

No-deal Brexit

What does it mean for the space and satellite industry?

Issue	Implications of no-deal Brexit
<i>Space, satellites and telecommunications</i>	
Membership of international bodies	<p>The UK’s International Telecommunication Union (“ITU”) membership will not be affected by Brexit as this is not an organisation of the European Union (“EU”). However, Brexit will be relevant to the extent that the UK’s EU membership WILL no longer take precedence over its ITU treaty obligations.</p> <p>The UK’s membership of the United Nations Committee on the Peaceful Uses of Outer Space (“UNCOPUOS”) will similarly not be affected as UNCOUOS is not an EU organisation.</p>
Relationship with European bodies	<p>The UK will remain a member of the following European bodies which are independent of the EU:</p> <ul style="list-style-type: none"> • European Space Agency (“ESA”); • European Conference of Postal and Telecommunications Administrations (“CEPT”); • European Organisation for the Exploitation of Meteorological Satellites (“EUMETSAT”); and • European Centre for Medium-Range Weather Forecasts. <p>The European Defence Agency (“EDA”) is an intergovernmental agency of the European Council and, as such, the UK’s EDA membership will cease upon no-deal Brexit in the absence of any specific arrangements.</p>
EU space programmes	<p>The UK’s participation in EU space programmes will cease upon no-deal Brexit, unless the UK elects to participate in any programmes as a third country. UK-based companies will no longer be able to bid for future contracts tendered through the EU, or otherwise utilising EU procurement rules. This will affect contracts relating to the Galileo (satellite navigation), Copernicus (Earth observation) and EU Space Surveillance & Tracking (“EUSST”) programmes.</p> <p>In addition to being excluded from future EU procurements, UK companies may be at risk of being non-compliant with existing contracts with EU agencies, as eligibility for EU tenders may be an ongoing condition of these contracts.</p> <p>EU subsidiaries of UK companies will not be affected by these changes, provided they continue to meet the relevant eligibility requirements.</p>

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	<p><u>Satellite navigation</u></p> <p>The UK Government has stated that it will not use Galileo and the future Public Regulated Service for defence or critical national infrastructure. This will be the case unless the UK Government negotiates a separate cooperation agreement with the EU that includes a clause on the use of the PRS as a third country.</p> <p>UK-based companies will no longer be able to bid for future EU Global Navigation Satellite Systems (“GNSS”) contracts as they will not be able to meet GNSS regulatory requirements (e.g. that a company be formed under EU Member State law, have its central administration in an EU Member State, carry out decision making in an EU Member State and have its facilities located in the EU).</p> <p><u>Earth observation</u></p> <p>UK-based companies will no longer be able to bid for future Copernicus contracts tendered through the EU. UK companies will however be able to bid for contracts tendered through the Copernicus Space Component Programme 4, or under other programmes such as the Earth Observation Envelope Programme 5, due to the UK’s ESA membership.</p> <p>The Department for Business, Energy & Industrial Strategy (“BEIS”) and the UK Space Agency (“UKSA”) have advised that they “expect that UK-based entities holding Copernicus contracts with delivery dates that run past the date of Brexit will continue to be able to deliver that work” but “encourage UK-based entities holding those contracts to confirm arrangements with their relevant contracting authority if there’s a no-deal Brexit”.</p> <p>UK-based entities will also lose the right to access Copernicus data that is not provided on a free and open source basis.</p> <p><u>EUSST</u></p> <p>The UK will no longer be eligible to participate in the EUSST programme. As a result, UK companies will no longer be able to provide services to the EUSST programme, participate in the development of the programme, or receive associated grant funding.</p>
Spectrum management	<p>The UK’s membership of the ITU will no longer be secondary to its EU membership.</p> <p>EU initiatives to harmonise spectrum allocation and management in the EU will no longer apply unless expressly translated into national legislation.</p>
Telecommunications regulation	<p>The 2002 EU Common Regulatory Framework, including any EU Directives or Regulations, will no longer apply to the UK.</p>

