

## How to prepare for a ‘no deal’ Brexit: TIGA’s guidance

### Introduction

On 1 February 2017, the UK Parliament voted to allow the Prime Minister to trigger Article 50<sup>1</sup>; the EU subsequently accepted this application. By law, the UK must leave the EU on 29 March 2019. As the UK Parliament are yet to approve a Withdrawal Agreement, the default position of the UK is to leave the EU without a deal.

Leaving the EU without a deal creates a number of uncertainties for the UK video games industry. It is important that the UK games sector assesses the risks and opportunities that Brexit will bring, and prepare for all eventualities.

In the event of a ‘no deal’, the key areas of concern for the UK video games industry include:

- Access to EU talent;
- Access to EU funding programmes and tax reliefs;
- Barriers to trading with the EU; and,
- Implications on trade marks, copyright and intellectual property rights.

Although delivering the deal negotiated with the EU remains the Government’s top priority, it is important that businesses across all industries prepare for a potential outcome of a ‘no deal’ Brexit. To help prepare companies in the video games industry, TIGA has prepared a short guide which covers the key concerns we have actively raised with Government.

This guide signposts Government notices and policy papers, and shares information TIGA has received through our engagement with Government.

*Please note this is not a comprehensive guide and the Government is constantly producing new guidance.*

*If you have any further queries regarding the information provided in this guidance, please contact [info@tiga.org](mailto:info@tiga.org) who will do their best to answer your questions.*

---

<sup>1</sup> Division 135, *Hansard*, 1 February 2017, Col. 1136-1140, [link](#)

## Access to EU Talent

The global success of the UK video games industry depends on its ability to attract global talent. According to TIGA research, EU workers make up 15 per cent of the industry, while 5 per cent come from countries outside the EU. The ability to retain these workers and recruit more talent is essential for the continued success of our industry.

### What will happen to the UK immigration system in a no-deal Brexit?

In the event of a 'no deal' Brexit, freedom of movement will end on 29 March 2019. To offer assurance to EU citizens residing in the UK, and to those wanting to work, study or visit the UK after 29 March, the Government has outlined the following:

- EEA citizens and their family members, including Swiss citizens, will still be able to come to the UK for visits, work or study and they will be able to enter the UK as they do now, for a transitional period.<sup>2</sup>
- To stay longer than 3 months, you will need to apply for permission and receive European Temporary Leave to Remain, which is valid for a further 3 years.<sup>3</sup>
- EU citizens granted Temporary Leave to Remain and wish to stay for longer than 3 years will need to make a further application under the new skills-based future immigration system, which will begin from 2021.<sup>4</sup>
- Any EEA and Swiss citizen living in the UK by 29 of March 2019 will be eligible to apply for settled status and have the deadline of 31 of December 2020 to do so.<sup>5</sup>

See: [Guidance for EU citizens coming to the UK to visit, study, work or join family if the UK leaves the EU with no Brexit deal.](#)

### Employing EU nationals: What will the UK's future skills-based immigration system look like?

On the 19 December 2018, the Government published an [Immigration White Paper](#) setting out its proposed single, skills-based immigration system for both EU and non-EU citizens post-Brexit. The policy is due to be implemented at the end of the post-Brexit transition period, at the beginning of 2021.

Some of the key proposals put forward in the White Paper include:

- Lowering of the skills threshold on the skilled workers route to include medium-skilled workers.
- Removing the cap on the skilled workers route.

---

<sup>2</sup> Home Office and UK Visas and Immigration, *Staying in the UK for longer than 3 months if there's no Brexit deal*, 29 January 2019, [link](#).

<sup>3</sup> Ibid.

<sup>4</sup> Settled and pre-settled status for EU citizens and their families, [link](#).

<sup>5</sup> Ibid.

- Consulting on a minimum salary requirement of £30,000 for skilled migrants seeking five-year visas.
- No longer requiring employers of skilled migrants to carry out a resident labour market test as a condition of sponsoring a worker.

The publication of the White Paper begins a 12-month engagement period with industry about the future immigration system. TIGA encourage all organisations to participate in the consultation.

#### Helpful Resources

- [Guidance for EU citizens and their families after the UK leaves the EU](#)
- [Immigration Rules: shortage occupation list](#)
- [The UK's future skills-based immigration system](#)
- [TIGA's response to the Migration Advisory Committee's review of the Shortage Occupation List](#)

## Access to European Funding in the event of ‘no deal’ Brexit

The UK video games industry benefits from a number of EU funding initiatives. In the event of a ‘no deal’ Brexit, UK organisations would no longer receive future funding for projects under EU programmes such as Creative Europe, the European Regional Development Fund and Horizon 2020.

