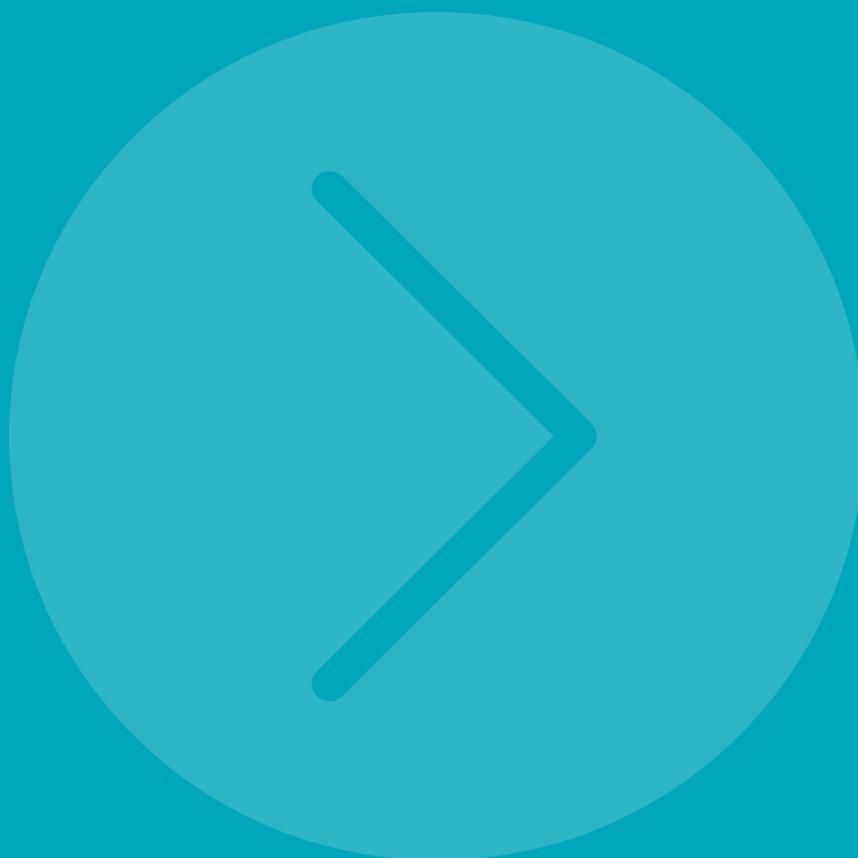


Deloitte.



Belgium's Brexit

Why you should plan now



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Foreword

A high-speed train ride connects our capital cities, Brussels and London. Our airports and ports allow companies to send and receive shipments to and from the UK, connecting not only Belgian consumers, but local, global and European businesses as well.

We take the ability to move back and forth for granted. We run our businesses on that basis. It is hard to imagine what a future of barriers to free trade in goods and services, and to free movement of people between Belgium and the UK, would look like. But it is a future for which we need to be prepared.

The negotiations and parliamentary processes that will determine the future relationship between our countries have reached a crucial stage.

We cannot yet predict the final shape of Brexit; whether it will take the form of a “soft” rather than a “hard” landing. But just hoping for the most favourable scenario could be fatal to Belgian businesses. **Preparing for the worst case means that businesses will be ready for all eventual outcomes.**

Our Deloitte Belgium experts have substantial insights into the sensitivity of our country, Belgium, to Brexit. This guide is an introduction to **key issues to think about** in planning for Brexit. It provides a dual perspective on the impacts:

- **issues that affect all companies:** trade and customs, business and indirect taxation, people issues, data and privacy, contracts and intellectual property, as well as prospects for investment.
- **Industries and sectors that are particularly sensitive to Brexit:** automotive, chemicals, life sciences, agri-food and beverages, textiles, financial services, transport and logistics, and the creative sector.

With this guide, our team seeks to provide some clarity in a web of Brexit complexities, and contribute to informed Brexit debates and decision-making.

Piet Vandendriessche
CEO Deloitte Belgium

November 2018



Belgium's Brexit

Belgium is one of the countries most vulnerable to Brexit. Almost 9% of total exports from Belgium are destined for the UK (EUR 32,02 billion in 2017), making it the 4th most important export partner for Belgium behind Germany, France and the Netherlands¹.

		2016	2017	
	Country	(in millions €)	(in millions €)	(in %)
1	GERMANY	59,558.6	63,324.2	16.7%
2	FRANCE	55,155.8	56,733.7	14.9%
3	NETHERLANDS	40,315.3	45,724.1	12.0%
4	UTD. KINGDOM	31,958.1	32,016.3	8.4%
5	ITALY	18,614.8	18,721.6	4.9%
6	UTD. STATES	20,969.6	18,391.8	4.8%
7	SPAIN	9,470.3	10,530.2	2.8%
8	POLAND	7,148.9	8,161.7	2.1%
9	CHINA	6,995.3	8,044.8	2.1%
10	INDIA	8,135.9	7,971.4	2.1%

▶ In 2017, a total of **8.4%** of Belgian exports was destined for the UK.

Nearly 5% of Belgium's total imports come from the UK, making the UK the fifth largest supplier behind the Netherlands, Germany, France and the United States.

		2016	2017	
	Country	(in millions €)	(in millions €)	(in %)
1	NETHERLANDS	57,052.6	61,664.7	17.3%
2	GERMANY	46,549.6	49,309.2	13.8%
3	FRANCE	32,328.3	34,011.4	9.5%
4	UTD. STATES	27,231.1	25,370.4	7.1%
5	UTD. KINGDOM	16,314.4	17,318.1	4.9%
6	IRELAND	14,993.3	14,840.2	4.2%
7	CHINA	14,687.1	14,750.4	4.1%
8	ITALY	13,329.8	12,884.7	3.6%
9	RUSSIA	7,547.6	9,365.7	2.6%
10	JAPAN	8,389.0	8,491.0	2.4%

▶ In 2017, a total of **4.9%** of total Belgian imports came from the UK.





In addition to the goods related sectors, Brexit poses the same magnitude of risks for the services industries in Belgium. In absolute terms, its service sector is overall as exposed to Brexit as the goods sector. Belgium plays a significant role in international trade in services: Last year (2017), Belgium ranked globally as the 13th largest exporter and 12th most significant importer of services. In 2017, almost 9% of Belgian services exports went to the UK, with a value of over 9.09 billion Euros. This reflected a growth of nearly 3% compared to 2016².

Major categories were all types of financial services, including insurance and pension funds; transport and logistics; and personal, cultural and recreational services. Audiovisual and related services make up an important part of this last category³.



The negotiation process

If the "Article 50" Withdrawal Agreement specifying the terms on which the UK will leave the EU is ratified, the deadline for agreeing the terms of the UK's future relationship with the EU will move forward to December 2020 (with the possibility of a further extension thereafter).

The Withdrawal Agreement foresees a transition period from 30 March 2019 to 31 December 2020. During this period, the UK will continue to abide by all EU rules (but will leave all EU institutions). There is a possibility to request a one-time extension of the transition period.

During 2019 and 2020, EU and UK negotiators will need to agree on the shape of their future relationship. It is likely to be uncertain until well into 2020 at best what the detailed future position between the EU and the UK will look like.



Two possible scenarios

There are conventionally two scenarios: a “hard” Brexit and a “soft” Brexit. Innumerable variations are possible for both, but having an idea of what both represent helps set the scene.

1

Scenario 1: A “hard Brexit”

A “hard Brexit” scenario would see the UK leaving both the Single Market and the EU Customs Union. This is the stated aim of the UK Government. To stay in the Single Market, the UK would have to accept free movement of goods, services, capital and people, as do the EU countries, and Iceland, Liechtenstein and Norway. The UK is not willing to do this, mainly because it is not happy with free movement of people. The UK has also rejected the option of remaining inside the Customs Union, i.e. sharing a common external tariff for goods with the EU (and Turkey).

This hard Brexit scenario is likely to be the most disruptive from different perspectives. In the extreme version of this scenario, World Trade Organization (WTO) rules would apply to trade with the UK post-Brexit. Belgian and UK businesses would pay tariffs on their trade with each other. The UK and EU regulatory regimes would diverge, bringing uncertainty and complications to companies. Non-tariff barriers could surface.

There would be changes to indirect taxation of transactions between Belgian and UK companies. The two countries’ citizens would not enjoy the freedom of movement rights that they have now. Work permits would need to be arranged for employees from Belgium wishing to work in the UK, and vice versa. The UK might not participate in EU funding programmes (thereby losing access to European research grants, the Erasmus+ scheme and many others). It could drop out of key regulatory agencies which manage vital approvals in sectors such as chemicals, pharmaceuticals, air safety and food.

2

Scenario 2: A “soft Brexit”.

A “soft Brexit” scenario would still see the UK leave the Single Market and the Customs Union, but the EU and the UK would be partners in an ambitious free trade relationship with the EU. This is the stated aim of both sides, but it is far from clear that it can be achieved. In this scenario, the UK would nevertheless be able to negotiate its own new trade deals with other countries. The freedom to do this is an important stated aim of the UK government. The free trade relationship would cover mutual recognition of standards and intellectual property, thus facilitating access to each other’s goods markets. Transit through the UK to and from Ireland would be straightforward. There would be free trade in many services thanks to agreements on regulatory equivalence and close regulatory cooperation. The UK would be associated with many EU Agencies and Programmes.

Many existing rights of EU citizens living in the UK and UK citizens living in the EU would be broadly unchanged, but there could still be implications for recruitment: UK citizens wanting to start work in the EU after Brexit would be third country nationals like any other (and vice-versa).

There would still be fundamental changes to indirect taxation: EU rules on VAT and excise taxes would not apply in the UK; there would be a ‘tax border’ between the EU-27, and thus Belgium, and the UK.

Whatever the scenario, some additional administrative burden and cost for Belgian companies is inevitable, both for those trading with the UK and those with operations in the UK.



