Draft Brexit deal: Implications for business

KPMG summary and analysis

Friday 23 November 2018

Overview

- On 14 November the UK Government and the European Commission published a 585 page **Draft Agreement on the UK's withdrawal** (DWA) from the EU
- On 22 November 2018, a twenty six page political declaration setting out the **framework for the future relationship** between the EU and the UK was published.
- The EU Commission also issued a **Contingency Action Plan** on 13 November (but with far less fanfare than the DWA). It contains details on how the EU will seek to mitigate some of the "cliff edge" effects that could arise in the event of a no deal Brexit. **In the event of a no deal scenario, the Commission has stated that it will not take steps to mitigate effects that arise as a result of a lack of preparedness.**
- The following pages are aimed at providing a **headline summary and analysis of the three documents**, offering a view from our experts on how the three papers could affect your business should they come into force.
- There are **still a number of hurdles that need to be cleared** before now and March 2019. This includes ratification of the deal by EU leaders, by the UK Parliament through a 'meaningful vote' and the passage of a Bill, as well as approval by the European Parliament and the European Council. A summary of the ratification process and estimated timings is included in this document.
- **Political events are moving rapidly. Please note the date on the face of the document.**. This note is not intended as a commentary on the political position or the likelihood of the DWA clearing future hurdles and taking effect.
- The full documents can be found here:
  - Draft Withdrawal Agreement
  - Political declaration on the future relationship
  - Commission Action Plan

Overview

Brian Daly, KPMG Head of Brexit in Ireland, commented

"The draft Withdrawal Agreement text and Political Declaration are major steps forward in the construction of a Brexit deal.

Whilst sub-optimal to the status quo, the DWA is a better outcome for many businesses than a No Deal exit. One of its most important attributes is that it allows for a transition period in which nothing will change for business, and it allows both parties more time to work out their future relationship.

For trade in goods, the proposals create a path to what might be described as a "softish" Brexit, i.e. one without customs duties but not one with frictionless trade. For regulated services, including financial services, the post transition framework could require significant changes to be made to existing business models.

There remains a hard road to travel before a No Deal exit is avoided, and our clients are under no illusions about the challenges that lie ahead and the potential for an impasse being reached.

Until there is broader political alignment and fewer risks, business leaders will have to deal with the prospect that a No Deal outcome could yet occur.

In this context, businesses should take account of EU Commissions Contingency Action Plan which outlines special measures to mitigate a "cliff edge", including in relation to citizens' rights, financial services (derivative contracts, and settlement of trades by central clearing depositaries), air transport, data privacy and the movement of animals and agricultural products."

Brexit timeline: Key dates

25 Nov

EU Summit

EU heads of government due to meet to give approval to the DWA and political declaration.

Early Dec

Stepped up plans for no deal

UK officials say if the UK fails to sign a formal treaty text with the EU by this date, they will need to trigger many of the contingency plans for a no deal Brexit.
in early 2019.

Early Dec?

House of Commons approval

It is a legal obligation under the UK's 2018 EU (Withdrawal) Act, that a 'meaningful vote' must take place before the European Parliament decides whether it consents to the withdrawal agreement being concluded on behalf of the EU.

13 - 14 Dec

Last European Council of 2018

Seen as the latest practical date for a Brexit deal to be 'signed off' by Britain and the EU. For an agreement to be reached, the withdrawal treaty text needs to be backed at the EU summit by a supermajority of leaders of Member States (at least 20 of 27 EU countries).

21 Jan

No Deal Benchmark

This is the date passed into UK law as the reference point for a no deal. According to the EU Withdrawal Act, if no deal with Brussels has been reached by this time, a government minister must set out within five working days how the government plans to proceed and to make arrangements for a House of Commons vote.

Jan - Feb

Deal passed into UK law

If, the UK Parliament approves a Brexit deal the government will put forward the EU (Withdrawal Agreement) Bill. This will pass into law some of Brexit's biggest issues, such as the agreement on citizen's rights, the financial settlement and the details of the transition.

Until 29 Mar

EU Ratification

The Brexit deal cannot take effect until it is approved by the European Parliament in a plenary vote.

29 Mar

Brexit day

If the Withdrawal agreement is concluded, the implementation period begins on 30 March 2019.
If the Withdrawal Agreement is not concluded or Article 50 is not extended, a no deal Brexit occurs on 29 March 2019.

