

Our position

Preparing for a No-Deal Brexit

Strengthening the European Union's Brexit preparedness framework

AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €2 trillion in 2018, directly supports more than 4.8 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

Executive summary

As the likelihood of a No-Deal Brexit increases by the day, it is critical that the EU and Member States build an adequate framework of contingency measures to mitigate the disastrous effects of a cliff-edge scenario. American companies have been preparing for the worst outcome, but there remain areas where support from EU decision-makers is required. Although the European Commission has put in place a comprehensive set of contingency measures, some sectors still lack adequate support and risk facing harsh economic consequences.

This paper points to the gaps that persist in the current framework and provides sector-by-sector input on where more support is needed to mitigate the effects of a No-Deal outcome.

US business interest in Brexit

US companies have for decades benefited from the ability to seamlessly move goods, services, capital and people across EU borders and under a common set of regulations. In 2018, Europe received approximately 60 percent of US foreign direct investment (FDI), directly supported some 4.8 million jobs and generated billions of euros in trade and investment. As the recipient of around one quarter of all US FDI flows to Europe, the UK is a particularly important destination for US companies within the EU.

US businesses' global supply chains, innovation models and strategic deployments are highly integrated with those of Member States. Significant disruption or changes to the current economic and political relationship between the UK and the EU could have profound effects on the ability of American companies to serve customers in these markets. That is why it is essential that policy-makers and stakeholders in both the EU and the UK work to mitigate this disruption and deliver a new, ambitious and forward-looking EU-UK trade and investment relationship.

As significant investors and job-creators in the EU and the UK, the American business community continues to closely follow the ongoing negotiations and provide constructive input to both parties throughout this important process.

Introduction

The American Chamber of Commerce to the EU (AmCham EU) is comprised of over 150 American companies committed to ensuring a growth-orientated business and investment climate in Europe. As an organisation, we remain deeply and urgently concerned about a No-Deal Brexit. We urge policy-makers to use what little time is left to:

1. seek a Brexit deal with a transition period; and
2. provide clarity where possible on No-Deal contingency planning and enact further measures where necessary.

American companies have done their utmost to prepare for a No-Deal Brexit scenario which appears increasingly likely as the October deadline approaches. While we have prepared as best we can, there are still extremely important areas of uncertainty where we would urge both the EU and the UK public sector authorities to announce additional contingency measures or temporary permissions. We have provided below a number of sector specific examples.

AmCham EU remains ready to engage with policy-makers to discuss these issues in greater detail. Ultimately, we are driven by the concerns of our customers, clients and investors, who as European citizens will feel the adverse impacts if additional No-Deal mitigation planning is not undertaken. At the same time, we would like to emphasise that the best solution to minimise disruption and uncertainty is to finalise and ratify a EU-UK Withdrawal Agreement before 31 October 2019. We welcome every effort to reach such a deal that ensures an orderly UK exit and provides for a transition period that gives businesses, citizens and consumers time to prepare for what comes next.

Horizontal input

Customs and trade facilitation

- Manufacturers, traders, carriers and retailers rely on the seamless flow of goods and ‘just-in-time’ supply chains across the EU-UK border. To ensure continuity in trade across the border under a No-Deal Brexit, goods departing before the Withdrawal date and arriving after should continue to be treated as intra-EU movements, regardless of the mode of transport used;

Allowing for a contingency procedure for these shipments will help to avoid blockages at the border in the absence of the correct post-Brexit documentation, relieve local customs and port authorities from a significant administrative and operational burden and ensure business continuity for thousands of economic operators in the EU; and

- More broadly, and recognising the unique challenges of a No-Deal scenario, both sides should adopt as far as possible a creative and flexible approach to customs controls in the immediate aftermath of a No-Deal Brexit so as to ensure the continued flow of goods and services. The absence of such an approach from EU, national and UK authorities will increase the likelihood of a severe disruption to trade increases. Such disruption would negatively impact EU businesses, citizens and consumers.

Sectoral input

Agriculture and food

- EU authorities should facilitate a smooth transition to label changes by adopting temporary measures that grant a grace period of at least 18 months, thereby allowing businesses to build this into their current label update cycle and incorporate all changes at a single time; and
- Adequate funding should be made available to companies, alongside supporting policies to address the negative impacts (economic, workforce) in a post-Brexit scenario.

Consumer affairs

- The EU online dispute resolution system and small claims procedure will no longer be available for UK consumers purchasing in the EU and vice versa. Adequate redress mechanisms should therefore be facilitated for consumers purchasing both in the EU and the UK;
- In parallel, UK-based alternative dispute resolution systems will no longer be able to provide redress for EU-UK cross border cases. The EU and the UK should enable out of court consumer dispute resolutions options.

Digital economy

- It is critical that in the event of a No-Deal scenario, the European Commission and European Data Protection Board (EDPB) issue a statement to guarantee the free flow of data between the EU and the UK;
- Unhindered data is fundamental to the success and future growth of Europe's digital economy. The EU needs to work swiftly towards an adequacy decision for the UK. Until this is achieved, the EU needs to establish a legal means for data transfers and provide companies with clear advice and alternative transfer mechanisms; and
- Simultaneously, the UK data privacy law will need to provide an adequate level of protection and should seek to adopt and implement the General Data Protection Regulation (GDPR).

Financial services

- Financial market participants (banks and asset managers) in the UK and the EU still lack clarity on their ability to access trading venues located in the other jurisdiction in the case of a No-Deal Brexit because of the Markets In Financial Instruments Directive (MiFID) Shares Trading Obligation (STO). Many EU issued shares are dual listed and have a high portion of their liquidity in the UK. Without reciprocal equivalence determinations, liquidity pools will be split and investors will be unable to access best execution outcomes. We urge the EU and the UK to work towards an agreed equivalence arrangement for the STO urgently to address the uncertainty this is causing in financial markets. The limited contingency measures taken to date are helpful but insufficient; and
- We welcomed the European Commission's temporary equivalence decision for UK Central counterparty clearing houses (CCPs) in the event of a No-Deal Brexit. However, the equivalence decision will expire 30 March 2020. Given the extension to Article 50, it is critical there is also an extension to this equivalence decision, in order to prevent UK CCPs having to off-board EU customers by the end of the year. An extension would be in line with the original policy intention of avoiding significant disruption to financial markets. We note that European market infrastructure regulation (EMIR 2.2) will introduce a new equivalence regime and there will need to be clarity on the transition from the temporary recognition to a permanent solution.

Healthcare

- It is critical that, in the event of a No-Deal, the EU introduces a measure that will continue to recognise UK based testing of medicines at least until it can be transferred to the EU;
- Arrangements are needed between relevant Member States and the sector to co-ordinate contingency plans such as putting fast track lanes or priority routes for medicines and medical technologies into ports. This is required to enable the speedy movement of essential lifesaving products into and out of Europe and the UK; and
- The EU should continue to permit the UK to participate in critical pan-European safety frameworks and data bases that track the incidence and spread of disease, adverse reactions to medicines and the safety of medicines and devices. These protect citizens throughout the EU and removing the UK from them will reduce their effectiveness.