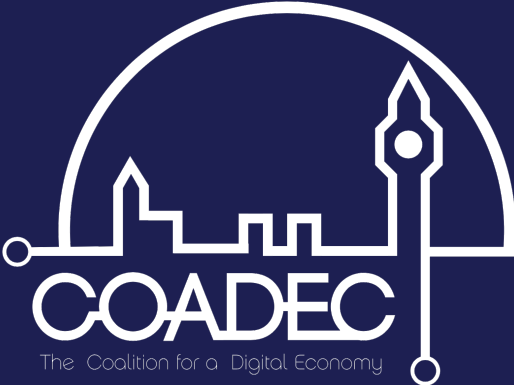


No deal:

**A Guide
for
Startups**

September 2019



About Coadec

The Coalition for a Digital Economy (Coadec) is the policy voice of UK tech startups and scaleups in Westminster, Whitehall and Brussels.

Founded by Mike Butcher (TechCrunch) and Jeff Lynn (Seedrs) in 2010, Coadec has fought for a policy environment that helps early-stage British tech companies grow, scale and compete globally.

Coadec works across a range of priority issues for startups including access to finance, immigration and skills, and technology policy.

About this document

This guidance is being produced in partnership with The UK Tech Cluster Group & Tech Nation to guide startups on their Brexit preparations in the case of a no deal Brexit.

This guidance should not be considered legal advice and as such Coadec, The UK Tech Cluster Group & Tech Nation should not be considered liable for the guidance contained in the document. We would strongly urge startups to consult legal professionals to aid their preparations.

1.

Data Protection & Data Flows

This impacts:

startups receiving personal data from the EU or the EEA

Data is the lifeblood of Britain's tech startups. The UK's tech businesses currently operate under Europe's data protection framework, where information flows freely across borders under the safeguards of a user-centric privacy model underpinned by the EU Charter of Fundamental Rights and the General Data Protection Regulation (GDPR).

What would no deal brexit mean

After the UK leaves the European Union, we will become a 'third country' to Europe's data protection framework. While UK businesses will still be able to send personal data to Europe as before, this means that information flowing in the other direction - from Europe to the UK - will require more work.

Without a data protection 'adequacy agreement' - meaning EU recognition of the post-Brexit UK's domestic privacy framework as one which protects European data to European standards - startups will need to create contract-based legal structures to replace the free flows of data we took for granted under the European system. The UK's data protection regulators are advising that startups should be looking at model clauses, binding corporate rules, codes of conduct, or certification mechanisms.

These complicated legal structures have typically been the preserve of larger businesses and corporations, not startups and scaleups - so will take time to put in place. If you haven't started your preparations for your post-Brexit data flows, they should be a priority now.

FAQs

How will a “no deal” impact data flows frameworks (like the Privacy Shield with the United States) outside the EU?

For data flows to the US in the event of a no deal, the US Department of Commerce will require participants to update their public commitments to the Privacy Shield programme to include the UK, and to maintain and recertify their Privacy Shield certifications as before. UK businesses sending data to the US must ensure the recipients' Privacy Shield participation.

For frameworks with other countries (e.g. the countries with which the EU has adequacy

agreements in place at present - see links below in further reading), there has been little indication of progress made - so you'll need to ensure you have contractual clauses in place just like for data flows with the EU.

Won't the EU offer the UK an adequacy agreement?

Evaluation of the UK as an adequate third country for European data cannot begin until after the UK has left the European Union. With everything else happening as the UK leaves, that process may be months if not years away. Startups cannot wait for adequacy, nor should they.