30 Mar Onwards

Brexit

Under the deal reached in principle in 2018, this is when the 21-month transition period begins. During this time most aspects of UK membership of the EU will remain in place, including free movement across borders and membership of the customs union and single market.

31 Dec 2020

An End to Transition?

Brexit interventions - Possible Scenarios & Timelines

A UK General Election?

1. The next general election is currently scheduled for May 2022, five years after the previous general election as per the Fixed-term Parliaments Act 2011.

2. There are **two ways** in which an early general election can be held:

- **A motion of no confidence** can be initiated by the government or the opposition under a simple majority. If the motion is passed, there are 14 days for a new government to gain the confidence of parliament, if not a general election is held.
- **At least two thirds of the House of Commons** pass a motion calling for an early general election.

3. Parliament must be dissolved 25 working days before polling day; the latest parliament can be dissolved in order for the Withdrawal Agreement to be agreed by a new government by 29 March 2019, is **14 February 2019**.*

*This date is technically the latest date on the basis of minimum timeframes recommended per House of Commons Procedure Committee, Motions under section 13(1) of the European (Withdrawal) Act 2018 and UK Parliaments Act 2011 to allow for debate and appropriate procedures to be followed.

A Further UK Referendum?

1. Parliament votes to hold a referendum.

2. The Electoral Commission is required to scrutinise the wording and publish a statement on its intelligibility. **The Electoral Commission suggest a 10-week campaign period and a 6-month gap between the passing of referendum legislation and the vote taking place*.**

3. An act is passed providing details of the date of the referendum, the question, conduct rules, the threshold (such as a percentage of the electorate or a qualified majority) and whether it is pre-legislative, where the result can be a mandate for the government to proceed with an aim, or post-legislative where if the referendum result is in favour of legislative changes, they are made without further recourse to government.

4. There is a statutory 28-day period, the bare minimum permitted, absent of new legislation, before the referendum vote, known as 'purdah' when restrictions on the activities of government departments and civil servants apply.

*Even if timelines can be compressed a second referendum at this point would likely require an extension to the 2 year Article 50 window requiring approval of all 27 EU Member States

Transition and backstop

The transition period

What is it?

Under Article 127 of the DWA, *"During the transition period, the Union law applicable……..shall produce in respect of and in the United Kingdom the same legal effects as those which it produces within the Union and its Member States, and shall be interpreted and applied in accordance with the same methods and general principles as those applicable within the Union."*

The transition period will run from 23:00 GMT on 29 March 2019 to 23:00 GMT on 31 December 2020.

The UK and EU may agree to a single extension to this transition period and, if so, would need to do so before 1 July 2020.

What does it mean?

"During the transition period from the moment of Brexit on 29 March 2019 to 31 December 2020 (or possibly longer), the UK will continue to participate in the EU Customs Union and Single Market (so essentially no change to the current position).

However, the UK will have no role in EU decision making, etc. but may be invited to participate in certain projects as a third country.

European agencies located in London will be moved to remaining EU Member States.

The future trading relationship with the EU is intended to be agreed before the end of the transition period and should cover the areas listed in the Political Declaration.

The backstop

What is it?

Article 1(3) of a specific Protocol in the DWA on Ireland and Northern Ireland *"sets out arrangements necessary to address the unique circumstances on the island of Ireland, maintain the necessary conditions for continued North-South cooperation, avoid a hard border and protect the 1998 Agreement in all its dimensions."*

This is referred to as the "backstop" or the insurance policy which will only come into force if no agreement is reached by the end of the transition period (including a possible extended period) on a future UK-EU relationship which achieves the same objectives as the backstop.

The backstop will apply until such time as it is jointly agreed by the EU and the UK that it is superseded.

The political declaration states that "*facilitative arrangements and technologies will also be considered in developing any alternative arrangements for ensuring the absence of a hard border on the island of Ireland on a permanent footing."*

How will the backstop work?