Our key messages

- Belgium is vulnerable to a Brexit economic setback;
- There is no time to wait for certainty; the time to plan is now, in order to be ready to implement changes as soon as clarity about the future state emerges
- Brexit is about more than the possibility of tariffs and customs procedures being re-introduced; significant regulatory issues may arise.
- There are likely to be impacts elsewhere in any supply chain of which you are part;
- Regulatory changes will impact on our digital economy, meaning that IT systems may need recalibrating, e.g. for trade monitoring and VAT reporting;
- New dispute settlement procedures are likely to be needed for any dispute currently involving the jurisdiction of the European Court of Justice;
- In any scenario, the cost of doing business with the UK will rise;
- Brexit could trigger greater exchange rate volatility for several years ahead;
- Preparing for risks and opportunities needs both an assessment of possible implications, and designing robust scenarios to prepare.
- Contingency planning for a “hard Brexit” will not be wasted; it will mean you are well prepared for any softer landing.



Brexit: scoping the issues

Every company's specific Brexit scenario will be different, but the issues in this chapter are relevant to all companies.

When the EU negotiates new trade agreements with external partners, the key driver is to promote convergence between the two sides in order to facilitate trade. However, the challenge of Brexit is to manage potential *divergence* between two partners who are already fully convergent.

The extent and nature of new barriers remains to be seen and the negotiations on the future arrangement are due to take place in 2019 and 2020. The UK will withdraw from the EU in March 2019, but a transition period until 31 December 2020 as specified in the Withdrawal Agreement will avoid abrupt disruption.

Still, an extremely hard Brexit remains possible, if either the UK or European Parliaments fails to ratify the Withdrawal Agreement, or if the transition period ends with unimpressive results in terms of the future EU-UK relationship.

Why will these issues be key to preparing for Brexit?

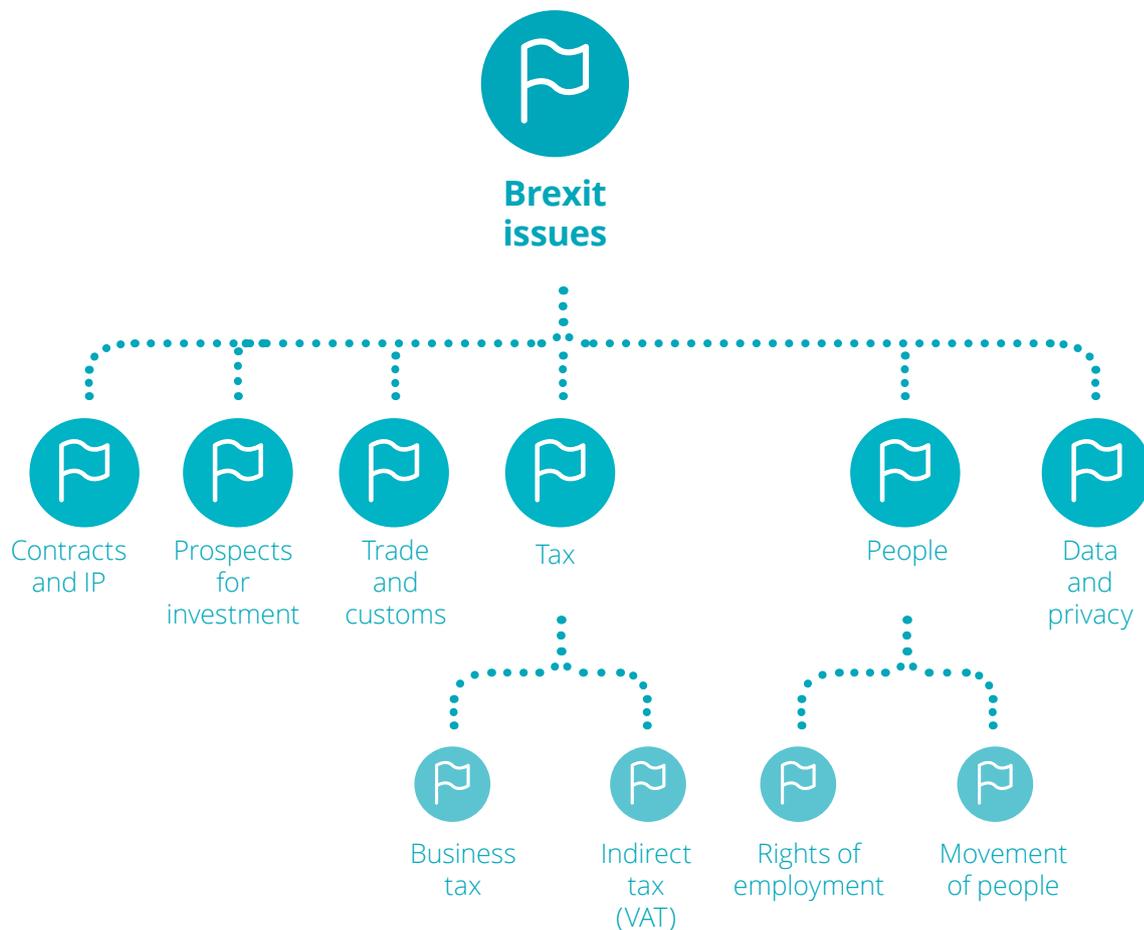
The answer lies in the possibility that the UK may diverge from the principles and rules currently agreed upon by all countries in the EU Single Market and Customs Union. The EU Single Market ensures that the EU functions as one territory without any internal borders or other regulatory obstacles to the free movement of goods and services.



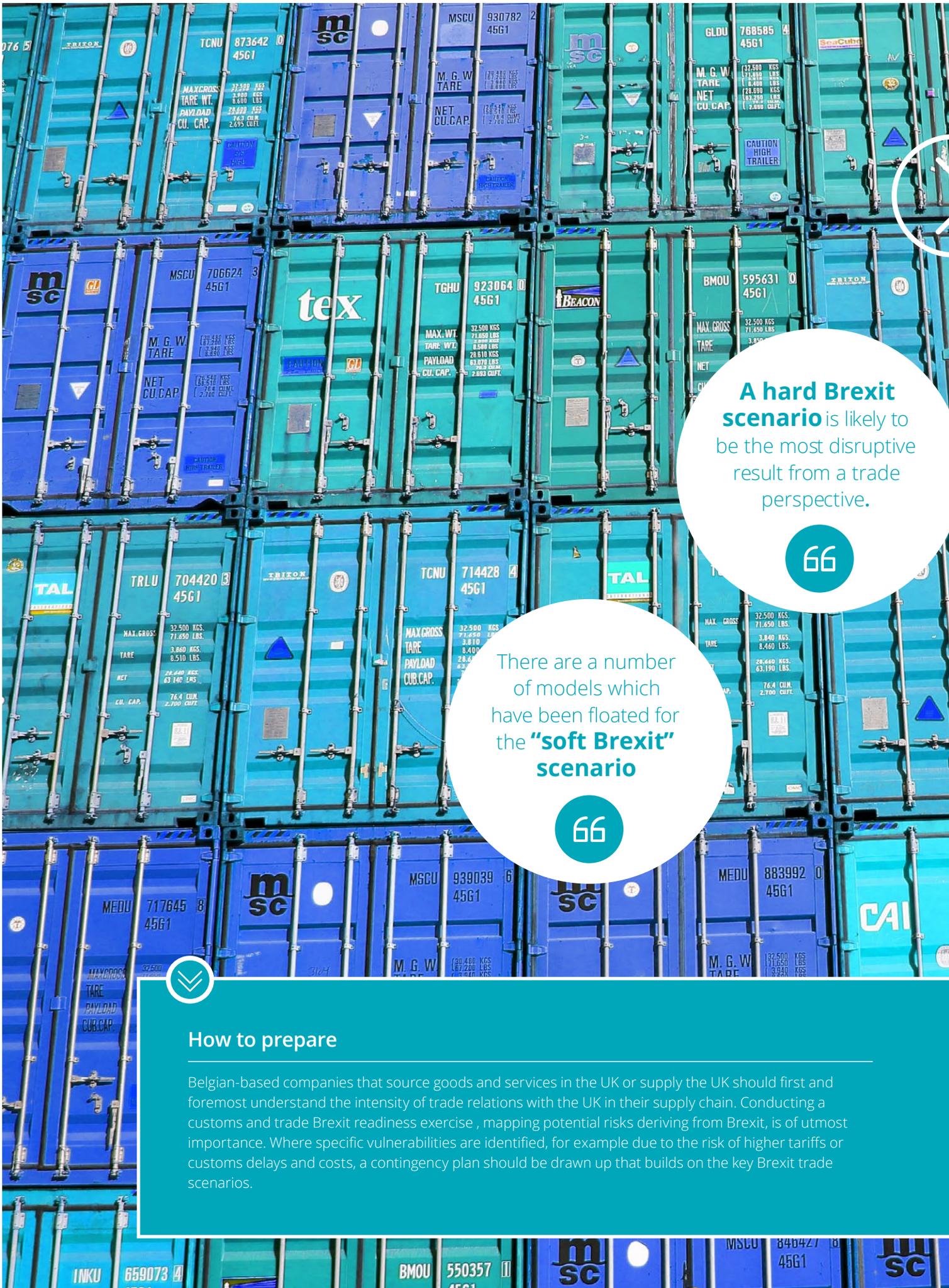


Brexit business issues

The issues map below provides an overview of the issues as a starting point for companies' scenario-building .







A hard Brexit scenario is likely to be the most disruptive result from a trade perspective.

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There are a number of models which have been floated for the “soft Brexit” scenario

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How to prepare

Belgian-based companies that source goods and services in the UK or supply the UK should first and foremost understand the intensity of trade relations with the UK in their supply chain. Conducting a customs and trade Brexit readiness exercise, mapping potential risks deriving from Brexit, is of utmost importance. Where specific vulnerabilities are identified, for example due to the risk of higher tariffs or customs delays and costs, a contingency plan should be drawn up that builds on the key Brexit trade scenarios.



Trade and customs

Both the EU-27 and the UK are aiming for 'frictionless trade' to continue in the future. What that will mean exactly may take time to emerge due to the complexity of the negotiations.

Unbundling the UK from the EU-27 will follow a phased approach. First comes formal withdrawal in March 2019. This would be followed by a transition period (minimum 21 months long) leading up to a future long-term arrangement, or, if such arrangement would not be ready in time, a possible intermediary 'backstop' solution, keeping the EU-27 and the entire UK in a single customs territory, with specific provisions applying to Northern Ireland.