What you should do

- 1. Audit your data transfers from the UK to the EU**
- 2. Identify which safeguards would best serve these transfers (and other countries which the EU has data transfer agreements with)**
- 3. Determine whether you need to designate a representative within the EU as your European data protection liaison**
- 4. Determine whether you need to identify a lead supervisory authority, if you receive data from many EU member states**
- 5. Review your provisions for EU residents to exercise their rights over their personal data**
- 6. Update your documentation, data protection impact assessments, risk registers, and public-facing privacy notices**

Further Reading

Gov.uk Guidance on data flows post-Brexit

<https://www.gov.uk/guidance/using-personal-data-after-brexit>

ICO No Deal Guidance

<https://ico.org.uk/no-deal>

US Privacy Shield guidance

<https://www.privacyshield.gov/article?id=Privacy-Shield-and-the-UK-FAQs>

European Commission page on data adequacy decisions

https://ec.europa.eu/info/law/law-topic/data-protection/international-dimension-data-protection/adequacy-decisions_en

2.

Employment, immigration, and visas

This impacts:

startups which employ EU citizens, or with UK citizens working in Europe

Under the existing immigration regime EU citizens (including British citizens) are free to seek work across EU member states. This freedom of movement has created a startup ecosystem in the UK in which European citizens are deeply embedded. Freedom of movement will end when we leave the European Union.

What would no deal brexit mean

If the UK leaves the EU without a deal, European citizens living in the UK need to apply for the EU Settlement Scheme (often called 'settled status') by 31 December 2020 if they wish to remain living and working in the UK. You should encourage European citizens to begin look into the requirements to support their application as soon as possible.

For UK tech talent working in Europe, you'll want to look into individual member states' plans for dealing with UK citizens. Germany, for example, has fast-tracked legislation protecting the rights of UK citizens already residing there.

In addition to long-term residency changes, business trips to Europe may require visas to do paid work during short stays. While none of these issues are definitely resolved yet, they will be as fundamental for tech talent as long-term residency.

FAQs

What about my family?

In the event of a no deal, if you are an EU citizen with family in the UK they will also need to apply for the EU Settlement Scheme. After 31 December 2020, it may be harder for them to gain the right to live here with you. In the event of a no deal, the deadline for family members to apply through the schemes created as part of the exit will be 29 March 2022 - and you'll be required to prove that you were in a relationship with them before the UK left the EU. If they do not apply before this time, they may have to go through another immigration scheme.

What about the future of visas for those outside the EU?

The Government brought forward its outline plans for the immigration system post-Brexit in the Immigration White Paper in December 2018. We would recommend reviewing our response (and the response of others in the sector) to those proposals - and continuing to monitor the ongoing Government changes (including those to the student visa system announced recently).

The EU Settlement Scheme covers residency rights, but what about the future of short-term assignments?

Once you have EU Settlement Scheme status, you'll be able to spend up to 5 years outside the UK without losing your status, as is the case now. Without that status, you'll only be able to spend two years outside the UK.

What about EU citizens arriving after Brexit?

After Brexit, EU citizens who move to the UK will be able to apply for a 36 month temporary immigration status - European Temporary Leave to Remain (Euro TLR). More information can be found at the link in further reading.

What you should do

- 1. If you're from the EU and you live and work here, apply for the EU Settlement Scheme if you intend to stay in the UK after Brexit**
- 2. If you're from the UK and work in Europe, the member states where you do business may have some assistance available to you.**
- 3. Let us know what support your startup needs on issues involving short- and long-term visas and residency rights throughout the Brexit transition.**

Further Reading

Gov.uk link for the EU Settlement Scheme (The UK Government)

<https://www.gov.uk/settled-status-eu-citizens-families/what-settled-and-presettled-status-means>

Gov.uk Guidance for UK Citizens Living & Travelling in the EU Post-Brexit

<https://www.gov.uk/guidance/advice-for-british-nationals-travelling-and-living-in-europe>

3.

Taxation & VAT

This impacts:

startups selling digital content in the EU, as well as EU traders selling digital content in the UK

At present, startups selling digital content in the EU are required to register with and use the EU's MOSS (Mini-One-Stop-Shop) portal to report and remit VAT on digital sales to customers in European member states. There are currently concessions for startups impacted by the MOSS requirements, including simplified reporting requirements and a 10,000 EUR threshold before the rules apply. The MOSS system wasn't designed to consider a member state that would leave the EU - this means you need to prepare.

