Trading through Brexit

Preparing for a No Deal: 10 questions for commodities traders

The UK leaving the EU with No Deal on 29 March 2019 is the default position unless any extension is legally confirmed. Certainty on an extension to Article 50 may not be secured until the last week of March. We therefore recommend that impacted business continue to prepare for a No Deal scenario. It is also important to note that an Article 50 extension does not take No Deal off the table at a later date.

Leaving with No Deal would have immediate implications for commodities traders and associated business operating models.

Our Commodities Markets and Brexit specialists set out ten key questions. Are you prepared?

1) How will you conduct MiFID regulated trading?

A hard Brexit will restrict the ability of entities within the UK to conduct MIFID activities with EEA counterparts. As such companies will need to consider the business solution for continuing this activity, and with it the appropriate licensing, booking model, operating model and governance model – all of which may require facilitation from within the EU. As well as considering the day-to-day business impacts, companies will need to consider the impacts on their clients and put in place measures to ensure trading can be carried out appropriately for counterparties where a solution has not been successfully implemented.

2) Can your UK and EU entities continue to be a member or clear on EU and UK exchanges respectively?

Companies will need to consider how their group trading patterns may change and determine which entities will require changes in access to commodity exchanges. They will then need to evaluate whether they can meet the member or clearer requirements of each exchange if it sits within or outside the EU respectively.

3) Are you prepared for potential border delays?

Companies will need to think about whether physical trades will have the right customs information, especially for vessels and shipments that leave under one regime and arrive under another. Companies should consider their border processes and how they will need to adapt in addition to the knock-on impacts of their counterparts not being able to deliver as expected.

4) Have you understood the impact on your European and UK shipper licences or other similar licences?

Gas and power companies will need to consider whether existing shipper licences remain valid. Where this is not the case engagement with national regulators will be needed to ensure that physical commodities can be delivered as required. This may also apply to other commodities where operational licences are required that are dependent on being an EEA member. Companies may also want to consider the impact of leaving the EU on their REACH registrations and any downstream compliance obligations.

5) Have you identified the contractual clauses that may cause you pain?

Companies may need to review their contracts to identify whether material adverse change or price review clauses could lead to renegotiation of existing contracts. Companies should also look to identify Incoterms or cost clauses that can lead to additional custom and duties.

6) Have you considered data protection and GDPR?

Companies will need to consider what information flows may cause a breach either from existing operations or from new business models deployed to deal with Brexit complications.

7) Are your systems ready to go?

Companies will need to consider how new operational structures will be setup in their existing IT systems to ensure that reporting and risk management requirements are met. Following a hard Brexit, EU legislation will be replaced by UK statutory instruments and/or WTO rules. Companies should consider the impact on their IT systems and processes with respect to potentially revising reporting and master/reference data related to these changes.

8) Do you understand the VAT, duties and direct tax impacts?

Companies should identify which European to third country free trade agreements (FTAs) are material to their business and understand the impact assuming these FTAs are not replaced. They should asses UK to EU trade flows to understand how customs duties and, to a lesser extent import VAT would change post-Brexit. Finally, companies may also want to consider how any changes in the operating model may impact existing direct tax relationships and the potential for withholding tax or other direct tax impacts.

9) Have you considered how a lack of mobility into the EU may affect your workforce?

As free movement comes to an end, companies may want to consider what this means for their workforce and their recruitment processes. Brexit may lead to a reduction in talent due to people returning home or companies relocating.

10) Do you have a robust business continuity plan?

Given the uncertainty associated with Brexit, have you planned for the unexpected? Does your company have a clear crisis management process that will allow you to take decisions quickly? Are you able to scale up your Brexit team if your counterparts suddenly inundate you will re-contracting requests?

EY's Commodities Markets practice:

Evolving global supply and demand patterns for commodities present new opportunities for companies to maximise returns through commodities markets. Companies with commodity trading operations are continuously exploring new business models, rationalising portfolios, accelerating investments in digital technologies and increasing efficiencies while managing market, credit, and operational risks. EY's global Commodities Markets practice provides comprehensive assurance and advisory services for business transformation, technology enablement, risk management, regulatory compliance, financial reporting, and external and internal audit services to companies with commodity trading, marketing, and hedging operations.

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