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	<p>The core Directives of this Framework are already implemented in the UK through national legislation (for example, the Communications Act 2003). The UK will now be free to amend or repeal any national laws implementing these Directives, and certain parts of the Framework (such as requirements for notification to the European Commission) may no longer be appropriate.</p> <p>The UK will no longer be required to implement the European Electronic Communications Code into its national law, although may elect to implement certain provisions.</p> <p>Ofcom will no longer be required to comply with EU telecommunications policy such as the Digital Single Market, and will be free to define markets, undertake Significant Market Power (“SMP”) assessments, allocate spectrum and impose ex-ante remedies as it sees fit (subject to remaining obligations, for example under ITU policy).</p> <p>UK telecom operators will continue to be able to provide cross-border telecoms services and operate within the EU, under the World Trade Organization (“WTO”)’s General Agreement on Trade in Services (“GATS”).</p> <p><u>Roaming</u></p> <p>The harmonised roaming regime will no longer apply. UK consumers may no longer be able to benefit from the Roaming Regulations when travelling within the EU if parallel legislation is not enacted in the UK or if some other arrangement is not reached within the EU.</p>
National Security and Defence	<p><u>EU programmes</u></p> <p>Although defence is not a competence of the EU, the UK participates in EU security and defence initiatives through the Common Security and Defence Policy (“CSDP”). The EDA plays an important role within the CSDP. As above, the UK’s EDA membership will cease upon a no-deal Brexit in the absence of any specific arrangements.</p> <p>The UK will be excluded from the Galileo and Copernicus programmes, which may affect national security and defence to the extent that the UK is no longer able to utilise its EU membership to obtain services and other benefits from these programmes. The UK Government has also confirmed it will not use Galileo for defence or critical national infrastructure after Brexit, as it will not be fully involved in the development of the Galileo system. The Government plans to explore alternatives by investing £92 million on an 18-month programme to design a UK global navigation satellite system.</p> <p>Since the UK voted to leave the EU in 2016, EU Member States have created a number of defence initiatives such as the European Defence Fund. While it is still a Member State, the UK will continue to participate in these initiatives, although this participation will cease in the event of a no-deal Brexit.</p>

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	<p>In a no-deal Brexit scenario, we would expect the UK and EU to agree a framework as quickly as possible in order to maintain a close cooperation on defence and security matters, including the UK continuing to participate in some CSDP missions as a third party. However, the depth of the level of cooperation will only become known over the coming weeks.</p> <p><u>Security clearance</u></p> <p>Post-Brexit, the European Commission has confirmed that personnel security clearances issued by the UK Cabinet Office (the UK Security Vetting authority (“UKSV”)) will no longer be valid for the purposes of Commission Decision 2015/444, which sets out the security rules for protecting EU classified EU information.</p> <p>Under the terms of any affected classified contracts, this could constitute a ground for termination unless the contractor has taken one of the following remedial measures:</p> <ul style="list-style-type: none"> • the contractor holds a personnel security clearance issued by an EU-27 Member State (i.e. not the UK); or • the contractor holds a personnel security clearance issued by a third country with which a security of information agreement covering industrial security aspects has been concluded, which provides for the recognition of a personnel security clearance. <p>The UK will constitute a third country upon exiting the EU, but until and unless a specific agreement covering industrial security aspects is concluded with the EU-27, the UK will not be able to grant the relevant personnel security clearances.</p> <p>The UK’s own security vetting system will be unaffected by Brexit.</p> <p><u>Defence procurement</u></p> <p>The UK is currently subject to international and EU government procurement rules:</p> <ul style="list-style-type: none"> • The EU Directive 2009/81/EC on defence and sensitive security procurement (Defence Procurement Directive) is implemented in the UK through the Defence and Security Public Contracts Regulations (“DSPCR”) 2011. The Defence Procurement Directive requires cross-border tendering for government contracts except for in very limited circumstances (such as highly sensitive defence contracts where national security is at risk). • The UK is also signed up to the WTO’s Government Procurement Agreement (“GPA”) by virtue of its EU membership (all EU Member States are bound as one party). The GPA requires cross-border tendering for government contracts, but contains a general exemption for defence contracts. <p>Once the UK leaves the EU, and without any deal covering these matters, the Government may elect to repeal the DSPCR in order to ‘buy British’ in relation to defence</p>

