



No-deal Brexit: What should energy companies do now?

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While a range of outcomes, including [a departure under the terms of the current Withdrawal Agreement](#), remains possible, it is important for businesses to plan for a no-deal Brexit, in which the UK leaves the EU without a withdrawal agreement or other deal. Here we look at the potential impact of a no-deal Brexit on energy companies.

In a no-deal Brexit situation, it is paramount that energy businesses can take informed decisions and mitigate potential risks in an inherently uncertain period. Staying on top of things will require significant resource for a considerable period. We appreciate that coming to terms with the new reality and taking appropriate steps is more likely to be a cost to business than an opportunity.

The on-shoring of EU acquis into UK law

The EU Withdrawal Act 2018 transfers EU legislation into UK law on 'Exit Day', preserving existing legislation that UK market participants are subject to.

The Act provides the power to fix deficiencies in this legislation after Exit Day through statutory instruments, but it does not allow any wider policy changes.

After Brexit, EU member states will be treated as third countries in respect to onshored third country regimes. There are potential carve-outs from this including ensuring financial stability, to protect existing rights of UK customers, minimising market disruption, and enabling regulators to fulfil their statutory objectives.

Gas and electricity specific Brexit regulations

There are multiple amending Brexit regulations relating to, or relevant to (including specifically repealing some existing EU measures), gas and energy, including:

- Electricity Network Codes and Guidelines (System Operation and Connection) (Amendment etc.) (EU Exit) Regulations 2019;
- Electricity and Gas (Market Integrity and Transparency) (Amendment) (EU Exit) Regulations 2019;
- Gas (Security of Supply and Network Codes) (Amendment) (EU Exit) Regulations 2019;
- Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019;
- Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019; and
- Electricity Network Codes and Guidelines (Markets and Trading) (Amendment) (EU Exit) Regulations 2019.

Key issues

Key issues being considered by participants in the UK energy sector include:

- What will happen to the EU Emissions Trading Scheme (ETS) when the UK exits? Will I be able to keep my EUAs?
- Does the UK's exit give me or my contractual counterparties the right to renegotiate or terminate contracts?
- My UK-based projects are currently benefiting or are planned to benefit from the Connecting Europe Facility and/or other European Union (EU) funding. Will my position be affected?
- I am using customer data from different operations in EU member states. What happens now?
- We are a UK energy business having or contemplating M&A and joint activities in the UK and the EU. Will the competition law regime change?
- We conduct our European energy trading business through our UK entity. We have relied on our UK entity's energy and financial services licenses and authorisations. We have thereby avoided local establishment in a number of other EU member states. Will this change?
- Will the UK's exit have consequences for an enforcement of legal awards?

No-deal planning

In a no-deal scenario, the EU's contingency planning measures would come into play (being emergency measures to ensure continuation in certain key sectors).

More generally, there is the energy-specific "preparedness" notices published by the EU Commission. The UK Government has also issued its own no-deal guidance

How DLA Piper can help

DLA Piper's energy practice advises ranging clients, from network operators to trading entities, on no-deal issues, and provides an applied approach to no-deal planning, tailored to specific business needs. To discuss further, please contact the author or your usual DLA Piper contact.

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