What would no deal brexit mean

In a no deal scenario, UK businesses will no longer be able to use the MOSS portal as before. To continue using the portal, you will need to register as a non-union member through the MOSS portal of an EU member state of your choice, though this may logically be one where you have a legal presence or representation.

If you opt not to register with the portal as a non-union member, you will be required to register with the tax authorities in each and every member state where you make any sales of digital content, and file tax returns as per their national taxation systems.

Non-UK businesses which have used the UK as their non-union member state of choice for MOSS remittance purposes will also need to find a new non-union member state. Likewise, EU traders selling digital services within the UK will no longer be able to report UK taxes through their national MOSS portal. They will be required to register with HMRC and pay VAT on any UK sales; the 10,000 EUR threshold is invalidated by the UK's withdrawal from the EU.

Additionally, in the event of a no deal Brexit, UK traders will no longer be able to use the EU VAT refund system to reclaim VAT from EU member states, and EU traders will no longer be able to reclaim UK VAT through the system either. It will become a manual process dependent on the tax rules of any given member state.

FAQs

What about the Place of Supply rules?

Under the MOSS system, the “place of supply” of the sale of a digital product is defined as the country where the consumer of the service is located - say, Austria - as opposed to the place where the seller is located - say, the UK. This system will not change after Brexit, regardless of a deal or no deal. You should be aware, though, that other services and goods have different place of supply rules, so your business may need to be aware of different rules.

What are some other VAT issues to be aware of?

While we know that you’ll be keeping meticulous records of your cross-border sales, we would suggest being extra diligent during the Brexit transition period, whether that ends in an orderly fashion or with a no deal. There will be an overlap period where the UK is out of Europe but you will still be filing tax returns on sales made within it.

What you should do

- 1. Examine your shopping cart and sales systems to make sure you are up to date with the latest VAT requirements**
- 2. Select an EU member state to register with through their MOSS portal as a non-union member**
- 3. Speak with your accountant, and make sure they are keeping on top of government guidance on VAT and taxation - particularly as it changes so often.**

Further Reading

EU guidance on VAT under no deal

https://ec.europa.eu/info/sites/info/files/vat_en.pdf

Gov.uk guidance for UK traders selling digital services in the EU

<https://www.gov.uk/government/publications/vat-for-businesses-if-theres-no-brex-it-deal/vat-for-businesses-if-theres-no-brex-it-deal>

Gov.uk guidance for EU traders selling digital services in the UK

<https://www.gov.uk/guidance/vat-it-system-changes-for-businesses-outside-the-uk-if-the-uk-leaves-the-eu-with-no-deal>

4.

The e-Commerce Directive

This impacts:

startups that provide 'information society services' (aka most online service providers - see the guidance in further reading)

The e-Commerce Directive is the EU law laying out the fundamental concepts of online commerce in Europe. Brought into UK domestic law in 2002, it establishes the simple but critical assurance that online service providers - including startups - can base their legal compliance on the laws of their member state of incorporation.

Critically, the Directive also contains the provisions on intermediary liability: the notion that an online service provider is not required to actively monitor the content its users create, and is not legally liable - in certain circumstances - for that user-generated content. In a world without the e-Commerce Directive, startups would be legally liable for every status update, tweet, blog post, online review, news update, and comment posted by a service's users.

What would no deal brexit mean

Under no deal, we would lose the 'country of origin' principle which allowed UK startups to base their European legal compliance on UK law, so companies still doing business in Europe will need to begin looking at online compliance matters in every country they operate. These aspects include the information you display about your business' legal incorporation, how you advertise online, how your users and customers buy from you online, and how your users and customers enter into contracts with your business.

The Government has committed to maintaining the European-based intermediary liability framework in the UK - for now. While it's important to ensure that your service has systems in place for users to notify you of content which may violate your terms of service or the law, a no deal Brexit will not mean an immediate obligation to monitor and pre-moderate user-generated content.