Over time (i.e. after the transition period) the UK has stated that it intends to leave the EU Customs Union and Single Market. This implies that the UK will need to re-establish its status in the World Trade Organisation (WTO) in its own right. In practice, this means that both the UK and the EU will discuss simultaneously with the other WTO members to agree on their separate terms. In fact, the UK will not automatically be able to fall back on a so-called "WTO Option" if it leaves the EU without a deal. It will still need to agree with WTO members on the terms for individual UK membership in the WTO. WTO members seem to be indicating that they will want separate negotiations to agree on the UK's and EU's new tariff schedules (import duty rates) and quotas (limits on the quantity of goods to be imported).

A "no deal" Brexit scenario would inevitably bring disruptive results from a trade perspective. It would require Belgian and UK businesses to deal with a new border, including applying the related tariffs. Belgian companies would therefore find themselves trading with the UK under WTO rules, whereby the Most Favoured Nation (MFN) rule would apply. These are the 'non-discriminatory' tariffs agreed between the EU and all other WTO members (164 in total). WTO non-preferential rules of origin would also apply. This would be akin to trade now with any third country with which there is no special trade agreement in place.

In case of "no-deal", there would be no mutual recognition of standards and approvals. This would create non-tariff barriers. It would bring new burdens in controls and risk management, and a need to adapt IT systems. All these would have flow-on effects for staffing.

If the UK were after all to **stay long-term in a Customs Union with the EU**, and keep the common customs tariff at its external borders, trade in goods would largely flow freely between the UK and the EU (assuming also that there was no regulatory divergence). However, the UK would not have a free hand to negotiate trade deals with third countries. And being part of the Customs Union does not imply free trade in services, which is critical for the UK economy.

If the UK were to envisage the type of arrangement the EEA countries have, trade in both goods and services would largely be "frictionless", but the UK would have to compromise on free movement of people, application of EU rules and regulations, and the competence of the European Court of Justice.

Finally, if the "future relationship" negotiations result in a **free trade agreement on the model of the EU agreement with Canada (CETA)**, trade would flow relatively freely but not be anything like as "frictionless" as under the other models, and services would not be covered to any significant extent.

The end-result is likely to be *sui generis* and to take significant time to negotiate, with the potential for the transition period to be extended beyond 31 December 2020.





Business tax

Tax legislation remains largely the responsibility of national governments, but the EU has a role in ensuring that tax laws across the Union avoid creating major differences for companies .

From a **business tax and transfer pricing** point of view, the Brexit negotiations will determine how the UK will step out of the European Union's tax influence since it will no longer be bound by EU Directives, EU principles and judgments of the European Court of Justice.

Existing tax reliefs and exemptions currently applicable to transactions between the UK and Belgian entities (and entities from other EU member states) might cease to apply when the UK's EU exit occurs. The tax legislation, if any, which will replace those reliefs and exemptions is unknown at this stage, although the UK's starting position is to adopt all existing EU law into UK law. This will create stability until and if the UK decides to change its tax laws in the future.

UK parent companies investing in the EU might have to rely on tax treaties in place between EU countries and the UK in order to benefit from preferential withholding tax rates on dividends. Investments in Belgium should not be impacted as Belgium has extended its full dividend withholding tax exemption provided by the Directive to treaty countries, provided that the treaty includes an exchange of information clause (which is the case for the Belgium-UK tax treaty). For Belgian companies with direct investments in the UK, the impact should also be limited as the UK is currently not levying dividend withholding taxes and the participation exemption regime (100% exemption as of 2018) would continue to apply to (qualifying) British dividends at the level of the Belgian shareholder.

Intra-group financing and licensing arrangements could be affected. The UK's national legislation provides for a withholding tax exemption for interest and royalty payments to EU entities. If this exemption regime were to be adapted, the British withholding tax on royalties and interest (currently 20%) would be reduced or waived based on the tax treaty between Belgium and the UK.

The EU Mergers Directive offers tax relief on cross-border reorganisations. The UK might create new law in the future, which could lead to increased tax costs for businesses undertaking merger transactions.

The UK could decide to resort to more generous tax treatment for business, offering opportunities for so-called 'treaty-shopping' by companies seeking economic advantages. The UK may, however, have to agree to limits to that freedom in exchange for the degree of market access it is seeking to the EU, to ensure a level playing field. EU leaders have said that attempts by the UK to engage in "regulatory competition" of this nature would have a negative effect on the willingness of the Union to offer attractive trade terms.

Belgian companies (and other EU companies) that currently rely on their UK beneficiaries to benefit from a US tax treaty relief may also be impacted after Brexit. The ability to benefit from the Belgium-US tax treaty may indeed be somewhat restricted (unless the relevant treaty is modified to address this concern) under the Limitation of Benefits provision, where a Belgian company is ultimately owned by EU residents that are based in the UK. This lost access to US treaty benefits may have a significant impact on group financing arrangements as many UK organisations rely on income tax treaties between the US and certain European countries.

Other concerns include the **EU transfer pricing rules** governing inter-company transactions in multinational companies in particular, heightening the risk of double taxation if these do not apply. There could be increased uncertainty whether double taxation would be eliminated in case of transfer pricing adjustments. Advance Pricing Agreements and Mutual Agreement Procedures provided by tax treaties could be applied instead. The impact on International Financial Reporting Standards is another aspect to consider: companies should assess the potential tax consequences of the withdrawal of the UK from the EU at each reporting date and consider whether recognition and/or disclosure of the potential tax accounting implications is necessary.



How to prepare

Belgian companies doing business with the UK or their UK businesses bringing goods to Belgium will likely encounter tax-related challenges as a result of Brexit and subsequent changes in their supply chain model.

In direct taxation, it is important to assess **vulnerability to double taxation** if the rules change, including possible changes to tax arrangements with the US, and to review **transfer pricing** arrangements.

From an indirect tax point of view, it is clear, even without waiting for details, that Belgian companies doing business with the UK (and vice versa) can already **map the flows that would potentially be impacted and assess the VAT (pre-financing) and administrative costs**.

Indirect tax

Looking at Value Added Tax (VAT) and excise taxes, the Withdrawal Agreement foresees continued terms for 'indirect taxes' when the UK departs from the EU (March 2019), as under the current situation of the Customs Union and joint Commercial Policy. As entry into force of the Withdrawal Agreement requires parliamentary ratification, and terms on the future of the EU-UK relations are still to be agreed, there is no guarantee that indirect taxes will not ultimately deviate after the UK departs from the EU.

EU legislation is relatively prescriptive in the area of **indirect taxes**, including **VAT and excise duties** (such as on tobacco, alcohol or energy). Rates of VAT or excise duty may differ, but the tax base and rate structure/level has to be broadly the same, e.g. only certain types of goods or service may be zero-rated for VAT.

Companies in Belgium and the UK operate under a single EU excise tax framework. The Excise Movement and Control System (EMCS) monitors the movement of alcohol, tobacco and energy products on which excise duties have still to be paid. In future, the UK will be a non-EU country, potentially complicating trade in goods subject to excise duties and other indirect taxes.

One of the most tangible consequences of Brexit is the potential for the imposition of "import" VAT when goods enter Belgium from the UK, or vice versa. Intra-Community supplies to the UK will become exports while intra-Community acquisitions will become imports from the UK. Where intra-Community transactions are normally cash neutral, import transactions could trigger pre-financing of VAT and hence affect the cash flow position of businesses.

There will be a need in each supply chain to define which party is taking responsibility for import/export declarations and for the related VAT reporting. This is based on the Incoterms applicable. It is likely that trade between Belgium and UK will still largely be made under DDP (delivered duty paid) conditions, whereby the seller assumes responsibility for the customs declaration and import VAT payment. Supply chains between Belgium (or other EU Member States) and the UK could begin to diverge from intra-EU supply chains. Specific VAT regimes, such as triangulation, consignment or call-off stock simplifications, may no longer apply.

More broadly, the UK VAT system, which is today strongly defined by EU VAT Directives and European Court of Justice judgments, may start to diverge significantly. The placement of the UK outside the scope of EU VAT could also have benefits for European businesses, for example in the financial sector, where financial transactions from Belgium to the UK could become VAT-exempt with credit, allowing Belgian financial institutions an increased right to deduct input VAT.

A complication stemming from Brexit may present itself in respect of UK companies registered for VAT in Belgium, as their non-EU established status may mean that they will have to appoint a fiscal representative, triggering additional (compliance) costs for these businesses. The UK does not require such an appointment from non-EU businesses under current legislation. For non-registered businesses, reclaiming input VAT incurred in Belgium or the UK may prove more difficult as they would no longer have access to the electronic EU VAT reclaim procedure.

Finally, Brexit will also have an impact on VAT reporting as transactions with the UK would no longer have to be included in the EC sales listing and Intrastat reporting. It is not yet clear whether any measures to reduce additional compliance burdens will be developed as part of the future relationship between UK and Belgium.



More than
4 million
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affected by Brexit

“

“
nearly **25,000**
live in **Belgium**

“

3.2 million EU
citizens in the UK, of
whom some
30,000 are
estimated to be
Belgians



How to prepare

Keep abreast of the situation for EU nationals working in the UK where there is currently no system for registering citizens from other EU countries. Whatever the final Brexit scenario, the UK will have to introduce such a system. This could be stressful for some EU-national employees in the UK.

Companies may have to assist any EU nationals working for them in the UK with obtaining permanent residence or considering obtaining citizenship in the UK. Similarly, it may be worth looking at whether UK nationals working in the EU-27 might be interested in obtaining citizenship of an EU Member State⁹ in order to maintain

People issues

The EU treaties and legislation allow EU citizens to travel, work, study and retire in another Member State and enjoy equal treatment while doing so. EU rules on coordination of social security ensure that those moving across borders do not suffer disadvantages because of their move (such as a loss of pension rights). EU provisions on recognition of qualifications reduce obstacles to free movement stemming from different national requirements on access to certain professions.