- **A single EU-UK wide customs territory will be put in place** so as to avoid the need for tariffs, quotas or rules of origin checks between the UK and the EU (some exceptions for fishery and aquaculture products).
- **NI businesses will not face restrictions when placing products on the EU's single market.**
- **There will be an agreed set of measures to ensure a level playing field** between the EU and UK, including competition, State aid, taxation, environment and labour policy.
- The UK will harmonise its commercial policy with the EU's common commercial policy to the extent necessary for the functioning of the single customs territory.
- The Union shall apply its trade defence policy and Generalised System of Preferences to both parts of the single customs territory
- In addition, NI would remain aligned to a limited set of EU rules related to the single market, including legislation on goods standards, sanitary rules for veterinary controls, rules on agricultural production / marketing and VAT and excise in respect of goods.

Impact on Northern Ireland

Johnny Hanna, Head of KPMG Belfast Tax, commented

- "The Protocol sets outs the UK's commitment to no diminution of rights as set out in the Good Friday (Belfast) Agreement and provides for the continuation of the Common Travel Area, the preservation of the Single Electricity Market on the island of Ireland and ensures the necessary conditions for maintaining North South cooperation.
- For certain businesses in Northern Ireland (NI), they are being presented with what might be described as the best of both worlds by virtue of being considered in many respects to be in both the UK and EU. The backstop may offer certain benefits (in terms of less frictionless trade) relative to GB and Irish businesses supplying goods into the EU and GB markets respectively, given that NI would have unfettered access to both markets.
- While NI businesses will have unfettered access to the Great Britain (GB) market under the backstop (if introduced) this is not the case for GB businesses selling into NI and in the case of certain products (e.g. animals and foodstuff) there will be a need for regulatory compliance checks. While these are expected to be fairly straightforward for industrial goods, taking place either in the market or at a traders premises, there is likely to be increased checks (over and above those currently taking place) for agricultural products at ports and airports."

VAT & Customs Under the Withdrawal Agreement

VAT and Customs	Commentary
(From the draft Withdrawal Agreement) Under the Withdrawal Agreement the status quo will continue from a VAT and Customs perspective until the end of the transition period (31 December 2020 unless extended).	**Glenn Reynolds Partner - KPMG Customs team** "In the event of a no deal scenario, there will be a significant VAT and customs cost for businesses engaged in cross-border trade from 29 March 2019, as well as significant non-tariff barriers. **During the transition period, the status quo should remain** in terms of trading with the UK from a Customs and VAT perspective allowing frictionless trade between the EU and the UK to continue. The backstop guarantees the free circulation of goods between the UK and the EU from a customs perspective if the transition period ends with no agreement reached on the future trading relationship between the EU and UK. There will be no tariffs levied on movements of goods between the UK and the EU – an outcome which is closely in line with what UK and EU businesses have been looking for. **In terms of the ongoing relations, the future relations document clearly sets out an ambition for a close future relationship. If these aspirations become reality, the EU and UK would enjoy the closest relationship for trade in goods between the EU and any third country.** However, as the UK will have less access to the Single Market from the end of the transition period, regulatory checks may yet be required on trade between the two under a new future relationship agreement. If so, it will be important that any such checks are carried out away from the border, for example at the factory gate. If not, border friction will occur. It is unclear how checks for certain products moving from Britain to Northern Ireland will be conducted in practice under a new future relationship agreement or indeed under the backstop should it apply. There is also the question of what additional infrastructure may be needed to conduct such checks. **A new VAT Regime will apply to trade between the EU and mainland UK post the end of the transition period.** This may require import VAT declarations and import VAT payable at the point of entry of goods into Ireland (and other EU Member States) unless a "reverse charge" VAT accounting mechanism is introduced similar to the procedure proposed for the UK. **The measures specific to Northern Ireland under the backstop should allow for frictionless trade to continue between Northern Ireland and the Republic of Ireland as well as between Northern Ireland and other EU Member States.** Northern Ireland will also remain as part of the UK's VAT area allowing for unfettered trade between Northern Ireland and mainland UK.
(From the draft Withdrawal Agreement) Unless the future trading arrangement between the EU and the UK has been agreed, as a backstop a new single customs territory between the EU and the UK (including Northern Ireland) will be established when the transition period (including any extension) ends.	
(From the draft Withdrawal Agreement) With the single customs territory, goods imported, obtained or produced in the UK will be deemed to be in free circulation in the EU from a Customs perspective. Reciprocally, goods imported, obtained or produced in the EU will be deemed to be in free circulation in the UK from a Customs perspective.	
(From the draft Withdrawal Agreement) After the transition period ends the UK will no longer be part of the EU VAT area and will not be subject to EU VAT rules. Northern Ireland will also remain part of the UK's VAT area. However, under the backstop additional measures will apply to Northern Ireland in order to maintain a frictionless border with the Republic of Ireland. In this regard, Northern Ireland will stay aligned to EU Customs rules and the EU's VAT and excise rules relating to goods, as well as maintaining specific regulatory alignment with the EU.	
(From political declaration on future relations) Comprehensive arrangements creating a free trade area combining deep regulatory and customs cooperation, underpinned by provisions ensuring a level playing field for fair competition.	