What you should do

- 1. Review the information you provide for your users about your location, legal registration, terms of service, and your conditions of sale.**
- 2. Review what business you do in Europe, and decide whether the amount of business you do in any given European member state might merit the creation of a representative presence there.**
- 3. Review the systems you have in place for your customers and users to notify you of content which may violate your terms of service or the law.**

Further Reading

Gov.uk Guidance for UK businesses on the e-Commerce Directive

<https://www.gov.uk/government/publications/ecommerce-eu-exit-guidance/ecommerce-directive-guidance-for-businesses-if-theres-no-brex-it-deal>

5.

The Digital Single Market Framework

This impacts:

startups doing business with European users and customers

The Digital Single Market was a four-year EU strategy which aimed to establish one single set of trading rules for online commerce in Europe. The strategy covered thirty legislative initiatives as diverse as taxation, cross-border content, the data economy, privacy, copyright, consumer rights, broadcasting, terrorist content, and many others.

What would no deal brexit mean

In 2018, then Prime Minister Theresa May said “the UK will not be part of the EU’s Digital Single Market, which will continue to develop after our withdrawal from the EU. This is a fast evolving, innovative sector, in which the UK is a world leader. So it will be particularly important to have domestic flexibility, to ensure the regulatory environment can always respond nimbly and ambitiously to new developments.”

In the event of a no deal Brexit, though, nothing will change in the short-term. The laws already adopted into UK law (eg the GDPR) will remain in place. This may, however, change in the future as, under a no deal exit, the UK Government would be free to diverge from the framework of EU regulation set out through the DSM strategy.

It’s important to note that the DSM framework is extraterritorial. That means that UK startups and scaleups still trading in Europe after Brexit will remain subject to the regulations created by the DSM framework for their European customers.

FAQs

What else do we need to be aware of?

The Framework is not finished, and that could create some immediate regulatory misalignments for UK businesses trading in Europe. That's because there are a number of DSM initiatives stuck in the "legislative limbo" of the Brexit process- we'll explain these on the next page.

What you should do

It's a good idea to familiarise yourself with the DSM strategy and its components like copyright, privacy, cross-border taxation, consumer contract rights, and anything else which might impact your startup's business model. If the UK does decide to move out of regulatory alignment with the DSM, you'll have a better sense of where those deviations will begin.

Further Reading

The Digital Single Market strategy

<https://ec.europa.eu/digital-single-market/en>

6.

EU Legislation in Limbo

This impacts:

will vary depending on the proposal in limbo

The EU’s Digital Single Market framework strategy (outlined in the previous note) is in its home stretch. Its final components have either been approved in the European Parliament or are in the final stages of committee processes. In normal circumstances, those final components would then commence the UK Parliamentary scrutiny process before becoming domestic legislation. These are not normal circumstances. The unexpected delays to the Brexit process means that those components are on domestic pause, and some may never become UK law at all.

The legislation caught in limbo includes:

1. The Digital Content Directive, which harmonises diverse member states’ contract rules on online and distance sales of digital content;
2. The Copyright Directive, which updates online copyright rules - and which includes the requirement for “upload filters”;
3. The ePrivacy Regulation, the revamp of rules concerning the protection of user data in transit, which includes an overhaul of the “cookie law”.

What would no deal brexit mean

It’s all about the timing. When each of these laws are finalised in the European Parliament, member states will have a two-year deadline to implement them into domestic legislation. That means if the UK leaves the EU with no deal on the 31st October - the UK is not obliged to implement these laws in domestic legislation.

If the UK chooses not to implement these laws, there’s remains a question on what sort of regulation it intends to put in their place to fill those gaps. No substitute ideas have been proposed yet.

FAQs

What has been the UK government's position on these proposals?

As with all of the DSM framework, government has been an active participant in the drafting processes for all of these regulations.

What you should do

Startups that may be impacted by these proposals should continue to monitor the UK Government decisions on the issue as they progress. We'll continue to publish and promote relevant information on these topics. We'll also be working with government if they decide to put in new domestic rules.

