



# Brexit.

**What does the EU-UK trade and cooperation agreement mean for enterprises?**

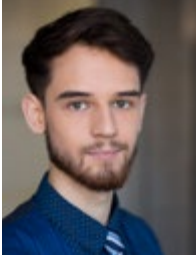
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# Introduction

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This report has been produced by a team of experts from the Konieczny Wierzbicki Law Firm.



CYPRIAN LISKE  
[cyprian.liske@kwkr.pl](mailto:cyprian.liske@kwkr.pl)



ŁUKASZ WIECZOREK  
[lukasz.wieczorek@kwkr.pl](mailto:lukasz.wieczorek@kwkr.pl)  
+48 517 851 868

**T**he United Kingdom (UK) left the European Union (EU) on 31 January 2020. On 31 December 2020, the transition period ended, during which EU legal regulations and case law, including immigration and customs regulations, remained in force in the UK (with a few exceptions). As champagne popped on the New Year's Eve, EU law formally ceased to apply in the UK. At the same time, in the last days of the transition period, EU and British negotiators managed to execute a 1,200-page trade and cooperation agreement. Adjusting to the new solutions (and to those which are not regulated in the agreement, but will be negotiated in the future) may be a major challenge for enterprises doing cross-border business.

The problem of the protracted negotiations was a significant difference of interests: the British were interested in a classic free trade agreement that abolishes customs barriers, at the same time rejecting the possibility of harmonizing their regulations, including those concerning sanitary and environmental issues, with EU law. In turn, the EU was inclined to open its market to the UK only if the United Kingdom continued to comply with EU standards. This was related to the need to ensure a level playing field in terms of trade and protect the EU market against an influx of goods whose standard would be lower than required in the Union. The controversies also concerned other aspects that are significant from the point of view of both parties, such as fishing

in British waters or the participation of the UK in EU programs. In the end, an agreement was reached, but a number of issues crucial for future cooperation, including for instance cross-border provision of services, have not been regulated. Below we present the most significant aspects that are covered by the agreement, as well as those that will require further negotiations.

# Main arrangements

## Elimination of customs duties and quantitative limitations

If it was not for this regulation, trade between the UK and the EU would have to take place in accordance with World Trade Organization rules, with the customs rate agreed by both parties applying. However, the exemption only concerns goods that comply with certain rules of origin. For enterprises, it may be important that many of the goods manufactured using materials from outside of the EU and the UK may not qualify for customs exemptions. At the same time, we may expect barriers of other than customs nature that will be related to different EU and UK regulations (e.g. sanitary regulations). Furthermore, entities trading between the EU and the UK will have to register for an EORI number if they had not traded with non-EU countries before.

## Transfer of personal data from the EEA to the UK

In the agreement, there is no comprehensive regulation in this respect, but until the European Commission has issued an adequacy decision, the UK will not be considered a third country in context of data transfer (however, no longer than until 1 July 2021).



## Transfer of personal data from the UK to the EEA

Like in the case of data transfer from the EEA to the UK, there are no extensive regulations here; however, the British data protection authority automatically recognizes the data protection level in the EEA as adequate.

“Enterprises trading between the UK and the EU should take into account additional barriers and fees related to the fact that European Union and United Kingdom regulations are no longer harmonized and that certain areas, such as cross-border provision of services, are regulated to an insufficient extent. The number of permitted cabotage and cross-trade transports will also be limited, which may result in difficulties in terms of moving goods between the UK and the EU.”

– says Cyprian Liske, a lawyer at the Konieczny Wierzbicki Law Firm, who specializes in international and immigration matters.

## Regulations concerning land transport of goods

Transferring goods between the UK and the EU will be possible, but limitations regarding the permitted number of cabotage and cross-border transports will apply.

## General provisions in terms of fair competition and equal opportunities

The parties have undertaken to maintain high standards, but with no obligation to act within strictly specified legal frameworks. Potential deviations (such as lowering of standards in terms of environmental protection or welfare rights) may result in the other party initiating the procedure for the settlement of disputes and resorting to remedies.

## Summary

Brexit is a great challenge for cross-border trade. In spite of the elimination of customs duties for goods coming from the EU, many products may not be eligible for customs exemption due to restrictive rules of origin. In the future, the issue of transferring personal data from the EEC to the UK may also be problematic.

# Changes on borders. Export, import, and migration

## Border and customs checks

**B**order checks and the need to file import and export declarations are coming back. Additionally, from October 2021, European identity cards will not be enough to enter the UK (a passport will be necessary).