People, mobility and citizen's rights

Summary	Business implications
EU citizens already in UK will have the opportunity to retain existing rights and settled status	**Aoife Newton, Director, Legal Services, Corporate Immigration and Employment Law** "Agreement has been reached over the status of citizens on both sides up to the end of the transition period. **For EU nationals coming to the UK and British citizens going to the EU, nothing changes between now and 31 December 2020 meaning businesses will be able to continue to recruit on the basis of free movement rules.** The Common Travel Area, and associated rights between the UK and Ireland will continue to operate and apply to Irish and UK nationals. Therefore Irish nationals can continue to enter and work in the UK, and vice versa, without restriction. **The UK will introduce a mandatory registration scheme for EU26 nationals living in the UK ("the Settlement Scheme"). Employers need to ensure that their employees are informed of, and make an application under this scheme.** **The Settlement Scheme is more favourable to EU26 nationals than equivalent requirements under EU Law.** For example, a person applying for Settled or Pre-Settled Status under the scheme, simply has to prove that they are resident in the UK by 31 December 2020, rather than proving that they were economically active or self-sufficient, as is the case under free movement legislation. We note that the Irish Government is investigating whether to introduce a registration scheme for British citizens in Ireland, however that scheme is less developed than the UK's Settlement Scheme and more will be known about it in or around April 2019. In relation to mobility from 1 January 2021 onwards the UK policy is that free movement will end. The UK Migration Advisory Committee released a report in September 2018 in relation to migration from the European Economic Area (EEA), which is currently the basis for the UK's post transition period immigration system. The report recommends that going forward "*there should be a less restrictive regime for higher-skilled workers than for lower-skilled workers in a system where there is no preference for EEA over non-EEA workers".* The only exception envisaged for low-skilled workers on a sectoral basis is for "*a seasonal agricultural workers scheme*". The report anticipates that shortages in the supply of low-skilled workers will, in part, be addressed as a result of migrants that have a right to come to the UK as result of family ties. In practice, it is unlikely that such migration will be sufficient to meet the needs of many UK businesses that rely on low-skilled migrants. **Employers in both Northern Ireland and the rest of the UK will therefore likely face obstacles recruiting unskilled workers going forward and should now take measures to reduce the risks of labour shortages in 2021**, including ensuring that employees from other EU Member States are aware of, and encouraged to apply for, the Settlement Scheme described above." **For a full explanation of the implications, see Appendix 1**.
EU citizens arriving "before the end of the transition period" will have the right to apply for settled status	
Professional qualifications gained before the end of the transition period will continue to be recognised by respective Member States. Cooperation is encouraged for pending applications. No details on future recognition system.	
A person taking advantage of EU Social Security coordination before the end of the transition period can continue to do so post-transition.	
Freedom of movement will continue until 31 December 2020. Thereafter, it is proposed that the UK and the EU will have visa-free travel for short trips for business or tourism.	