Further Reading

The Digital Content Directive

https://ec.europa.eu/info/business-economy-euro/doing-business-eu/contract-rules/digital-contracts/digital-contract-rules_en

The Copyright Directive

<https://ec.europa.eu/digital-single-market/en/copyright>

The ePrivacy Regulation

<https://ec.europa.eu/digital-single-market/en/online-privacy>

7.

Domain Names

This impacts:

startups who have, or use, .eu domains

The rules which govern the use of .eu domain names state that only persons, companies, or organisations based in the EEA (the EU plus Iceland, Norway, and Liechtenstein) can register them for use. When the UK leaves the European Union, over 340,000 UK users will lose the rights to their .eu domain names.

What would no deal brexit mean

Assuming the UK leaves the EU on 31 October, regardless of whether that is with or without a deal, businesses based in the UK will no longer be eligible to purchase .eu domain names.

On 24 October, one week before the UK leaves the EU, domain registrars will begin notifying UK holders of .eu domains that they will no longer be in compliance with domain rules. Holders who wish to retain their .eu domains will then have until 1 January 2020 to update their contact data from an address in Britain to the address of a valid legal presence in any EU member state.

UK citizens resident in the EU who hold .eu domain names, and likewise, EU citizens resident in the UK who hold .eu domain names, will need to follow the same procedure and update their contact details to an EU member state.

At the stroke of midnight on 1 January 2020, all .eu domains still registered to UK addresses will be immediately withdrawn. Registrars will have no obligations to UK domain holders over any content stored on those .eu sites, or any business operations taking place on them, which are no longer accessible to the public.

One year after withdrawal - meaning 1 November 2020 - all rescinded .eu domains will become available again for public registration.

What you should do

- 1. Review any services or processes you have running on your .eu domains, and prepare to migrate them to a new home.**
- 2. Inform your customers of your new domain and contact email addresses.**
- 3. Check whether you have any intellectual property issues raised by the loss of your .eu domain, such as your business's name.**

Further Reading

Gov.uk guidance on .eu domain names and Brexit

<https://www.gov.uk/government/publications/guidance-on-eu-top-level-domain-name-registrations-in-the-event-of-a-no-deal-eu-exit/>

EU guidance on .eu domain names

https://ec.europa.eu/info/sites/info/files/eu_domain_names_en.pdf

EURID domain registrar guidance on .eu domain names and Brexit

<https://eurid.eu/en/register-a-eu-domain/brexit-notice/>

8.

Harmful, illegal, and terrorist content

This impacts:

startups running platforms or services which host and share user-generated content (including user comments or reviews)

Governments everywhere want to take action on content which diminishes the web, including illegal content, hate speech, and incitement to terrorism. A no deal Brexit could mean that UK startups have to follow a stricter set of rules on content screening, reporting, and takedowns than they would in Europe.

What would no deal brexit mean

The EU is currently debating several pieces of legislation to establish how platforms should identify, moderate, and take down illegal and terrorist content. These would establish base standards for how this material is defined, place a duty of care on providers to prevent its dissemination, and create strict time limits for terrorist content to be taken down. They are also looking at illegal content, ranging from hate speech to copyright violations, and how these issues are managed by platforms at scale.

In the event of a no deal Brexit, the UK won't participate any further in the negotiations on the rules for content which reaches across borders. The UK Government has proposed its own rules for dealing with objectionable content, the Online Harms White Paper, which goes beyond the specifications of the EU proposals and includes 'legal but harmful' content. For startups hosting content, it will mean following two sets of rules: one for UK content, and one for European content.

FAQs

What is happening with the EU's proposals in these areas?

In addition to its proposal on terrorist and illegal content, the new European Parliament has proposed a plan to modernise the rules on moderation of user-generated content which could alter the e-Commerce Directive (see section 4).

What you should do

- 1. If your service uses user-generated content, review the processes you have in place for users to report material which could be illegal.**
- 2. Review your terms and conditions for what user-generated content is deemed acceptable on your service, and how users can raise a concern.**
- 3. Review what systems and processes you have in place for dealing with government requests.**

Further Reading

Illegal content on online platforms

<https://ec.europa.eu/digital-single-market/en/illegal-content-online-platforms>

The UK Government's Online harms White Paper

<https://www.gov.uk/government/consultations/online-harms-white-paper>

9.