### What will happen to funding from EU programmes in the event of a ‘no deal’ scenario?

The Chancellor announced in August and October 2016 that the Government will guarantee EU projects agreed before we leave the EU. This guarantee will cover all successful bids submitted by UK participants before the UK exits the EU, for the full duration of the projects.<sup>6</sup>

In July 2018, the Government extending this guarantee to provide further stability for UK organisations in a ‘no deal’ scenario.<sup>7</sup> The guarantee now covers:

- the payment of awards where UK organisations successfully bid directly to the European Commission on a competitive basis while we remain in the EU; and
- 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.

This guarantee ensures that UK organisations, such as charities, businesses and universities, will continue to receive funding over a project’s lifetime if they successfully bid into EU-funded programmes before the end of 2020.

If you are in receipt of funds from an EU programme such as Horizon 2020, or you have submitted a bid to one of the funds, then you need to submit a recipient registration form. Instructions for UK recipients of EU Direct Bid funds to submit information about projects which may be eligible under the UK government’s guarantee can be found [here](#).

### Helpful Resources:

- [The government’s guarantee for EU-funded programmes if there’s no Brexit deal](#)
- [A technical notice on Horizon 2020 funding if there’s no Brexit](#)
- [Creative Europe Brexit update](#)
- [European Regional Development Funding if there’s no Brexit deal](#)
- [European Social Fund \(ESF\) grants if there’s no Brexit deal](#)
- [Horizon 2020: UK government underwrite guarantee](#)

---

<sup>6</sup> *HM Treasury*, The government’s guarantee for EU-funded programmes if there’s no Brexit deal, 3 December 2018, [link](#).

<sup>7</sup> *Elizabeth Truss MP*, HM Government’s guarantee: Written statement - HCWS926, 24 July 2018, [link](#).

## **Trading with the EU in the event of ‘no deal’ Brexit**

If the UK leaves the EU on 29 March 2019 without a deal, the government’s aim will be to keep VAT procedures as close as possible to what they are now.

### **Are video games at risk of tariffs or other barriers being introduced in the event of a ‘no deal’ scenario?**

TIGA wrote to Mel Stride MP, the Financial Secretary to the Treasury and Paymaster General, calling for guidance on the distribution of video games in the event of a ‘no deal’ Brexit scenario.

In response to TIGA’s letter, Mel Stride MP offered the following guidance:

“Digital sales of video games via online platforms or marketplaces are considered a supply of service, as opposed to a supply of goods. Therefore, such sales are currently not subject to UK customs tariffs when supplied to ‘Rest of World’ countries.

“For VAT on services to consumers outside of the UK, the current ‘place of supply’ rules determine which country UK businesses will need to account for VAT on their supply. In the unlikely event of a no deal scenario, the technical notice ‘VAT for business if there’s no Brexit deal’ published on 23 August 2018, confirms that *“the main VAT ‘place of supply’ rules will remain the same for UK businesses...These rules are in line with international standards set out by the Organisation for Economic Co-operation and Development (OECD), guidelines can be found on the OECD website.”*

### **What will happen to VAT Mini One Stop Shop (MOSS)?**

If the UK leaves the EU with no agreement, businesses will no longer be able to use the UK’s Mini One Stop Shop (MOSS) portal to report and pay VAT on sales of digital services to consumers in the EU. Instead, businesses that sell digital services to consumers in the EU will be able to register for the MOSS non-union scheme.

Businesses that want to continue to use the MOSS system will need to register for the VAT MOSS non-Union scheme in an EU Member State. This can only be done after the date the UK leaves the EU. The non-union MOSS scheme requires businesses to register by the 10th day of the month following a sale. You will need to register by 10 April 2019 if you make a sale from the 29 to 31 March 2019, and by 10 May 2019 if you make a sale in April 2019.

See: [How VAT rules for UK businesses trading with EU countries would be affected if the UK leaves the EU on 29 March 2019 with no deal.](#)

## **Will Brexit affect UK tax reliefs?**

The UK's Creative Sector Tax Reliefs will not be affected by Brexit — this includes those available for film, high-end TV, animation, childrens' TV and videogames.