Financial Services

Summary	Business implications
(**From political declaration on future relations**) Commitments to "preserving financial stability, market integrity, investor protection and fair competition, while respecting the Parties' regulatory and decision-making autonomy, and their ability to take equivalence decisions in their own interest. This is without prejudice to the Parties' ability to adopt or maintain any measure where necessary for prudential reasons."	**Darina Barrett, Head of Financial Services** "**The declaration on the future relationship envisages giving the UK only a basic level of access to the EU's financial markets**. It is not what everyone hoped for, but it is similar to that enjoyed by US and Japanese firms at the moment. The proposal is based on the EU's existing system of equivalence – it is not the enhanced equivalence or mutual recognition that the UK government previously proposed and which would provide greater access and more certainty for all market participants. These three short bullets commit to maintaining financial stability, market integrity, investor protection and fair competition, but see a future where the UK and the EU have regulatory and decision making autonomy and are able to act in their own interest. The future relationship for financial services must be about mutual equivalence given there are 8,000+ 'inbound passports' from EU27 entities to the UK and around 4,000+ 'outbound passports' from UK entities operating in the EU27. This seems to be recognised with reference to equivalence assessments by both Parties commencing as soon as possible. Sensible calm heads need to prevail in order to create an outcome that benefits the UK and EU businesses who are the ultimate users of financial services and are the ones that will otherwise have to bear the costs. Immediate market reaction is muted – the importance of financial services is acknowledged by its inclusion in the declaration on the future relationship, **but this is not enough for the financial services industry to begin changing course and it will continue to prepare for the loss of financial services passports. The transition period would push the date out from March 2019 to December 2020, but with the uncertainty of the deal being ratified, our clients continue to prepare for March 2019 as the critical date**. The industry will welcome the transition period when it becomes legally binding. Any future 'constructive talks' on equivalence between the EU and the UK will have much broader significance for countries including the US and Switzerland. The EU will be mindful of their third country precedents as evidenced by the 12 month period granted to the Swiss Stock Exchange post MiFID II."
(**From political declaration on future relations**) Commencement of equivalence assessments by both Parties as soon as possible after the United Kingdom's withdrawal from the Union, endeavouring to conclude these assessments before the end of June 2020.	
(**From political declaration on future relations**) Close and structured cooperation on regulatory and supervisory matters in their mutual interest, grounded in the economic partnership and based on the principles of regulatory autonomy, transparency and stability, recognising this is in the Parties' mutual interest.	
(**From EU Commission Action Plan for no deal**) "As regards cleared derivatives, it appears that there might be risks to financial stability in a no deal scenario, deriving from a disorderly close out of positions of EU clearing members in the UK central counterparties. There might also be potential risks in relation to certain services provided to Union operators by UK central security depositories which cannot be replaced in the short-term."	"The Commission Action Plan notes that the existing systems of equivalence provide appropriate tools, which can be swiftly deployed but the Commission will only act to the extent necessary to address financial stability risks arising from a no deal Brexit, under strict conditionality and with limited duration. **Should no agreement be in place, the Commission will adopt temporary and conditional equivalence decisions in order to ensure that there will be no disruption in central clearing and in depositaries services**. These decisions will be complemented by recognition of UK-based infrastructures, which are therefore encouraged to pre-apply to the European Securities and Markets Authority (ESMA) for recognition. **This is a positive step, not just in terms of derivatives contracts, but also for Irish shares and Exchange Traded Funds cleared by UK based clearing systems."**

Data

Summary	Business implications
(From the draft Withdrawal Agreement) Personal data of non-UK data subjects collected before the end of transition will be protected in the UK. If the EU doesn't issue a decision that the UK provides adequate protection from personal data, then EU laws (including GDPR) will apply. Personal data of UK data subjects will continue to be protected under EU law (including GDPR). (**From political declaration on future relations**) EU decision on adequacy of UK protection due before end of 2020.	**Aisling Brennan, Associate Director, Legal Services** "It is of the upmost importance that businesses based in the EU have an ability to transfer personal data within the EU and internationally in order to function in the digital economy. **Under the DWA the UK will continue to apply certain EU law, including GDPR rules until the end of the transition period in December 2020.** The political declaration on the future relationship signals that the UK will take steps to ensure equivalent protections of personal data post the end of the transition period to enable data to move freely between the EU and the UK in the future. **It is envisaged that the EU will adopt a "data adequacy decision" in respect of the UK before the end of 2020**. It should be noted that EU data adequacy decisions are reviewed every four years and hence businesses will need to continue to monitor developments in this area in the future."
(**From EU Commission Action Plan for no deal)** The European Commission's Contingency Action Plan states that in a no deal scenario the UK will become a "third country" on 30 March 2019 and all EU primary and secondary legislation will cease to apply to the UK from that date.	**"If there is a no deal Brexit, the transfer of personal data by Irish entities to the UK will be considered 'international transfers' within the meaning of the GDPR rules** and appropriate safeguards (EU Commission's approved standard contractual clauses, binding corporate rules and certain other administrative arrangements) will be required to be implemented between these UK and Irish entities prior to these international transfers being completed. **This may cause disruption where businesses are not prepared for a no deal Brexit and may delay such transfers until the appropriate safeguards are in place**. In light of this, we urge Irish businesses to keep preparing for a no deal Brexit so as to ensure minimal disruption."