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	<p>contracts.</p> <p>The UK Government has however applied to join the GPA on substantially the same terms once it leaves the EU. Parties to the GPA approved the UK’s accession as an individual state in February 2019.</p>
General industry	
Goods and services	<p><u>Tariffs</u></p> <p>If the UK leaves the EU without a deal, it will need to trade with the EU on WTO rules. In accordance with the WTO’s “most favoured nation” principle, the UK is not able to offer reduced tariffs to a particular trading partner through a trade agreement without offering the same to all WTO members (with some limited exceptions).</p> <p><u>Product standards</u></p> <p>The UK Government has advised that goods that meet EU regulatory requirements will continue to be recognised as valid for sale on the UK market for a time-limited period after the UK leaves the EU, irrespective of whether the EU reciprocates.</p> <p>In the event that the UK leaves the EU without a deal, UK exporters of goods into the EU will need to be compliant with EU product standards and regulations. Regulatory compliance in the UK will no longer be recognised as automatically sufficient for EU regulatory compliance. This will place a heavy regulatory burden and an increased financial burden onto UK exporters as they will need to ensure that they remain fully compliant with all relevant EU regulatory requirements.</p> <p><u>Services into and from the EU</u></p> <p>In the event of no-deal Brexit, UK providers of services may lose their “passport” to provide services into the EU as the principle of free movement of services will not apply.</p> <p>This will affect online services (such as broadcasting, provision of on-demand content and online retail) in particular, as the applicable EU Directives and Regulations incorporate the “country of origin” (“COO”) principle. According to the COO principle, if a service is licensed in an EU Member State, and has therefore met the minimum requirements in that state as dictated by the EU, that service may be made available throughout the EU even if other Member States have different or more stringent licensing requirements. For example, a broadcasting licence issued by Ofcom in the UK is currently valid and effective throughout the EU.</p> <p>Without a Brexit deal, UK-based companies currently reliant on the COO principle to provide services into the EU may need to obtain licences, authorisations or otherwise to comply with requirements from EU Member States – which may include requirements to be headquartered in the EU in order to access EU markets.</p>

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	<p>Similar restrictions may apply to EU-based companies providing services into the UK.</p> <p>Services may be able to provided from the UK to certain EU Member States, and vice versa, pursuant to agreements and arrangements which are not tied to EU membership (for example, the WTO’s GATS) or, in relation to broadcasting, the Council of Europe Convention on Transfrontier Television).</p>
Labour and skills	<p>The UK Government has advised that the free movement of people will end after the UK leaves the EU and an EU Settlement Scheme will apply.</p> <p>EU, European Economic Area (“EEA”) and Swiss citizens will be able to live and work in the UK for a limited period, and under certain conditions, in accordance with a transitional period that will be in effect until 1 January 2021. They will then be able to live and work in the UK for 36 months from the date their leave is granted. The UK will then introduce a single, skills-based immigration system from 1 January 2021.</p> <p>In the absence of any agreement otherwise, these new restrictions on free movement between the UK and EU may restrict the ability of UK companies to employ staff from outside the UK and, potentially, meet skills requirements in certain industries.</p>
Legislation	<p>In a no-deal Brexit scenario, the UK will no longer be obliged to implement EU law into national law, although from a practical perspective it is likely that the UK will introduce new legislation which follows EU law where it is best to do so for UK economic, security and foreign policy reasons. It is likely that most existing EU law will be retained as national law through the European Union (Withdrawal) Act 2018. The UK may also use this Act to implement any post-Brexit EU law as national law.</p> <p>EU law will remain relevant to the interpretation of national laws introduced to implement EU directives pre-Brexit.</p>
Trade marks	<p>Under a no-deal Brexit, owners of EU-registered patents, trade marks and designs will be granted an equivalent registration in the UK.</p> <p>The UK Government has indicated that, in the event of no deal, the UK will continue to recognise the EEA regional exhaustion regime as a temporary measure, and will consider how the exhaustion regime should operate after this temporary period. IP-protected goods placed on the EEA market by rights holders will continue to be considered exhausted in the UK, and parallel imports of these goods from the EEA to the UK will be unaffected.</p> <p>Goods placed on the UK market by rights holders will not, however, be considered exhausted in the EEA, and businesses exporting these goods from the UK to the EEA may need the right holder’s consent.</p>