The BFI have published the following guidance on this issue:

Content will still qualify for the Tax Relief if it passes the UK's relevant cultural test. Creative sector cultural tests will also continue to recognise EEA content and personnel regardless of whether the UK secures a deal with the EU.

Some minor changes will be required if the UK is to continue to qualify for incentives in some EU member states after it has left the EU. The UK Government, in conjunction with BFI, is working to ensure that Member States reassess the mechanisms by which they assess the eligibility of content and personnel for these incentives to ensure the UK still qualifies.

These changes will have to be made in both a 'deal' and 'no deal' scenario. If there is a deal, UK personnel will have EEA status – and thus will be able to qualify for cultural tests until the end of the transition period. However, in the longer term, amendments will be required for UK content and personnel to qualify post 2020. In the event of no deal, UK personnel will have EEA status until 29 March 2019. Those planning on accessing other countries' incentives should seek advice from the BFI.

There are no major changes expected to the UK's State Aid regime under either deal or no deal. This regime helps regulate how Government provides help to private industry, ensuring a level playing field for businesses operating across the UK and influencing their level of competitiveness relative to international counterparts too.

See: [Brexit: Answering questions from the screen sectors](#)

### Helpful Resources

- [Industry guidance in the event of a 'no deal' Brexit scenario](#)
- [How to register and use the VAT Mini One Stop Shop to report and pay VAT due on sales of digital services to consumers in the EU](#)

## Trade marks, Personal Data, Copyright and Intellectual Property Rights in the event of a ‘no deal’ Brexit

### What are the implications for trade marks and design in the event of a ‘no deal’ Brexit?

In the event of the UK leaving the EU without a deal, all existing European Union Trade Marks (EUTM) will cease to provide protection in the UK. As a result, the government must amend existing trade mark legislation to ensure that UK protection conferred by EUTMs is preserved.

As a result, the government has introduced [The Trade Marks \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) under the powers of the [European Union \(Withdrawal\) Act 2018 \(EUWA\)](#).

UK businesses will still be able to obtain trade mark protection in the remaining 27 Member States of the EU through an application to the EUIPO, and businesses from the EU and worldwide will still be able to apply for a UK domestic trade mark through the Intellectual Property Office.

From exit day, all existing registered EUTMs will be treated as if they had been applied for and registered under UK law. For all registered EUTMs the government will create comparable UK trade marks, which will be recorded on the UK register.

See: [Trademarks and designs if there’s no Brexit deal](#) and [Changes to trade mark law in the event of no deal from the European Union](#)

### How can businesses ensure data can continue to flow between the UK and EU?

If the UK leaves the EU in March 2019 with no agreement in place regarding future arrangements for data protection, there would be no immediate change in the UK’s own data protection standards. This is because the Data Protection Act 2018 would remain in place and the EU Withdrawal Act would incorporate the GDPR into UK law to sit alongside it.

You would continue to be able to send personal data from the UK to the EU. In recognition of the unprecedented degree of alignment between the UK and EU’s data protection regimes, the UK would at the point of exit continue to allow the free flow of personal data from the UK to the EU. The UK would keep this under review.

However, the legal framework governing transfers of personal data from organisations (or subsidiaries) established in the EU to organisations established in the UK would change on exit. The EU has an established mechanism to allow the free flow of personal data to third countries outside the EU, namely an adequacy decision. Adequacy decisions recognise that non-EU countries have the same privacy protections as the EU. The US, Japan and Switzerland are among countries which have this agreement.

If the European Commission does not make an adequacy decision regarding the UK at the point of exit, organisations which want to receive personal data from organisations established in the EU (including data centres), should consider assisting their EU partners in identifying a legal basis for those transfers. More information is available from the [Information Commissioner’s website](#).

See: [Data protection if there's no Brexit deal](#).

### **Copyright and Intellectual Property Rights**

The EU cross-border copyright mechanisms extend only to member states of the EU or EEA. On exit, the UK will be treated by the EU and EEA as a third country and the reciprocal element of these mechanisms will cease to apply to the UK.

The Government has advised businesses and other interested parties may wish to seek legal advice on how these arrangements could affect their business model or intellectual property rights.

See: [Copyright if there's no Brexit deal](#)

### Helpful Resources

- [Leaving the EU – six steps to take concerning data protection](#)
- [IP and Brexit](#)
- [Do I need to use standard contractual clauses \(SCCs\) for transfers from the EEA to the UK \(if we leave the EU with no deal\)?](#)