Energy

Summary	Business implications
(**From the Draft Withdrawal Agreement protocol on Ireland**) The provisions of Union law governing the Single Electricity Market on the Island of Ireland shall apply to and in the United Kingdom in respect of Northern Ireland. (**From political declaration on future relations**) Framework to facilitate technical cooperation between electricity and gas networks operators and organisations in the planning and use of energy infrastructure connecting the Parties' systems, and mechanisms to ensure security of supply and efficient trade over interconnectors over different timeframes. Consideration of cooperation on carbon pricing by linking a United Kingdom national greenhouse gas emissions trading system with the Union's Emissions Trading System.	**Mike Hayes, Global Head of Renewables, KPMG and Energy and Natural Resources Leader in Ireland.** **"The DWA confirms that the UK and Ireland are committed to maintaining the Single Electricity Market in Ireland. While not mentioned in the Commission's contingency Action Plan for a no deal scenario, the Irish government and the UK government have both previously committed to maintaining the Single Electricity Market across the Island of Ireland so it is hoped that even in the event of a no deal scenario it will continue."** The key point is that the agreement confirms that UK will stay in Internal Energy Market until the end of the transition period, removing the 'cliff edge' risk. Assuming it gets agreed, then gas and electricity should continue to flow as normal through the Interconnectors post March 2019.
(**From political declaration on future relations**) Wide-ranging Nuclear Cooperation Agreement between the European Atomic Energy Community (EURATOM) and the United Kingdom, underpinned by commitments to existing high standards of nuclear safety. Timely reassessment of authorisations and EURATOM Supply Agency approvals of contracts for the supply of nuclear material. Cooperation through the exchange of information on the supply of medical radioisotopes.	The agreement also covers the safeguards being put in place on nuclear post the UK's withdrawal from the Euratom Treaty. **"However, bigger questions remain about the longer term arrangements, including whether the UK is, or is not part of the EU Emissions Trading Scheme post 2020 (the end of phase 3)."**
(From EU Commission Action Plan for no deal) "For the EU Emissions Trading System, the Commission will closely monitor the proper functioning of the system in the withdrawal context."	"The Action Plan notes that in a no deal scenario the Commission will take the necessary steps to preserve the integrity of this mechanism, including through the possible temporary suspension of auction and free allocation/exchange processes in relation to the United Kingdom. The Commission will also amend annual quotas for fluorinated greenhouse gases to take account of the UK no longer being a part of the EU. **For companies that buy or sell emissions allowances, the effective removal of the UK from the market may have an impact on costs for EU businesses."**

Air and Road Transport

Summary	Business implications
Air Transport (**From political declaration on future relations**) Comprehensive Air Transport Agreement, covering market access and investment, aviation safety and security, air traffic management and provisions to ensure open and fair competition. (**From EU Commission Action Plan for no deal**) The Action Plan will propose measures to allow UK flights to continue to be able to land in the EU and fly back to the UK and to ensure continued validity of aviation safety certificates for a limited time period, provided the UK reciprocates on all these matters.	**Tom Woods, Head of Aviation Finance and Leasing** "It is welcomed that the political declaration on future relations envisages a comprehensive agreement that will hopefully see air transport between the UK and the EU continue in much the same way as it does currently. **The comments in the Commission's Action Plan are also welcomed and assuming the UK reciprocates such measures, they will be an important element of mitigating some of the "cliff edge" effects of a no deal Brexit."**
Road Transport (**From political declaration on future relations**) "*Comparable market access for freight and passenger road transport operators.*" (**From EU Commission Action Plan for no deal**) "Regarding road transport, in case of no deal scenario, as of the withdrawal date, UK hauliers would have market access rights limited to the permits offered under the European Conference of Ministers of Transport (ECMT) which would allow for considerably less traffic than what currently takes place between the Union and the United Kingdom."	**Glenn Reynolds Partner - KPMG Customs team** **"While it is welcomed that the political declaration on the future relationship seems to envisage UK and EU road transport operators having substantial access to each others markets, the backstop includes no road transport agreements in respect of the movement of goods to the continent and the Commission's Action Plan does not suggest potential measures to mitigate the disruption that could be caused in this area in the event of a no deal scenario.** Many businesses operating in Ireland use the UK as a land bridge to continental Europe – the Action Plan does not comment on whether it would work with the UK to ensure continued access for Irish importers / exporters or how long it would take for any agreement to come into effect."