More than 4 million people will be affected by Brexit if these rights are less extensive in future – 1.2 million British citizens in the EU-27, of whom nearly 25,000 live in Belgium and 3.2 million EU citizens in the UK, of whom some 30,000 are estimated to be Belgians⁸. But, of course, any EU citizen employed by a Belgian company in the UK will be affected.

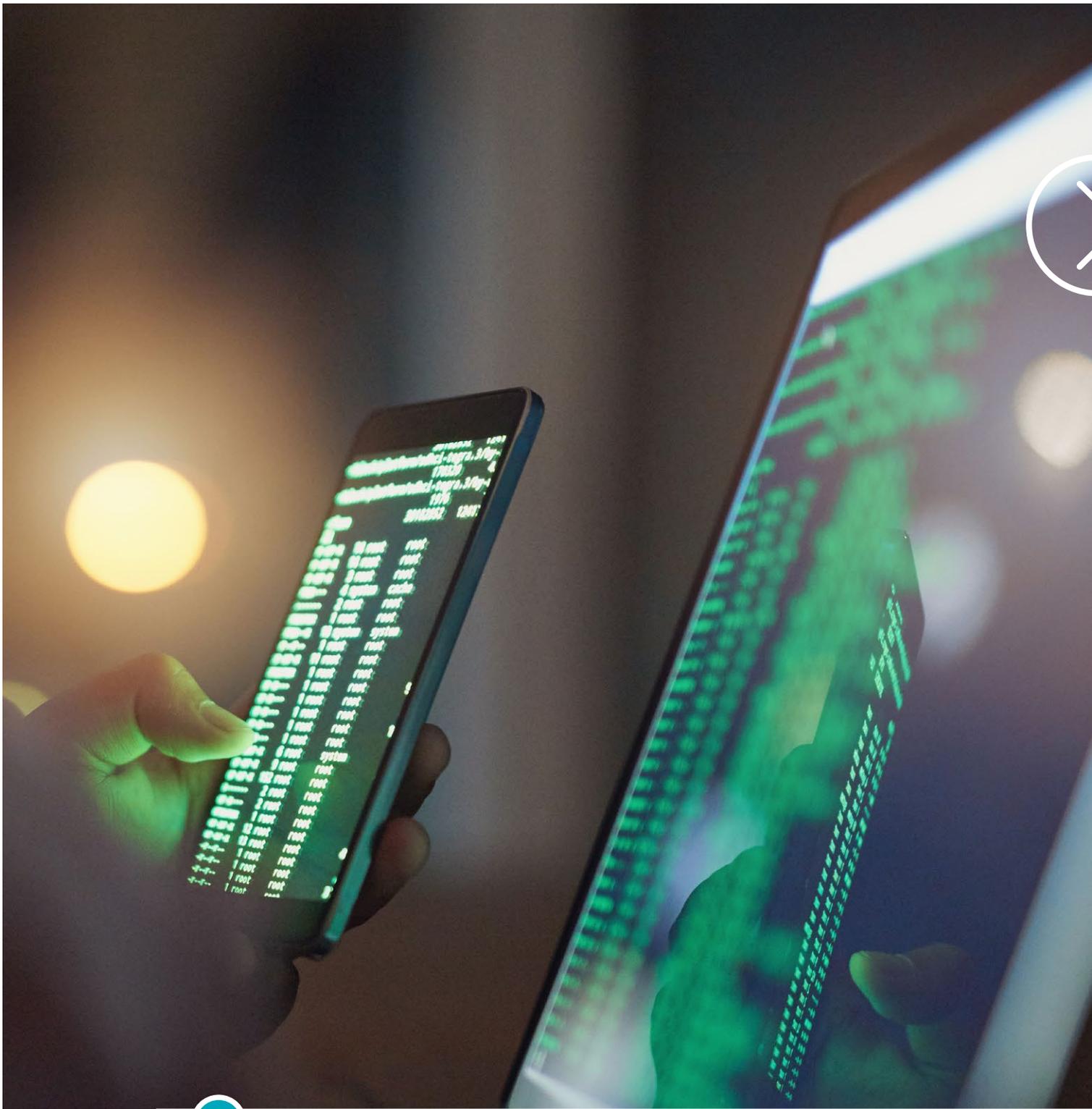
Most of these are people in employment or members of their families. Even in a “hard Brexit” scenario, it is likely that the existing rights of anyone in employment, together with those of their family members, will be protected. Agreement in principle has already been reached on preserving most of the rights of this group whatever form of long-term relationship is agreed. Post-Brexit, other UK citizens wanting to work in the EU (or Belgians wanting to work in the EU) will become third country nationals with fewer rights for themselves and their families, and more bureaucracy attached to getting permission to employ them, or transfer or post them to another EU country.

Employers need to understand which employees could be affected, and to define a strategy and a two-way communication plan for employees.

Identifying who is affected should take into account both residence status and social security status. The impacts of these are not necessarily the same. It should include assessing whether any staff positions are dependent on the person's qualifications being recognised across EU borders. Defining a strategy implies deciding the level of guidance and support you want to provide to your employees and their families (bearing in mind in particular that the rights of children in tertiary education may change).

their freedom of movement rights anywhere within the Union. If providing guidance, this should cover the tax consequences of a change of citizenship, such as the potential loss of a beneficial expatriate tax status.

Prepare for changes in your recruitment process. A more restrictive environment after Brexit may reduce companies' flexibility to recruit UK citizens to work in EU-27 and vice versa. It may become more complex to attract and employ particular profiles, if, for example, fewer people are allowed to move to the UK or fewer UK citizens are accepted into the EU.



How to prepare

The EU-UK negotiations in Phase 2 of the Brexit negotiations may lead to greater certainty in this area, but in the meantime Belgian companies and organisations should be aware of the seriousness of data protection related issues. As well as the risk of penalties for breaching the rules, there are potential operating issues in terms of business policies on sourcing, transferring and storing data applying to non-EU jurisdictions. This is evidence of the need to review the risks and set up safeguards to manage this complex area successfully.

Data and privacy

Businesses collect data for a range of reasons – from marketing to payroll – by a range of means, including social media, mobile apps or websites. .

The EU legal framework governing data collection, usage, transfer and storage, is about to experience major change, and **as of May 2018, there will be a single set of rules for the EU-28 in the shape of the EU General Data Protection Regulation (GDPR).**

Part of the impetus for this far-reaching legislation is that citizens have become more and more aware of and concerned about their privacy

The GDPR aims to restore confidence in online services by installing basic levels of data protection. Every business providing a service or selling goods within the EU will need a data handling policy. More specifically, the law will introduce a range of data protection requirements, which will strengthen citizens' rights such as:

- the “right to be forgotten”
- the right to data portability, and
- the right to be informed of personal data breaches.

Non-compliance by corporates could lead to penalties of up to 4% of the company's annual global turnover for a serious breach. The GDPR, as an EU Regulation, will have automatic effect in the UK until withdrawal, but **the UK is also legislating specifically to incorporate the GDPR in its national law.** As a result, the GDPR's provisions will remain in force post-Brexit. It is unclear whether the UK's legal framework might diverge from the EU framework in the future.

As a principle, EU companies will only be able to transfer and exchange data freely with non-EU (including UK) companies if that country's data protection rules in effect at that point have been deemed equivalent to those of the EU.

The EU's criteria for being judged to have an “adequate” data protection regime are strict, and obtaining recognition can be time-consuming¹⁰. What the process will be in this case is still unclear.

Non-compliance by corporates could lead to penalties of up to **4%** of the company's annual global turnover for a serious breach.

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How to prepare

All existing contracts and licences should be reviewed to see whether clauses on governing law, jurisdiction and territorial scope are Brexit-proof (and all new contracts should be Brexit-proofed). As a precaution, obtaining UK registration where separate registration is already available may be wise.

Contracts and IP

EU Directives and Regulations will cease to apply in the UK as such post-Brexit, though it is likely that similar provisions will be in force in UK law in the short to medium term.

The UK's "going in" position is that all existing EU law will be transposed into UK law to provide for legal certainty after Brexit: until the UK decides in due course whether to diverge from EU law and in which areas. Over time, the UK and EU's legal frameworks could diverge to an unpredictable extent.

Commercial agreements will nevertheless still be valid. These are the result of negotiations between the contracting parties. Choice of law clauses will also remain valid after Brexit, but companies may find that the referred law in the UK will change. Similarly, jurisdiction clauses will remain valid, but in practice EU-27 courts may not recognise clauses giving exclusive jurisdiction to UK courts.

In the event of a dispute, the European Court of Justice (ECJ) will no longer automatically have jurisdiction over the UK, though its views and jurisprudence may be considered in some circumstances.

On the other hand, as the European Patent Office (EPO) is not an EU institution, its activities are not affected. However, the new Unified Patent Court is only open to members of the EU. A special status is possible but will have to be negotiated.

"Brexit-proofing" contracts also means assessing whether transaction costs will rise and amending pricing clauses accordingly. Duties and taxes are obvious additional costs, but if goods spend more time in transit because of border checks, transportation costs will rise, as will brokerage charges. Where no mutual recognition is in place, the cost of obtaining approvals or registration will have to be factored in.

Where IP rights, including trademarks and licensing rights, rely on EU legislation; or where permission to market a product relies on approval for that product by an EU Agency, contingency plans are needed.

Once the UK has left the EU, EU trademarks (EUTM) will only be enforceable in the UK in certain complicated conditions.



How to prepare

Monitor how your sector will be specifically affected by Brexit, assess pressures that could be put on the cost of talent or real estate and opportunities which could arise for supplying new clients.

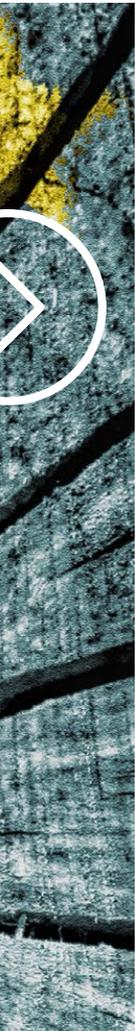
Review the extent to which any operations in the UK rely on 'passporting-type' rights to operate in the UK, or to sell services, such as insurance or legal advice. Similarly, consider whether Belgian operations are affected by similar issues in dealings with the UK.

