

# No-Deal Mitigation Strategies



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In a pair of recent blogs ([here](#) and [here](#)), Visiting Fellow Nigel Taylor and I debated the likely impact of a “no deal” scenario on the UK, particularly from an economic standpoint. Whilst I continue to believe that such an outcome is likely to constitute a significant negative economic shock for the UK, both in the short-run and longer-term, there are actions that the country can take to mitigate some of the worst impacts. Doing so will not be costless and will increase the regulatory burden for both the UK state and many individual companies.

It is now too late to prepare thoroughly for a ‘no deal’ Brexit, particularly as regards the work done by many key EU agencies. Nevertheless, some substantial work has been undertaken behind the scenes over the past 2 years (note, for example, the work done by the Civil Aviation Authority in ensuring that UK-issued Form 1 certificates would be acceptable in states with which the UK has a Bilateral Aviation Safety Agreement with, including the USA<sup>(1)</sup>).

More generally, the UK can (and in many cases will) recognise existing certification from EU agencies (grandfathering existing

REACH registrations<sup>[2]</sup> and automatically converting existing EU Centrally Authorised Product Marketing Authorisation Holders to a UK equivalent<sup>[3]</sup>). Indeed, in most cases there is no sensible reason why the UK should not recognise EU approvals on an ongoing basis (at least temporarily). This common-sense measure would help to reduce disruption in a number of sectors from catastrophic levels to something still substantial but ultimately more manageable.

Moving forward, the UK should seek to maintain membership (even at the expense of losing voting rights) of EU agencies, including the European Aviation Safety Agency, the European Chemicals Agency and the European Medicines Agency. This would undoubtedly entail ongoing payment, but there is no logical reason why this should be impermissible. Of course, political considerations might render it impossible in the short term.

The UK will be dependent on significant goodwill from the EU in many areas. Nevertheless, there are actions that UK-based companies in a number of sectors can and must take (e.g. apply for a third-country Part-145 approval from the European Aviation Safety Agency). This will not be costless and may not be entirely seamless if applications are not processed in time for exit-day.

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In order to avoid a 'cliff-edge' for companies dependent on the movement of EU personnel, the UK should unilaterally extend existing 'freedom of movement' rules for EU nationals until the end of 2020 (as already agreed in the Draft Withdrawal Agreement) and implement the agreed procedure for EU nationals currently resident in the UK to register for settled status. Whilst immigration was undoubtedly one of the major drivers of the vote to leave the EU<sup>[4, 5]</sup>, migration from the EU is already falling and most would accept a short, time-limited extension of the existing framework in order to give the UK time to adjust to the reality of life outside the EU.

Given this, there is no reason not to accept the Community License for hauliers driving from the EU into the UK (at least until the end of 2020). The EU has already stated that UK hauliers will continue to be able to use existing UK Community Licenses until the end of 2019. The UK government should attempt to negotiate to extend this period if possible. It should also, simultaneously, accelerate bilateral

negotiations to ensure that hauliers can obtain bilateral permits post-2019. It is unlikely that an EU-wide system akin to the existing Community License will be feasible without an agreement on freedom of movement for EU nationals, but a 12-month extension might be. In any event, the UK government should seek to cooperate closely with EU partners in order to ensure that the relevant paperwork can be checked as rapidly as possible post-2019.

There is a limit to what can be done in those service-sector areas reliant on EU agreements. The UK would cease to be covered by the EU's Audio-Visual Media Services Directive (making broadcasting out of the UK into Europe much more challenging) and UK companies would lose passporting rights. In the longer-term, it is to be hoped that future access can be negotiated but there is absolutely no guarantee of this and it would almost certainly be years off. In the interim, the UK will need to rely on the goodwill of the EU in accepting 'equivalence' of regulations. This is likely to be granted in the short term (at least for financial services) but the UK will want to act in a way that will maximise the probability of this being extended. In any event, this is not guaranteed and will weigh on sectors heavily dependent on existing passporting arrangements.

In areas covered by World Trade Organisation rules, the situation is somewhat rosier. Providing the UK maintains complete alignment with EU regulations (and it will, by definition, be in alignment on 'exit day') then there should be practical limits on the number of checks that need to be imposed. Customs barriers will go up overnight as the UK will cease to have a free-trade agreement with the EU. Negotiating one should be an urgent priority. Dynamic rolling alignment with all EU regulations (and with no say) is probably not what Brexiters had in mind when voting to "take back control". Nevertheless, it is necessary in order to maximise the protection given to the UK under the WTO's rules on 'technical barriers to trade' and the Agreement on the Application of Sanitary and Phytosanitary Measures. More generally, such alignment need not necessarily be permanent, which should render the situation rather more palatable to those who wish to diverge from EU standards post-haste.

Given that most border checks fall into the category of sanitary and phytosanitary (SPS) checks, ensuring ongoing alignment with the EU's rules in this area is of particular importance. SPS checks will

almost definitely occur on exports of livestock and many agricultural products. Nevertheless, article 4 of the WTO's SPS Agreement gives a substantial degree of protection to the UK, providing the UK can demonstrate ongoing equivalence with the EU's SPS standards. In this case, any checks must be light-touch and should be completed quickly. As the EU's standards will also be equivalent to the UK's, the UK need not impose additional checks on goods coming from the EU into the UK.

The UK can avoid customs checks on inward-bound goods by choosing to unilaterally set tariffs to zero for all trade partners. Although this is an extreme measure, it would have some advantages: it would enable goods to clear customs at Dover extremely quickly and would avoid difficulties in reclaiming duty for companies which import a substantial volume of components from the EU before re-exporting a finished product.

As can be seen, therefore, the UK Government maintains substantial power to facilitate the movement of inward-bound goods, but is rather more limited in its ability to ensure the free-flowing movement of exports. Where this poses a problem for just-in-time supply chains is at the port of Dover. Due to the circular nature of flows (both at the port and via the tunnel), delays at one end typically cause delays at the other. What can be done? Using alternative ports is one way in which some of the effects can be mitigated (but is a very partial solution at best). In addition, a dramatic fall in UK exports of agricultural produce is likely given the tariffs that the EU will levy of them. This cloud has a silver lining: the fewer such exports, the lower the level of SPS checks that will be needed.

In the longer term, the initial difficulties will subside. The overwhelming majority of economic modelling predicts a negative long-term impact from leaving the EU. Nevertheless, with the right policy frameworks in place the Armageddon predicted by some should not come to pass.

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4. Goodwin, M. and C. Milazzo, *Taking back control? Investigating the role of immigration in the 2016 vote for Brexit*. *The British Journal of Politics and International Relations*, 2017. **19**(3): p. 450-464.
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