## Special status of Northern Ireland. Export of goods and customs duties on the EU border

**T**he border between Northern Ireland and the Republic of Ireland will enjoy a special status. According to the 2019 Protocol, the customs border will legally be located between Northern Ireland and the Republic of Ireland, but, effectively, Northern Ireland will be a point of entry into the EU customs area. As a result, the actual customs border will run through the Irish Sea. The UK will charge customs duties on behalf of the EU with respect to goods entailing risks related to their further export to the Republic of Ireland; however, if the goods stay in Northern Ireland, enterprises will be allowed to subsequently deduct these duties. Although, in general, the elimination of customs duties removes the problem



of charging them on the border between the Republic of Ireland and Northern Ireland, customs checks and verifications whether goods qualify for exemption will still be necessary.

## Immigration to the EU

The requirements for obtaining a residence permit are agreed at the EU level, but individual Member States may regulate the number of employees they accept. Directives in terms of regular immigration will probably not change to any significant degree in the near future. Consequently, the relocation of employees from the UK to the EU will look exactly the same as in the case of citizens of other third countries. The individual Member States are responsible for the procedures in terms of legalization of stay and employment. In the case of a stay in excess over 90 days in a period of 180 days, British citizens will have to obtain the relevant visa (usually a D-type national visa) and then a residence and work permit in accordance with national procedures.

## Immigration to the UK

A new points-based system has been introduced in the UK, similar to the one used in Australia. Points will be assigned to potential migrants depending mainly on their education, command of English, professional qualifications, and the expected remuneration. This is intended to cut off the influx of the so-called “unskilled workforce.” Without a visa, short visits of up to 6 months will be possible (e.g. for tourist, research, or business purposes). EU citizens that are currently legally staying in the UK will have to update their status to “settled.” The deadline for filing the application in this respect is 30 June 2021.



“Brexit has become a source of significant uncertainty, especially among the Poles working or planning to start a job in the United Kingdom. Before they make a decision as to their future on British soil, they should definitely learn more about the new points-based system, which we will be used to verify if someone is allowed to start a career in the UK. The elements subject to assessment will include education, fluency in English, and the expected remuneration.”

## Regulation of services

The agreement does not contain any detailed regulations related to the export and import of services between the UK and the EU; neither does it provide for mutual recognition of qualifications yet. This means that the representatives of particular professions will have to independently meet the requirements both in the UK and in the EU. The agreement in itself is not a decision concerning the equivalence of legal and supervisory frameworks, which means that the UK and EU markets may be restricted for entities not registered in the given state. The lack of further provisions related to regulating services may be particularly severe for the market of financial services.

– *Cyprian Liske, a lawyer at the Konieczny Wierzbicki Law Firm, who specializes in international and immigration matters, points out.*

## Summary

Post-Brexit changes include the return of border checks and the obligation to file export and import declarations. By 30 June 2021, EU citizens staying in the UK will have to update their status to “settled.” Relocation of employees from the UK to the EU will take place in accordance with the general rules, which will mean the need to obtain the relevant visas and residence permits. In turn, when applying for a job in the UK, one will have to take into account the points-based immigration system intended to limit the influx of “unskilled workforce” to British market.



# What's new in taxes and insurance?

## Tax policy

The UK will have to comply with EU regulations in terms of tax rates and exemptions, and the agreement does not impose that the same legal framework is to be retained. This may mean changes both to the structure of indirect taxes, such as the VAT, and direct taxes, such as the CIT.

## VAT on goods

The import of goods from the UK will no longer qualify as intra-community acquisition of goods. This means that these products will be treated as products imported from outside of the EU. As a result, the VAT will have to be paid at the moment of import, unless a simplified procedure applies. The taxation base will also increase because it will include customs duties, which obviously do not apply if goods move across borders between Member States. Changes may mean cash flow restrictions for taxpayers that have to pay the VAT at the moment of picking up goods. As for goods imported to the UK, the United Kingdom has proposed the Postpone VAT Accounting (PIA) program, which allows traders to put the VAT in the declaration without the need to pay it directly at the moment of import.



## One-Stop Shop and mail order trading

British companies will also face changes after the new One-Stop Shop (OSS) system is introduced in the EU, which will cover mail order trading. Consumers purchasing goods directly from the UK should remember that taxes and customs duties will have to be paid with respect to them (once the changes concerning e-commerce have taken effect, it will no longer be possible in the EU for goods worth up to EUR 22 to be exempt from the VAT in B2C sales from outside of the EU).



## VAT on services

In terms of taxation of services, the difference will not be so noticeable because the rules in force within the EU are similar to those applicable to the taxation of services from third countries. Importantly, however, the United Kingdom will be unable to use the Mini One Stop Shop (MOSS) VAT system developed in the EU for providers of digital services. MOSS covers telecommunications, radio and TV broadcasting, and electronic services, allowing for them to be provided without the need to register in every Member State. After leaving the EU, the United Kingdom will not be able to use this system, which means that British service providers will have to register in each of the Member States in which they provide their services. In turn, EU service providers should register separately in the UK.