Plan for the possibility of a need to relocate some or all of existing UK operations, and consider whether Belgium is the best location for that.

The prospect of Brexit has, until now, had little impact on merger and acquisition (M&A) activity in Belgium. An overall negative economic impact of UK withdrawal from the EU would be likely to reduce M&A volume, but realignments of economic activity and exchange rate changes may also present specific opportunities in some sectors. Examples of potential impacts include:

- Belgian M&A investment in the UK being positively affected by any sterling devaluation;
- positive effect on UK investments/ M&A in Belgium, driven by UK corporates' need to have a base in the EU – linked to one-off shifts in cross-border production and supply chains.

The best opportunities are likely to lie in Belgium's strongest sectors (manufacturing/industrial products, life sciences, technology, logistics) and market segments (in particular, privately held businesses) which emphasise the open trading nature of the economy.



Prospects for investment

With a central location in the EU, Belgium is often said to be a springboard or hub to the EU. For many international companies, Belgium remains an interesting market for investments and is perceived as a good 'test market' for companies wishing to enter the EU market through trade or establishing a local presence.

The UK has also historically been seen as an excellent base for investment into the EU, due to competitive advantages including language, highly developed financial markets, logistics (sea trade), pro-business labour market rules and the size of the local economy. However, Brexit could seriously affect the UK's attractiveness in this respect and **service industries, like banking and insurance, stand to be among the most affected as a result.** Some financial services companies have announced that they will move part of their operations out of the UK to avoid losing their 'passporting' rights to offer services throughout the EU after Brexit.

A "hard" Brexit could logically see EU-bound investment flows rebalancing away from the UK.

Belgium may attract more investment in this scenario, but competition between EU states is tough. In this "race", Belgium scores high on logistics/trade, as well as on having excellent knowledge of several European languages. Furthermore, with the latest fiscal reforms in Belgium, the tax regime is improving its attractiveness. But there are also comparative disadvantages in labour market flexibility and cost, weakening the country's relative attractiveness.

The decision-making process for investment projects is not simple; it requires a comprehensive approach. The company's vision, corporate strategy and operating model are all key criteria for location selection. It will be up to each company to assess the threats and opportunities, and whether it needs to change its operating model in dealings with the UK.



A "hard" Brexit
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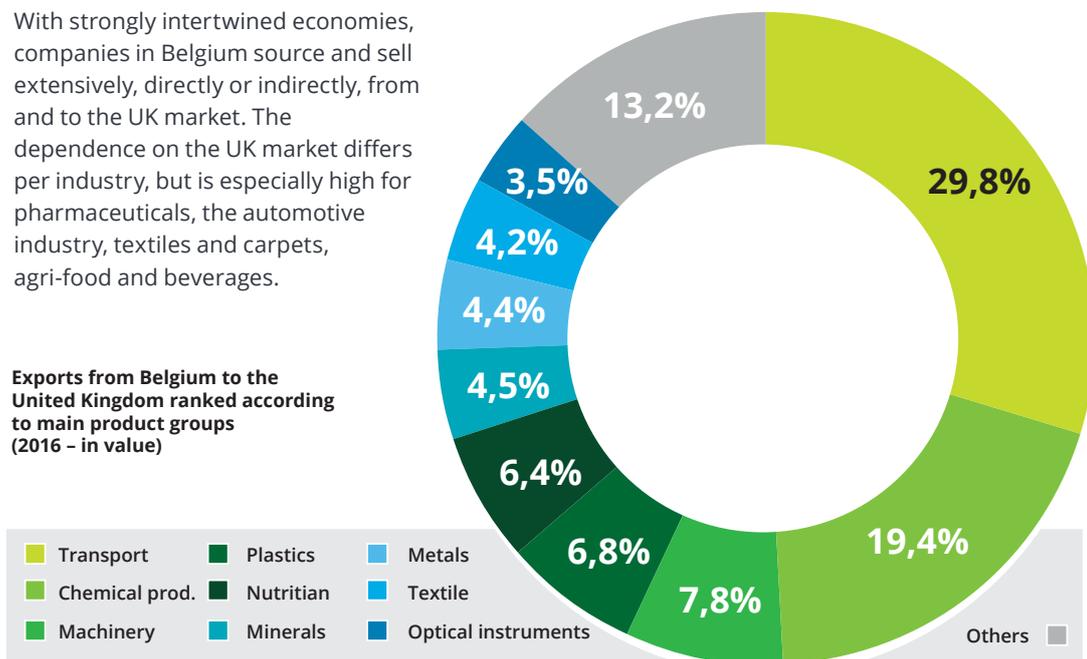
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Industry and sector perspectives

With strongly intertwined economies, companies in Belgium source and sell extensively, directly or indirectly, from and to the UK market. The dependence on the UK market differs per industry, but is especially high for pharmaceuticals, the automotive industry, textiles and carpets, agri-food and beverages.

Exports from Belgium to the United Kingdom ranked according to main product groups (2016 – in value)



source: based on data abh-ace

Whereas the risks for the more traditional goods sectors, such as automotives, chemicals or healthcare have been more widely emphasized, the risks for services companies are less straight forward.

However, the implications of Brexit may be as substantial for Belgian companies active in either the goods or the services sectors. Most notably, there is a risk that the United Kingdom would change its regulatory frameworks underpinning market access in sectors such as finance, insurance, and legal or in recognition of professional qualifications. There are also potentially major effects for the transport and logistics sectors and for the creative industries. Whereas the most pragmatic approach would be for the UK to convert all EU laws on service sectors into UK law, there is a risk of divergence over the longer term.

The importance to each Belgian Region of the different sectors varies, but overall it is clear from the figure that Flanders is the worst affected across the board, due to the strong trade relations with the UK. Looking at the two main scenarios, namely "Hard" and "Soft" Brexit, how can companies in the different industries expect to be affected? What key risks to a given goods and services sectors (and their supply chains) need to be taken into account? This Chapter provides some food for **thought, offering an industry-perspective.**




Small and medium-sized enterprises

The Belgian economy is built on small and medium-sized enterprises (SMEs), with almost 70 % of employment in Belgium generated by companies employing fewer than 250 employees. Belgium has 575,938 SME's, but only 913 large enterprises¹¹. Micro firms, i.e. those with fewer than 10 employees, are becoming increasingly important within the group of SMEs as a whole. They generate more than one fifth of value added to the economy, and represent one third of employment.

SMEs that deal with customs authorities already may understand and recognize some of these points. However, small and medium-sized enterprises (SMEs) that trade between EU and the UK today are less likely to be fully prepared to deal with Brexit-related challenges.



How to prepare

Given the complex nature of the automotive supply chain, many Belgian companies will feel the effect of Brexit either directly or indirectly, because they supply intermediate goods or services.

Understanding the dependency of your company on the automotive supply chain and on the United Kingdom as a (source or destination) market is a starting point for mapping potential implications of Brexit. This will be the basis for an informed discussion to determine priority issues, and draw up a risk mitigation plan based on Brexit scenarios. That should include supply chain optimisation and looking for opportunities beyond the UK, for example as a result of the Free Trade Agreements (FTAs) that the EU has or is negotiating with major trading partners around the world.

Any scenario-planning exercise should not be static. It will be critical to follow the Brexit negotiations closely – what the UK is saying, what the Belgian government is doing to support the industry in the negotiations, and what the European Commission is advocating – and then to adapt.

Automotive

Why it matters

The automotive industry continues to play an important role in all three Regions. Belgium is home to several bus and truck manufacturers, with plants for the assembly of cars, trucks, buses and other vehicles. The industry is served by original equipment manufacturers (around 300) and after-suppliers, as well as service providers in areas as diverse as software and logistics.

The automotive industry in Belgium equally benefits from the country's central location and strong logistics services, with the Port of Zeebrugge being the biggest car-handling port in Europe. In 2016, more than 2.7 million vehicles (and many more automotive components) were handled by Zeebrugge, and the UK was a major destination and source of these. Vehicle shipping is also important to the port of Antwerp.

The Flanders region is especially sensitive to possible changes as a result of Brexit, as the United Kingdom is the leading destination for its automotive exports and imports, representing 31% and 25.5% of the total respectively¹².

Taking **Belgium as a whole, transport equipment accounts for 29.8% of exports to the UK and 22% of imports**¹³.

What could change

Since the Brexit vote, car assembly and manufacturing companies in Belgium have adopted a strategy of 'prepare for the worst', with a focus on the possibility of the introduction of tariffs, burdensome **customs procedures and documentation**.

With a hard Brexit, the introduction of tariffs based on WTO¹⁴ (MFN¹⁵) rates would mean additional customs duties of 10% for cars and 4.5% for parts. If lower tariffs are agreed as part of a trade deal, it does not necessarily follow that those cars and parts could comply with the **rules of origin** that would make them eligible for those tariffs. Supply chains may need to be rethought.

Deloitte¹⁶ has estimated that the average price of a car in the UK (currently around EUR 23,900) would go up by 15% to EUR 27,600 in the event of a hard Brexit¹⁷. The impact of that on demand would lead to a drop in sales of cars produced in Belgium of 43% (10,000 cars), but have flow-on effects on other parts of the Belgian economy from the impact on the EU car industry as a whole.

That impact will, of course, depend on where cars are produced and on the price elasticities per vehicle segment. It will be compounded whatever happens by the impact on imports – and patterns of trade – of higher prices for cars produced in the UK if tariffs are applied or the UK cannot meet rules of origin requirements.

A different type of insecurity for the automotive industry comes from the **regulatory standards**, including those covering emissions, safety and type approval. Whereas the United Kingdom has been an active player in developing relevant EU regulations impacting the automotive industry, it is unclear to what extent these will apply in the UK after Brexit. As a result, car manufacturers may need to go through **certification** procedures in both the EU and UK, or face additional compliance costs if/when the UK develops different types or levels of standards upon departure from the EU.

Companies in the automotive industry in the UK have contingency plans for moving parts of their operations to the EU or even outside the EU, with clear implications for Belgian goods and service providers as trade flows shift and supply chains adapt.



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The Belgian **chemical industry's exports** to the UK amount to some EUR **2.5 billion**.