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Financial contribution	<p>In the event of a no-deal Brexit, the UK will cease to contribute to the EU budget and will cease to benefit from EU funding.</p> <p>UK organisations will not be eligible for EU research and development funding and will no longer receive future funding for projects under such as the European Regional Development Fund and Horizon 2020. Nor is it likely that UK companies would be able to apply for tax relief under the current HMRC Research and Development Tax Relief scheme as this is an EU generated scheme.</p> <p>The UK government has guaranteed that UK organisations will continue to receive funding over their project’s lifetimes if they have successfully bid into EU-funded programmes before Brexit. As of July 2018, this guarantee covers:</p> <ul style="list-style-type: none"> • the full Multiannual Financial Framework allocation for structural and investment funds over the 2014-20 funding period, with payments to beneficiaries made up to the end of 2023; • the payment of awards where UK organisations successfully bid directly to the European Commission on a competitive basis while we remain in the EU, for the lifetime of the project; • the payment of awards under successful bids where UK organisations are able to participate as a third country in competitive grant programmes from Exit day until the end of 2020, for the lifetime of the project; and • the current level of agricultural funding under CAP Pillar 1 until 2020.
Data protection	<p>The EU General Data Protection Regulation (“GDPR”) will no longer be in force in the UK in the event of a no-deal Brexit. However, the UK Government has indicated that will take steps to implement the relevant provisions of the GDPR at a national level (in the form of a ‘UK GDPR’).</p> <p>Transfers of personal data outside the UK will be permitted as ‘restricted transfers’ provided they meet new domestic adequacy regulations. The UK Government has confirmed that transfers of personal data from the UK to the EU/EEA will be permitted. The Government has also indicated that it intends to recognise the EU’s ‘adequacy decisions’ which authorise transfers of personal data from the EU/EEA to non-EU/EEA countries (for example, Switzerland and New Zealand).</p> <p>UK companies will be able to receive personal data from the EU/EEA if the European Commission issues an adequacy decision for the UK, or if the sender of the data has put in place the other safeguards required by the GDPR. There is currently no such adequacy decision in place.</p> <p>In the event of a no-deal Brexit, and until such adequacy decisions have been made, it is likely that the continued transfer of personal data between the UK and EU/EEA will be at risk.</p>

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Competition	<p>Harmonised EU/EEA competition laws will no longer apply to the UK, and only national competition laws will apply.</p> <p>It is possible that the UK could enter into bilateral treaties whereby EU competition law remains applicable to UK companies to the extent that the behaviour of those companies has an effect in the EU/EEA.</p>
Export control	<p>International Agreements covering export control (Wassenaar Agreement, Missile Technology Control Regime, Australia Group and Nuclear Suppliers Group) will remain in force in the UK.</p> <p>However, no-deal Brexit will involve a complete exit from the EU and the EU customs territory. Supply of dual-use items from UK to EU will be regarded as an ‘export’ being subject to export control licensing (with all the costs and administration attached to this) – this may be particularly difficult for small and medium-sized enterprises and education and science bodies.</p> <p>The same will apply to dual-use items to be exported from the EU to the UK.</p>



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