Sanitary & Phytosanitary issues and support for Ireland

Summary	Business implications
Sanitary/phytosanitary requirements (**From EU Commission Action Plan for no deal**) "On the basis of the EU veterinary legislation, the Commission will – if justified – swiftly 'list' the United Kingdom, if all applicable conditions are fulfilled, so as to allow the entry of live animals and animal products from the United Kingdom into the European Union."	**David Meagher, Head of Agri-business** "This is important for agri-business in the event of a no deal scenario. The Action Plan, however, does note that even if such steps were taken, Border Inspection Posts would be required. As such, it would be unlikely that there would be frictionless movement at the border and hence there would likely be a significant impact for businesses operating in the sector."
Support for Ireland (**From EU Commission Action Plan for no deal**) "The withdrawal of the United Kingdom from the EU will impact all Member States to varying degrees, but none more so than Ireland. On the basis of the principles described above, the Commission stands ready to support Ireland to find solutions addressing the particular challenges"	**Brian Daly, Head of Brexit** "While Ireland is specifically mentioned in the Action Plan, it does not contain special provisions to prevent a "hard border" on the island of Ireland. The Action Plan references a number of tools at the disposal of Member States in mitigating the impact of Brexit within the constraints of existing EU rules, stating that **the Commission commits to "*finding solutions addressing the specific challenges of Irish business*" and "stands ready to support Ireland to find solutions addressing the particular challenges.** In the event of a no deal scenario, the Commission has stated that it **will not** take steps to mitigate effects that arise as a result of a lack of preparedness."

Appendix

Appendix 1: People, Mobility and Citizens Rights

Implications for employers, Aoife Newton

On 14 November 2018, the EU and UK published the latest version of the Draft Withdrawal Agreement (the "DWA"). It indicates that agreement has been reached over the status of EU nationals in the UK and British citizens in the EU who reside in one or the other before 31 December 2020, the end of the transition period between the UK leaving EU and the new terms of the EU/UK relationship coming into force.

Although the DWA is a draft agreement, and will only come into force after approval by the UK and EU, it is indicative of the position that both the EU and UK may take unilaterally in a "No Deal" scenario.

This Appendix looks at the impact of the DWA from the point of view of EU nationals in the UK, travellers, and recruitment in the Post Brexit immigration system.

1. EU nationals in the UK

There is no change in rights for those who arrive (or have arrived) in the UK between 29 March 2019 (the date of "Brexit") and 31 December 2020 (the end of the transition period).

They will have the right to remain in the UK and apply for "Settled Status" after five years. Once they have "Settled Status" they can be outside the UK for up to five years (instead of the current two years) before losing this status. Therefore, employers will be able to send employees with "Settled Status" abroad on secondment for longer periods than before.

The UK has confirmed that EU nationals in the UK will not be asked to leave, even in a "No Deal" scenario. However, every EU26 national will be required to make an application under the Settlement Scheme to provide evidence of their right to live and work in the UK.

2. People crossing the UK/EU border

Travelling to the EU26

The EU Commission's Contingency Action Plan provides that in a no deal scenario British citizens will not require a visa to enter an EU26 country for a period of up to 90 days provided the UK reciprocates.

This applies for travel to EU countries other than Ireland. The Common Travel Area provides for travel between the UK and Ireland for Irish and UK citizens.

Appendix 1

Frontier workers

The DWA specifically addresses frontier workers. These are EU citizens or British citizens who pursue an economic activity in one or more states in which they do not reside. For example, an EU national living in Ireland, and working in Northern Ireland, returning home at least once per week is a frontier worker.

Some existing business travellers or commuters will be frontier workers and will therefore gain protection under the DWA to continue their current arrangements. For example, an EU26 national living in Ireland will still be able to continue working in Northern Ireland as a frontier worker.