How to prepare

Given the continued uncertainty and the potentially significant implications of Brexit on the chemicals industry, Belgian chemicals companies and those in their supply chain should map out scenarios covering tariffs, free movement of people and capital, and regulation. They should at the same time assess impacts on trade and investor confidence, **likely behaviour of UK and EU competitors, and the potential for finding alternative markets.**

Given the asset and capital intensity of the chemicals industry, investment horizons in the sector are long and hence regulatory stability and certainty are very important. These are unlikely to be available for some time, thus making scenario-planning in their absence absolutely crucial.



Chemicals

Why it matters

The Belgian chemical industry's exports to the UK amount to some EUR 2.5 billion. This represents roughly 7% of Belgian chemical industry sales¹⁸. **Chemicals (including pharmaceuticals) account for nearly 20% of Belgium's exports to the UK²**. The main exports (behind pharmaceuticals) are polymers and plastics, followed by organic base products¹⁹. Imports from the UK are around EUR 2 billion²⁰ and represent some 17.5% of imports.

Compared to other EU countries, the Belgian chemicals industry is highly exposed to trade with the UK. It accounts for around 11% of all EU chemicals exports to the UK and 10% of all EU chemicals imports² from the UK²¹.

These numbers are significant. Only the Belgian automotive industry is more important to Belgian trade with the UK. Flanders could be worst hit by post-Brexit disruption to Belgium's chemicals industry, as around 75% of Belgian chemicals exports to the UK originate in Flanders.

With 2.2% of added value²², the industry is on a par with the Belgian food & beverages industry in terms of its contribution to the economy²³. It employs 90,000 people directly and 120,000 indirectly²⁴.

What could change

In a chemical industry that is increasingly segmented and horizontally specialised, and where most companies are both suppliers as well as each other's customers, the potential implications of tariff barriers on inter- and intra-company trade are high. This is particularly true in a "hard" Brexit scenario²⁵. WTO rules would be likely to come into effect if no deal were struck. By way of example, this could mean **a tariff of 6.5%**²⁶.

A major uncertainty is whether **REACH²⁷, the EU's environmental regulation of the chemicals industry** will apply to the UK at all, in part or in full, both in any transition period and in the long term. If it did not, and the UK were not associated in some way with the European Chemicals Agency (ECHA), it would be necessary to register chemicals separately in the UK under separate legislation. Potentially, this could be a benefit, as it could become possible to register chemicals for production and sale in the UK that are not currently accepted in the EU. Come what may, trade in both directions would be disrupted and compliance costs would rise.

Beyond its high dependence on trade and the regulatory environment, the chemicals industry is also dependent on **skilled workers** (scaffolders, insulators, and engineers to name but a few) to execute large turnarounds and capital projects. Restrictions on hiring from the UK in response to the restrictions the UK could introduce once it is no longer bound by EU rules on free movement of people **could complicate staffing** these jobs.



How to prepare

As well as looking at the issues that are common to most industries, such as the impact of **higher tariffs, and additional time and money for importing and exporting** if customs clearance and additional trade certification is needed, pharmaceutical companies face **regulatory burdens if the UK does not remain part of the European Medicines Agency in some way.**

These companies should also monitor the role of the UK in the future Unified Patent Court. Only EU Member States can be members of the Court, but a special status may be possible. Moreover, the future location of the Court's pharmaceutical and life sciences section, which was to have been in London, is uncertain.

Life Sciences

Why it matters

The biopharma and life sciences industries are among Belgium's greatest strengths. Belgium's pharmaceuticals industry is the 5th largest investor in R&D in the EU; and is the 8th largest producer of pharmaceuticals. Only Germany exports or imports more pharmaceuticals. The life sciences industry employs 0.5% of Belgium's workforce²⁹.

In the OECD index of revealed technological advantage in biotech for 2012-2015, Belgium ranks fifth in the EU. According to other OECD data, Belgium also has one of the highest rates of biotech R&D intensity in the EU³⁰.

Pharmaceuticals account for **11.8% of Belgium's exports to the UK**, and the UK is Belgium's third largest export market for pharmaceuticals³¹, so it is obvious that Brexit is a potential threat.

This is not just because of the prospect of tariffs, but also of potential changes to the regulation of pharmaceuticals currently produced or marketed in the UK, and of clinical trials carried out there.

What could change

There are two characteristics of the pharma industry to take into account when considering the impact of Brexit:

- (i) reimbursement models are based on efficacy and patients will need treatment come what may. This means the price elasticity of pharma products is low. Thus, sales volumes are not likely to feel a major impact from any new tariffs or non-tariff barriers;
- (ii) supply chains are complex, but it is relatively easy to relocate pharma manufacturing, so manufacturers could readily move production from the UK to Belgium (or vice versa) to avoid new tariffs or non-tariff barriers.

The likelihood of manufacturing moving (in either direction) will depend on the future trade and regulatory regime. Over time, however, **this could be an opportunity for Belgian companies in the life sciences industry to supply** companies relocating manufacturing, trials and R&D from the UK in order to be inside the Single Market.

Nevertheless, **there could be a significant cost to Belgium's pharmaceutical industry** if it became necessary for Belgian companies to obtain separate permission to carry out clinical trials or obtain marketing authorisation in the UK. That will not become known until it is clear whether the UK can – and chooses to – opt in to the European Medicines Agency.

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Pharmaceuticals
account for
**11.8% of
Belgium's exports
to the UK**



How to prepare

As in the case of the other industries discussed here, preparing is not just a question of **knowing what tariff rates might apply** in future if trade defaulted to WTO rules.

It is about **keeping a close eye on where the negotiations on a post-Brexit deal are going** in terms of the degree of regulatory alignment or divergence – since divergence seems almost certain for goods covered by excise taxes.

It is also about understanding **how you and others in your supply chain will be affected** by higher costs, both direct and indirect, i.e. from charges for obtaining certification that is not currently necessary, and from, for example, the higher transport costs if transit takes longer.

All these are mainly important for Belgian exports, but understanding **how the UK will function as a transit country for food imports from Ireland** to Belgium and beyond is equally important.

Agri-food and beverages

Why it matters

Belgium is a major exporter of food and agriculture products, and this is a growing export industry³³. In 2016, this industry accounted for 6.4% of Belgian exports to the UK (and 2.4% of imports from the UK)².

The UK is Belgium's fourth largest export market for foodstuffs. It is a particularly important market for processed fruit and vegetables (notably frozen), but also a significant market for cereal and dairy products, and fresh vegetables. It is also a growth market. Exports to the UK doubled between 1996 and 2015¹⁵.

What could change

Just-in-time deliveries of fresh produce to supermarkets or processing plants are critical to the agri-food industry. They are currently made possible by the absence of tariffs, smooth customs handling, approval of (health and safety) certificates within the EU Single Market and a single system for monitoring the movement of goods subject to excise tax. All this may change and lead to disruption, delays and costs.

Several sectors are particularly vulnerable to high tariffs if trade reverts to the tariffs negotiated in the WTO. Dairy, sugar, drinks and meat would be particularly affected (in both directions).

Alcoholic beverages will be affected by divergent excise tax systems.

As the UK market is known to be very sensitive to high food prices, and higher food prices in the UK that could be blamed on Brexit could generate bad publicity, measures to avoid this could be a priority in the negotiations. However, this remains speculation at this stage.

In trade from the UK to Belgium, the issue of whether the UK will have to comply with the EU entry price system for fruit and vegetables is one issue to be resolved, but this is just part of a complex picture of **knowing what UK agricultural, and agricultural trade, policy will be in future** across all agri-food products.

A specific concern are **import tariff rate quotas (TRQ)**³⁴, i.e. how the EU's TRQs with its other trading partners will be divided between the UK and the EU-27. This is already being discussed in the context of WTO talks between the UK, EU and other WTO members.

Clearly, the degree of regulatory cooperation between the UK and EU on food, animal and plant health and safety, (as well as packaging and labelling) will also be a major concern to this industry. Will WTO principles apply or will the UK align with the EU's far-reaching regulation in these areas? If it does, what sort of recognition of the equivalence of its regulation will be in place? And will it apply to trade in both directions? There are as yet no answers to these questions.

The time-sensitivity of trade in fresh food makes potential delays in customs clearance to ensure compliance with food safety, plant, animal health regulations a major worry. This will not just affect the two-way trade, but Belgium's position as a hub for agri-food trade to and from the UK and EU-27. If imports from the UK are to be 'third country' imports in future, this means for example that:

- imported plant products will have to be accompanied by a phyto-sanitary certificate (SPS);
- imported products of animal origin will be submitted to a Border Inspection Post for import control.

In addition, the UK is the land bridge for agri-food products in transit to Belgium and on to other EU27 countries from Ireland, so anything other than frictionless trade along this route could have major implications.

Finally, the support available to Belgian agri-food producers under the EU Common Agriculture Policy (CAP) may be affected by Brexit in the medium term as the EU adapts its budgetary commitments to the loss of one major net contributor, i.e. there will be less money overall in relative terms to spread across the remaining 27. This could affect both direct support to farmers and incentives for exploring new markets outside the EU.



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30% of the **Belgium's exports** of special woven fabrics, tufted textiles and lace going to the UK



How to prepare

Whereas Brexit is a unique situation and potentially deeply disruptive to the industry, Belgian businesses in the textile industry have a reputation for resilience and innovation in response to economic shocks and competition from low-cost suppliers, e.g. in Asia.

In this case, resilience will need to take two forms: one is planning for the possibility of tariffs, customs clearance procedures (and associated costs) and higher shipping costs as a result of delays while clearing customs; the other is a renewed focus on diversification, taking advantage of the growing number of EU Free Trade Agreements to target growing global markets.

Nonetheless, given the strong dependence on the UK market, companies in the textiles industry are clearly advised to prepare for the worst. This starts by assessing the role the UK plays in their business and the impact of Brexit on their supply chain, and then constructing scenarios as a basis for informed planning and adaptation.



Textiles

Why it matters

The textiles industry has traditionally played a strong role in Belgium, and this continues to be the case. Carpets, fine linen and lace, textiles used for interior decoration or technical purposes and design clothing: these make up a large part of the exported textiles from Belgium. The focus on technological innovations and future competitiveness is high on the agenda for the Belgian textiles industry.