Geoblocking and cross-border content

This impacts:

startups who work using content doing business with European users and customers

The geoblocking and cross-border content portability regulations are an example of how UK startups will be required to continue following European laws for their European customers, while losing those protections for their domestic customers.

What would no deal brexit mean

After we leave the EU under any scenario, UK startups continuing to do business in the European digital single market will be required to continue following both the geoblocking and cross-border content regulations.

You will not, for example, be able to treat a Belgian customer differently from a Spanish one; you will not be able to make content available in Germany but not in Italy; and as is the case now, you won't be allowed to redirect your European customers to other sites. The only exemptions allowed are where issues of copyright come first.

It's very different the other way around. After the UK leaves the EU, UK customers will no longer enjoy the protections of the EU geoblocking and cross-border content regulations. This means that EU businesses can treat UK customers differently.

FAQs

What if I produce broadcasting and video-on-demand content?

The future of content production for the European market is a complex issue involving copyright, licensing, and the Audiovisual Media Services Directive. In the event of a no deal, you will still be able to broadcast your content into Europe, but several layers of national licencing and possible legal registration may be required in order for that content to be seen. We'd take legal advice in each country of operation as soon as possible.

What you should do

- 1. Review your service offerings, terms and conditions, and provisions for the European marketplace, ensuring you are fully aligned with the Digital Single Market framework;**
- 2. Give assurance to your European customers that you will continue to serve them after Brexit;**
- 3. Look into any licensing requirements you may have to adopt to continue producing video content.**

Further Reading

Gov.uk Guidance on Geoblocking after Brexit

<https://www.gov.uk/guidance/geo-blocking-of-online-content-after-brexit>

Gov.uk Guidance on Broadcasting and video on demand

<https://www.gov.uk/government/publications/broadcasting-and-video-on-demand-if-theres-no-brexit-deal/broadcasting-and-video-on-demand-if-theres-no-brexit-deal--2>

Cross-border portability of online content

https://publications.parliament.uk/pa/cm201617/cmselect/cmeuleg/71-xxxv/7108.htm#_idTextAnchor009

10.

Horizon 2020 and R&D Funding

Startups this impacts:

startups who have received funding from the EU's Horizon 2020 scheme (either directly or indirectly)

Horizon 2020 is the EU framework for Research and Development funding. Many startups doing innovative R&D have used the EU's Horizon 2020 scheme to bid for funding. At present, funding can be derived from this scheme just like every other EU member state. This will change when we leave the European Union.

What would no deal brexit mean

If there is no deal, the government has committed to maintaining funding for all successful bids for Horizon 2020 funding that are submitted before we leave the EU via UKRI.

The guarantee also covers all successful competitive UK bids to Horizon 2020 calls open to third-country participation submitted between Brexit and the end of 2020. Both the guarantee and extension commit funding to UK Horizon 2020 participants for the lifetime of projects.

In the event that a bid is stuck in the Horizon 2020 system as we leave the EU, it will instead be automatically reviewed by UKRI - with successful applications provided with funding.

Current UK recipients of Horizon 2020 funding need to provide initial information about their projects on the UKRI portal.

FAQs

If I have submitted an application for Horizon 2020 which is yet to be judged by the European Commission, should I register the details with UKRI?

If you have submitted a bid to one of these calls before exit you should wait for the Commission's response. If the UK leaves with no deal and your proposal is evaluated as successful, your project will be covered by the funding guarantee. As soon as you receive notification you should contact UKRI.

What you should do

- 1. Check where any public R&D funding you receive derives from**
- 2. Ensure that if you are funded by Horizon 2020 at present you register the project in the UKRI portal**

Further Reading

Gov.uk Guidance on Horizon 2020 after Brexit

<https://www.gov.uk/guidance/horizon-2020-funding-after-brexit>

UKRI - Brexit Information

<https://www.ukri.org/research/international/ukri-eu-exit/>