Irish citizens will not need to rely on the provisions for frontier workers, due to the agreement on the Common Travel Area and associated rights.

3. Recruitment of future EU nationals.

Anyone arriving in the UK before 31 December 2020 will have the same rights to apply for permanent residence and to settle as above. We are expecting a UK White Paper before the end of 2018 to formulate the Post Brexit immigration system. We know that the system will commence on 1 January 2021, and current proposals include: a minimum salary requirement of £30,000; no particular provision for unskilled workers to enter the UK; and no specific provision for Northern Ireland.

KPMG Comment

"It is highly likely that in the event the DWA is not ratified by the UK/EU and there is a "No Deal" scenario, the UK will have their own form of unilateral transition which mirrors the current Brexit transition period. However, the system for mobility from 2021 onwards remains under consultation, and will be subject to UK Parliamentary approval.

In the event of a "No Deal", for EU nationals coming to the UK, nothing is likely to change between now and 31 December 2020 whilst the UK establishes the rules and infrastructure for a new immigration system, and administratively operates the Settlement Scheme.

The Common Travel Area, and associated rights between the UK and Ireland looks set to continue, therefore Irish nationals can continue to enter and work in the UK, and vice versa, without restriction."

KPMG is helping businesses plan for the impact of Brexit on their workers. This includes technology tools to help your staff assess the impact of Brexit on them depending on their personal situation and guidance on making applications. If you would like to talk to our immigration team about insights and services we can offer contact Aoife.newton@kpmg.ie

Our Brexit Team

Don't delay. Planning for Brexit means understanding the implications and opportunities for your business today. Our team of Brexit experts are already working with businesses North and South to make sure they are Brexit ready.

Policy and Business Strategy

Brian Daly leads our Brexit Team – working with clients, government and representative bodies to develop solutions to Brexit threats and opportunities.

brian.daly@kpmg.ie

Kieran Wallace is our Head of Private Enterprise with a deep knowledge of the issues confronting Irish business and with a pragmatic approach to Brexit matters.

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Darina Barrett is our Head of FS Markets – working with Financial Services clients to understand and plan for a post Brexit environment and the opportunities Ireland can deliver for FS clients.

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Johnny Hanna is our Head of Tax in Northern Ireland. Johnny works on cross-border and cross-channel tax and trade issues - working with clients on solutions to the complexity that Brexit can cause.

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Supply Chain & Transformation

Owen Lewis is a partner in our Management Consulting team with over 10 years' experience at Toyota and can assist businesses with Brexit related supply chain issues and transformation projects.

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VAT & Customs

Glenn Reynolds is a partner in KPMG's indirect tax and customs practice with extensive experience in helping businesses analyse the customs and VAT costs Brexit may trigger.

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Richard Cowley has extensive experience in supply chain issues – helping businesses analyse the customs and VAT costs that Brexit may trigger.

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Our Brexit Team (continued)

People and Immigration

Eoghan Quigley leads KPMG's global mobility practice in Ireland – helping business with the challenges Brexit bring to managing people around the world.

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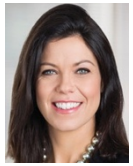

Aoife Newton is an expert in employment law and immigration matters – two of the areas most impacted by Brexit.

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Financial Services Regulation

Eric Cloutier is the head of regulatory banking in KPMG in Ireland with over 17 years' experience advising regulators, stakeholders and banks across 25 countries.

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Niamh Mulholland joined KPMG from the Central Bank of Ireland where she was a policy advisor to senior management, primarily in the area of investment management.

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Financial and Business Impact

Gillian Kelly leads a team of financial modelling experts providing Scenario Analysis services to clients building Brexit scenarios into their business models.

gillian.kelly@kpmg.ie

Andrew O'Leary leads a team that provides cash and working capital performance improvements for clients across various sectors impacted by Brexit.

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Data Protection

Aisling Brennan specialises in the area of data protection and in particular GDPR which came into force in 2018 with Brexit related implications for Irish business.

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David Collins works in our Data and Analytics team, helping our clients to address their data challenges including Data Management, GDPR compliance and Business Intelligence.

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Your usual KPMG contact can also work with you to plan for Brexit and introduce you to other members of the KPMG Brexit Team with the experience and expertise needed to support your business.

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