As an export destination, the UK continues to be a major trading partner for textile businesses. The UK accounted for **4.2% of all Belgian exports in 2016**². As a sector, it is one of the most exposed to Brexit, with more than 30% of the industry's exports of special woven fabrics, tufted textiles and lace going to the UK, and well over a quarter (27.8%) of all carpet exports. Brexit would be hitting a growth industry: the carpets industry has proven to be resilient and successful in the UK, with growth of approximately 16% in 2016.

Hence, Brexit has the potential to cause major disruption, particularly in Flanders, with textile associations (such as Fedustria and Creamoda) leading the way in voicing concerns.

What could change

Key issues for Belgian businesses active in the textile industry will be linked to a potential rise in tariffs, changes in customs processes and conditions. Customs compliance processes will have to be put in place, but many SMEs – and many of the businesses in the sector are SMEs - are unfamiliar with these as they may only have traded intra-EU up till now.

The **tariffs** which this industry potentially faces are significant. If trade reverts to WTO (MFN) tariffs, they would add an average of 10% to the cost of exporting to (or importing) from the UK. Traders between the UK and EU currently pay 0% duties, but under the WTO (MFN régime), tariffs for selected projects stand at the following rates:

- Carpets and other textile floor coverings: 8%
- Bed linen: 12%

Regulatory divergence is also a worry for the textiles industry. Areas where having the same regulation is important range from labelling to construction standards: these are important for carpets, for example. The EU will no doubt continue to develop rules on greater transparency in global textile supply chains. This includes imposing due diligence to ensure that suppliers comply with minimum labour standards. But the UK will not be obliged to continue on this path. The UK has a good track record in this area, but until the negotiations on a new trade deal are announced, it is unclear whether UK importers will be required to meet the same standards as Belgian companies, and whether trade diversion could be the result.



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In the case of Belgium, **5.8%** on average of the **financial services sector's imports originated in the UK**



How to prepare

Supervisors in the EU-27 and the UK will want to be assured that relocating firms have appropriate substance and risk management in place. It is likely that they will have a heavy workload as companies apply for new or converted licences. It is therefore advisable to engage with the supervisors and submit applications as soon as possible.

In addition, the presence of major Central Counterparty Clearing House (CCP) facilities in London potentially poses a dilemma once the UK is no longer directly regulated by the EU³⁸.^[4] Proposals have been made to place stricter requirements on the recognition and supervision of third-country CCPs, with a potentially significant impact on the conduct and location of euro-clearing activities. Were there to be a 'hard' Brexit with no EU decision on UK rules being equivalent, however, firms should prepare for access to market infrastructure to be significantly affected.

Financial services

Why it matters

As more foreign banks operate in the UK than in any other EU country, and more than half of the world's largest financial firms have their European headquarters in the UK, it is clear that Brexit is likely to have spillover effects in the rest of the EU. In the case of Belgium, **5.8% on average of the financial services sector's imports originated in the UK** in the period 2013-2015. The corresponding figure for insurance and pension funds was 3.6%³⁵.

What could change

The main concern of banks and other financial services firms is the extent to which market access rights will be lost because of Brexit, and the strategic and operational impacts linked to this. If UK financial sector companies lose their "passporting" rights, i.e. the right to offer services throughout the EU on the basis of their UK registration or licence, they will need to have fixed establishments in the EU. Some firms have already announced contingency plans for just that scenario, including a partial relocation to Belgium in some cases.

In selecting their preferred location, financial services firms are considering a number of parameters such as:

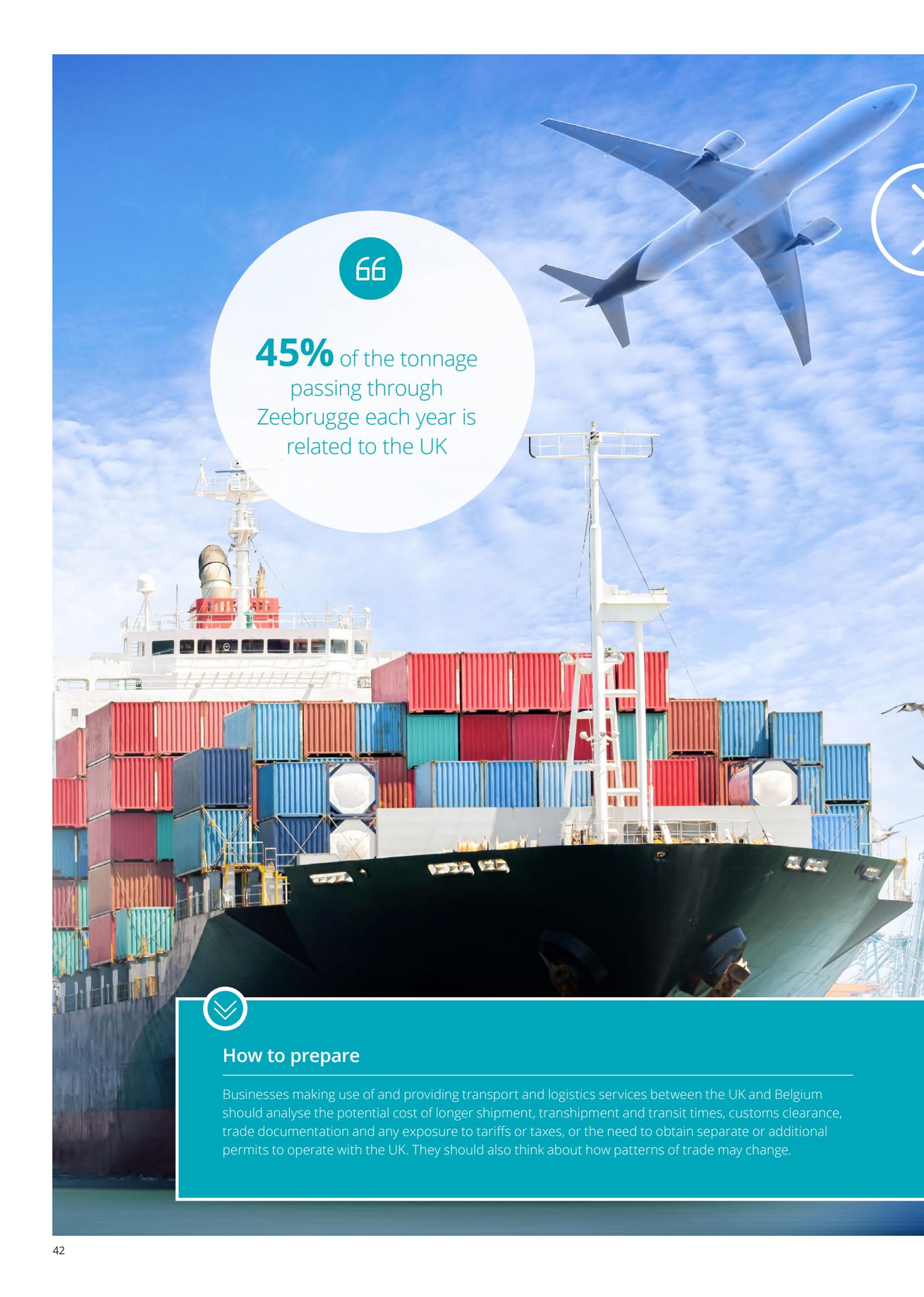
- the countries in which they are already present;
- the nature of their business, activities and clients;
- the possibility that national bilateral exemptions might be available as an alternative means of market access; and
- labour market rules and conditions in potential target locations.

In addition to thinking about location, firms are taking strategic decisions regarding legal entity structures, future business models, capital and liquidity impacts and resolvability.

The European Supervisory Authorities (ESAs) and the Single Supervisory Mechanism (SSM) are already preparing for (re-)location requests and have published their insights on Brexit and the impact on financial services firms³⁶. The European Insurance and Occupational Pensions Authority has done the same³⁷.

Brexit is likely - conversely - to have an impact on the degree and the way in which Belgian financial services firms will be able to provide services to clients in the UK. The UK's future inward authorisation framework for EU financial services firms that currently passport into the UK is likely to be a key topic in the negotiations.

In the event of a 'hard' Brexit, branches of Belgian financial services firms would no longer be properly licensed. They will either need to seek approval to become a third country branch or convert to subsidiaries. Regulatory approval would need to be granted in advance of the UK's withdrawal. Similarly, Belgian firms that are active in the UK through freedom of services rules will no longer be permitted.



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45% of the tonnage passing through Zeebrugge each year is related to the UK



How to prepare

Businesses making use of and providing transport and logistics services between the UK and Belgium should analyse the potential cost of longer shipment, transshipment and transit times, customs clearance, trade documentation and any exposure to tariffs or taxes, or the need to obtain separate or additional permits to operate with the UK. They should also think about how patterns of trade may change.

Transport and logistics

Why it matters

Through its transport and logistics industry, Belgium plays a key role in facilitating incoming and outgoing trade in the EU. This area encompasses rail, road, waterways, sea, air, pipeline operators and (from 2019) an electricity interconnector with the UK as well. According to Eurostat, there are more than 12,000 logistics services providers in Belgium.

The sea ports of Antwerp, Bruges, Ghent and Zeebrugge will all feel the impact of Brexit. By way of example, 45% of the tonnage passing through Zeebrugge each year is related to the UK³⁹. The ferry service to Hull carries well over 300,000 passengers annually. In tonnage terms, the UK is second only to the US in importance to the Port of Antwerp. Transshipment of containers of consumer goods to and from continental Europe is important to ports on both sides of the North Sea. Air freight is important to Belgium's trade in pharmaceuticals and Liège airport is a hub for e-commerce air freight. Post-Brexit, some form of customs clearance is likely to be needed and trade patterns could shift over time.