## Excise duty

The existing EU regulations specify who and when needs to pay excise duty—in principle, once the product has been approved for consumption, which is particularly important in the case of cross-border sales of alcohols (excise duty is not always paid by the manufacturer). UK enterprises will no longer be able to use the EMCS system in the excise duty suspension procedure.

**“The UK’s existing tax system will undergo a number of transformations. Changes in this respect will affect not only the enterprises that export goods and services from the EU to the UK and from the UK to the EU, but also ordinary consumers, who will pay more for products purchased directly from the United Kingdom. Service providers operating in the telecommunications sector that used to use the MOSS may be significantly affected, as well”**

– says Łukasz Wieczorek, an attorney-at-law at the Konieczny Wierzbicki Law Firm where he heads the TMT Department.

## Social security

The general principle in the agreement is that employees are subject to social insurance in their place of employment. From January 2021, for posted workers, contributions will be paid in their home country, in accordance with EU rules, provided that the given Member State notifies, by the relevant deadline, such an intention to the European Commission and then the EU notifies the United Kingdom and the UK does not object. This way, the transition period for the settlement of social insurances may commence; it may last up to 15 years. Meanwhile, the A1 certificates issued before the end of 2020 remain valid.

## Summary

The United Kingdom no longer has to comply with EU tax regulations. One of the novelties will be the need to pay the VAT for products from the UK already at the stage of import; these transactions will no longer qualify as intra-community acquisition of goods. For EU clients buying in British online stores, Brexit means higher costs related to the purchase of goods.

# Comprehensive legal services for enterprises and businesses



**T**he Konieczny Wierzbicki Law Firm provides business entities with advisory in terms of broadly understood IT law, business law, construction law, intellectual property law, corporate law, and civil law. For more information, please go to <https://koniecznywierzbicki.pl/pl/oferta/>

**T**hanks to excellent knowledge of international law and fluency in foreign languages, our dynamic team of lawyers is successful not only in domestic transactions, but also internationally. To learn more about them, please visit <https://koniecznywierzbicki.pl/pl/zespol/>

**W**e provide services to companies all over the world. Our clients operate in more than 30 countries on four continents. We work in five languages.

# Awards

2020

Due to the pandemic and the related economic crisis, 2020 was a year of many challenges in business. It also brought **three major awards** for the Konieczny Wierzbicki Law Firm.

In the **Legal 500** ranking, we were named a leader among international law offices in the **“Technologies, Media, Telecommunications”** category for handling transactions in terms of new technologies, for our individual approach to clients, and for high competences in terms of international affairs.

The Rzeczpospolita daily once again recognized our Law Firm, this time naming us one of the **five best law firms in the Małopolska Region**.

We were also recognized by the Rzeczpospolita for our **efficiency in adapting to market needs during the COVID-19 pandemic**.

2019

In the 2019 edition of the Rzeczpospolita ranking, we were recognized as a **leader in real property law**.

In the opinion of the jury, our Law Firm is just as efficient in achieving its goals as the largest entities on the market. The experts also appreciated our successes in **solving disputes related to perpetual usufruct**.

**Marcin Wierzbicki, attorney-at-law**, founder and managing partner of the Law Firm, was named a **recommended lawyer**.

In 2019, our Law Firm received one more recognition in the ranking of the Rzeczpospolita: in the **“Technologies, Media, Telecommunications”** category, we were named a recommended law firm in terms of TMT. **Michał Konieczny, attorney-at-law**, the other founder and managing partner of the Law Firm, received an individual award in this area of law.

2018

Our Law Firm was recognized in the largest, nationwide ranking of Polish law firms organized by the Rzeczpospolita. We received an **award for outstanding legal skills in handling a transaction**.

The chapter of the contest was impressed by a transaction consisting in granting a license for the Live-Bank24 system developed by Ailleron S.A. in the implementation of that solution in 16 banks of the Citi Bank Group in Asia and Europe. Notably, this was the first time we took part in the contest.



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**CYPRIAN LISKE**  
[cyprian.liske@kwkr.pl](mailto:cyprian.liske@kwkr.pl)

**ŁUKASZ WIECZOREK**  
[lukasz.wieczorek@kwkr.pl](mailto:lukasz.wieczorek@kwkr.pl)  
+48 517 851 868

Kącik 4  
30-549 Kraków  
Poland

t: +48 12 395 71 61

Piękna 15 lok. 34  
00-549 Warsaw  
Poland

t: +48 12 395 71 61