

# THE VIEW FROM BRUSSELS: THE EUROPEAN COMMISSION'S NEW READINESS NOTICES

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Legal Briefings

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During the negotiations for the Withdrawal Agreement, much attention was paid to the need to prepare for a no-deal Brexit – where trade with the EU would no longer benefit from all the facilitations made possible by the Single Market, but would be governed by WTO rules only. Both the [European Commission](#) and the [UK Government](#) issued large numbers of sectoral “preparedness notices” warning participants of the consequences of a no-deal Brexit and insisting on the need for all operators to prepare for this eventuality. Towards the end of the negotiations, there was also a flurry of autonomous “[mitigation measures](#)” in particular from the EU endeavouring to mitigate temporarily some of the most disruptive changes where this was judged to be in the interests of the EU. For example, UK airlines were to be allowed to continue to operate flights into and out of the EU for one year, but no flights between EU Member States.

Since the conclusion of the Withdrawal Agreement, attention has turned to the negotiations of the future relationship between the EU and the UK which is to apply from the end of the transition period. However, there is also a risk of the UK exiting the transition period without an agreement on the future relationship. In that case, the consequences will be to some extent the same as for a failure of the negotiations on a Withdrawal Agreement.

In this View from Brussels, we look at these consequences and how they may be addressed.

## THE IMPACT OF THE WITHDRAWAL AGREEMENT

The EU took the view early on that the Withdrawal Agreement could not provide for the future trading relationship between the parties. Accordingly, while the Withdrawal Agreement maintains the UK in the Single Market during the transition period and contains certain limited “separation provisions” that clarify the status of certain situations that are ongoing at the end of the transition period, the future relationship is only dealt with in the non-binding Political Declaration (except in respect of Northern Ireland). The separation provisions regulate, for example, the fate of legal and administrative proceedings ongoing at the end of the transition period and the continuation of certain outstanding intellectual property rights. As regards trade, the most important separation provision is Article 41 which provides that any goods (except animal and plant products) already on the EU28 market at the end of the transition period can continue to benefit from free movement between the EU27 and UK markets thereafter – so, in particular, no duties will be payable. “Placed on the market” is widely defined and can also cover a contract to buy goods that remain with the seller until long after the end of the transition period. A person seeking to rely on this provision will have the burden of proving his entitlement.

Inconsistently with the EU position that the Withdrawal Agreement could not provide for the future trading relationship between the parties, the Withdrawal Agreement did regulate the future of trade between the EU and Northern Ireland. The objective was to avoid the need for controls on the border between Ireland and Northern Ireland and the effect is, practically, to maintain Northern Ireland within the Single Market. This will lead to multiple legal difficulties as can be seen in this Commission [Technical Note](#).

## **THE COMMISSION’S READINESS NOTICES**

The EU Commission has been gradually replacing its Brexit preparedness notices with what it now calls “[readiness notices](#)”. These are more elaborate than the preparedness notices that they replace and describe not only the consequences of a failure to agree a future relationship with the UK by the end of the transition period, but also certain consequences of withdrawal that will arise whether or not there is an agreement. The readiness notices have a number of common features:

- They are addressed primarily to stakeholders and seek to provide useful and practical advice, for example, on transferring certificates from a UK to an EU authority. The former preparedness notices were less helpful and insisted on the responsibility of operators to prepare.
- The readiness notices are more elaborate and detailed and take into account the legislative and regulatory changes made by the EU in the interim and, in particular, the instances where EU law has been adapted to take account of UK withdrawal.
- Generally, the readiness notices contain a section on the implications of the separation provisions of the Withdrawal Agreement to the sector under discussion, often describing the application of Article 41 discussed above.

- Most readiness notices contain a section discussing the treatment of Northern Ireland after the transition period ends. In almost all cases, the EU is defined to include Northern Ireland and the UK is defined to exclude Northern Ireland (and is referred to as “Great Britain”).
- It is generally in areas where safety is an issue, such as aviation, medicines and food, that the most updating has occurred. This is both because legislative and regulatory changes have been made to take account of UK withdrawal and also because new potential problems have come to light that the notices attempt to resolve.

There are a number of entirely new notices such as one on delivery of goods ordered online and organic foods. However, many notices have not yet been issued (judging from the range of preparedness notices that were issued). More are surely to be expected.

One major omission is guidance on customs formalities, duties and tax. There is a readiness notice on the consequences of UK withdrawal for the administration of VAT. However, even more difficult issues may arise for customs and other taxes.

The readiness notices make no mention of possible future [autonomous mitigation measures](#) of the kind that were adopted during the negotiations on the Withdrawal Agreement. The situation will be less dramatic than during the Brexit negotiations since the transition period has been used to provide most of the necessary adaptations. One may expect, however, that some autonomous mitigation measures will be adopted on both sides where this is in their interests, if it becomes clear towards the end of the year that there will be no agreement on the future relationship.

[More on Brexit](#)

## KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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