What could change

Potential changes as a result of differing UK regulatory frameworks post-Brexit could include:

- **Road transport:** EU cabotage rules currently allow non-resident hauliers to carry out goods on a temporary basis in (host) EU Member States, with some limitations. The fall-back position would be for trucks travelling between the EU and the UK to apply for International Road Transport Licences. Alternatively, a multilateral license for cabotage may provide a less convenient solution.
 - **Railways:** The EU Railway packages have opened up markets for passenger and freight transport, governance and procurement. The European Union Agency for Railways (ERA) is in charge of technical authorisations and safety certificates. Cross-channel passenger and freight rail transport will become more complicated if the UK were no longer part of this process.
- **Air transport:** UK airlines could lose the right to operate from other Member States on the basis of their UK licence. They would no longer be able to operate freely between any two points in the EU without one of those needing to be in the UK. The UK might no longer be part of the European Aviation Safety Agency (EASA), which ensures the safety of aircraft products for use and sale, and also ensures standards for environmental regulations. The UK would be outside the EU-US Open Skies Agreement which facilitates air cargo (and passenger) traffic.
- **Maritime transport:** Cabotage between UK ports by EU shipping lines may no longer be possible if the UK is no longer part of the internal market for maritime transport. The other regulatory implications are less direct, but if the UK drops out of the European Maritime Safety Agency, it will lose access to expertise on safety, security and pollution. Regulatory divergence in these same areas is likely.



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Belgium is the **sixth largest exporter of creative services** in the EU and the seventh largest importer.



How to prepare

Firms in this industry need to think about the importance to them of operating in the UK. This is a copyright-intensive industry, so a good understanding of how Brexit might affect clearance and registration is essential. Licensing is also particularly important to this industry, so it is crucial to monitor what rules will apply once the UK is outside the scope of the EU Interest and Royalties Directive and how the bilateral tax treaty with Belgium will apply instead.



The creative sector

Why it matters

Belgium is a major exporter of a range of creative services, and among these audiovisual services predominate. They account for **80% of Belgium's creative service exports** (and 90% of imports). Belgium is the sixth largest exporter of creative services in the EU and the seventh largest importer⁴⁰.

This is complemented by a strong export position as an exporter of audiovisual and interactive media goods⁴¹. The consequences of Brexit on this sector, and in particular the audiovisual sector could be significant as it could limit cooperation with one of the UK's fastest-growing sectors in an industry where co-production is critical to long-term success.

What could change

The easy hiring and movement of staff and provision of services on short-term assignments is critical to the audiovisual industry. Co-production deals are the norm for a small country like Belgium, with each backer specifying that a portion of the film be made or certain services provided in their country. Filmmaking thus consists of a series of short-term services from scouting for locations through to post-production. Being able to move people and equipment around for short periods with a minimum of paperwork is essential. Brexit could make working with the UK, and its major film industry, more complex. Shooting permits and work permits for crew and actors from elsewhere in the world could also then be needed in both the UK and the EU-27.

On the plus side, UK productions are likely still to fall under the rules in the Audiovisual Media Services Directive (AVMSD)⁴² on minimum levels of promotion of European works. For the purposes of the directive, European works are not just works originating in EU Member States, but also those from European States parties to the European Convention on Transfrontier Television of the Council of Europe. This includes the UK.

Broadcasting companies relying on the protection of this directive for a linear channel licence will face a problem in Belgium, however. In this case, the Council of Europe's Transfrontier Television Convention would apply instead of the AVMSD, but Belgium has not ratified this.

It is uncertain whether incentives to working with UK audiovisual companies will still be available under the EU Creative Europe Programme. There are non-EU countries which have access to the Programme's support for audiovisual productions and companies, but each country negotiates this specially with the EU.





Conclusions

Belgium's strong economic ties with the UK will make it one of the EU Member States most vulnerable to Brexit. Preparing for this uncertain future requires an in-depth and sector-specific look at possible implications.

Whereas most of the potential post-Brexit scenarios emphasise trade and customs implications, businesses should not overlook the impact of possible changes to **regulatory** frameworks in the UK post-Brexit, or the **tax, intellectual property and data** implications, and more broadly the fact that patterns of trade may change. Companies are well advised to think about new suppliers and/or markets to balance any disruption that Brexit might bring.

Contingency planning for Brexit requires a detailed supply chain perspective. Often, companies do not have a complete understanding of the sources and destinations of their incoming and outgoing goods and services. This means looking beyond the Brexit-readiness of direct supplier- and client-relations, and gathering data *on second and third tier relations*.

Deloitte's Brexit tools help to identify the most important issues and provide a starting point for informed discussions, priority-setting and potential decision-making.

As the exit of the United Kingdom from the EU comes nearer, business in Belgium cannot take the risk of being unprepared when Brexit actually happens. Although the Withdrawal Agreement foresees a transition period until 31 December 2020, failure to secure parliamentary ratification for the Agreement could mean a "no deal" Brexit and no transition period.



The recommended approach to Brexit contingency planning is hence to:

- understand your own relations with the UK;
- assess the impact of Brexit on your supply chain;
- analyse the resulting risks from your exposure to Brexit;
- plan for risk mitigation; and
- make sure your processes, systems and staff are ready for rapid reaction as soon as you reach your own deadline for decisions (which may be well before final clarity emerges from the political process).



Our approach combines several aspects:

- ongoing monitoring of developments;
- preparation of company-specific scenarios, with assessment of the likely implications for each scenario through impact-mapping;
- formulation of options to aid informed decision-making;
- being ready to execute the right option at the right time – and rapidly.

Contacts

For full details on Deloitte's Brexit services and how we can assist you, please contact your company's Deloitte adviser across our network of offices in Belgium.

Alternatively, email us at bebexitready@deloitte.com

End notes

- 1 https://www.abh-ace.be/sites/default/files/Statistics/Belgiums_foreign_trade/belgian_trade2017_low_def.pdf
- 2 https://www.abh-ace.be/sites/default/files/Statistics/Belgiums_foreign_trade/belgian_trade2017_low_def.pdf
- 3 <http://unctadstat.unctad.org/wds/TableViewer/tableView.aspx>
- 4 http://eur-lex.europa.eu/summary/glossary/withdrawal_clause.html?locale=en
- 5 Expected as of January 2018 to be around two years.
- 6 Iceland, Liechtenstein and Norway are part of the Single Market because they are part of the European Economic Area (EEA); Switzerland de facto mimics most of these arrangements through a series of bilateral agreements with the EU.
- 7 The TMEU has no role in personal taxation.
- 8 Extrapolated from figures for England and Wales (28,000) from the Office of National Statistics.
- 9 In some EU Member States, this could involve an obligation to surrender UK citizenship.
- 10 It took New Zealand more than two years, for example.
- 11 See: <https://ec.europa.eu/docsroom/documents/22382/attachments/3/translations/en/renditions/native>
- 12 Source: Flanders Investment & Trade, Bilaterale Handel Vlaanderen – Verenigd Koninkrijk (2016)
- 13 http://www.abh-ace.be/sites/default/files/Bilateral_notes/July_17/nota-stat-verenigd_koninkrijk-juni2017_version_a4_-_ld.pdf
- 14 World Trade Organisation
- 15 Most-Favoured Nation
- 16 Source: own research based on analysis by Deloitte Research
- 17 Source: own research based on analysis by Deloitte Research
- 18 Data from Econopolis study, source: Eurostat (average 2014-16)
- 19 Towards a Belgian Economic Brexit Strategy – Position of the Belgian Employers' Federations, Brexit High Level Group, January 2017, (PoV Essenscia, p. 56-59)
- 20 See 1
- 21 Brexit: Cefic calls for certainty for continued EU-UK trade, Cefic, Brussels, 29 March 2017, <http://www.cefic.org/newsroom/More-news-from-2017/Brexit-Cefic-calls-for-certainty-for-continued-EU-UK-trade/>, last visited 31 November 2017 (export/import numbers 2014)
- 22 Gross value added is defined as output value at basic prices less intermediate consumption valued at purchasers' prices, http://ec.europa.eu/eurostat/web/products-datasets/-/teina434_r2, last visited 31 October 2017
- 23 See 1
- 24 <http://www.vbo-feb.be/globalassets/actiedomeinen/europa/europa/high-level-group-stelt-brexit-aanbevelingen-voor/20170129-brexit-rapport-nl-final.pdf>; including life sciences
- 25 See 6
- 26 <http://www.cefic.org/Documents/RESOURCES/PositionPapers/Cefic-CIA-joint-statement-on-Brexit-and-the-future-November2017.pdf>

- 27 REACH, European Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals, https://ec.europa.eu/growth/sectors/chemicals/reach_en, last visited 31 October 2017
- 28 EFPIA, 2015 figures. Figures include the UK.
- 29 Pharma.be
- 30 <http://www.oecd.org/innovation/inno/keybiotechnologyindicators.htm>
- 31 Average: 2013-2015; See 15
- 32 It is worth noting that the European Patent Office is not an EU institution, so the use of the EU biotech directive as a basis for biotech patent rulings should not be affected.
- 33 Figures include tobacco.
- 34 When quantities inside a quota are charged lower import duty rates, than those outside (which can be high): WTO definition; https://www.wto.org/english/thewto_e/glossary_e/glossary_e.htm.
- 35 http://www.krispeeters.be/sites/default/files/20170129%2520Brexit%2520rapport%2520NL.final_.pdf
- 36 ESMA General Principles to support supervisory convergence in the context of the UK withdrawing from the EU; Opinion of the European Banking Authority on issues related to the departure of the United Kingdom from the European Union; ECB Brexit: How the authorisation process in the euro area works in practice; Brexit: an ECB supervision perspective
- 37 <https://eiopa.europa.eu/Publications/Opinions/EIOP>; EIOPA Opinion on supervisory convergence in light of the United Kingdom withdrawing from the European Union; A-BOS-17-141%20Opinion_Supervisory_Convergence.pdf
- 38 <https://www.ecb.europa.eu/press/key/date/2017/html/ecb.sp170620.en.html>
- 39 <https://www.portofzeebrugge.be/en/port/facts-and-figures>
- 40 UNCTAD creative economy statistics.
- 41 http://uis.unesco.org/sites/default/files/documents/the-globalisation-of-cultural-trade-a-shift-in-consumption-international-flows-of-cultural-goods-services-2004-2013-en_0.pdf
- 42 This is true in early 2018, but the Directive is currently under revision, including the country of origin provisions. The revision could also introduce rules on video-on-demand (VOD) at EU level for the first time.



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