

Brexit: How universities can prepare for a no-deal scenario

State of play

The Brexit negotiations have exceeded the planned deadline of October 2018. The aim is to reach a formal, legally binding agreement on an orderly withdrawal of the United Kingdom from the European Union. The delay does not mean that this will not happen. However, due to the difficulty of the negotiations and the short time before the UK will leave the EU (30 March 2019), it is necessary to plan for the consequences of a so-called “no-deal scenario” in which the UK leaves without a separation agreement.

In this scenario, the UK would go from being an integral part of the EU on 29 March 2019, to being a third country the day after – without a transition period. This would imply no certainty in the way in which exchanges across the channel would continue, potentially affecting areas from trade to travel and information exchange. Every relation with the EU would have to be redone, and even if the UK does not change its laws overnight, from a legal point of view UK rules would not be considered equivalent with EU rules, for example for data protection.

It is important to underline that a no-deal is a worst-case scenario; if there is an agreement, the EU and the UK have already agreed that the Horizon 2020 and the Erasmus+ programmes will continue without changes to UK participation until 2020, and that there will very likely be a transition period so that other areas such as trade and regulation are not immediately affected.

What should universities do in a no-deal scenario?

In practice, a no-deal scenario would have consequences for universities both in the EU and the UK that have relations across the channel. In order to continue collaboration between EU and UK universities, it is important that universities:

- 1) identify and compile an overview of potential problem areas;
- 2) seek answers to questions that arise in these areas, be it from national authorities, the European Commission or other legal advice;
- 3) find solutions with their partners on the other side of the channel to face challenges.

EUA has identified four major areas of importance for universities that are likely to be affected by a no-deal scenario. These areas provide a framework for identifying problems, however, the examples given are not exhaustive, and EUA advises universities to identify any other area that might be relevant for their specific context and type of collaborations.

The four areas are:

- 1) **people:** students and staff affected by Brexit;
- 2) **cooperation:** the future of EU-funded activities;
- 3) **data:** shared information between the UK and the EU;
- 4) **trade:** goods and services passing between the UK and the EU.

People

- Legal status and residence permits: Concerning the consequences for students and staff, it is important to have answers to the question of their status as of 30 March 2019. What will they need in terms of residence permits and what are their rights as third country citizens? Here, universities must consult national authorities to see what the eventual procedure is for the transition from EU to third country citizens.
- Tuition fees: Regarding fees, UK students in some countries would move from a national to a third-country fee regime. It would need to be clarified whether these students need to pay fees, and if so for what period as the change would in many cases happen mid-semester. The decision might be different from system to system, but it is likely that the question would need to be raised with national authorities in good time.

Cooperation

- EU programmes: The UK would be considered a third country also in the framework of EU funding programmes. While this would not automatically exclude UK entities from participating in already existing consortia, they would no longer be eligible for EU funding. Therefore, the UK government has already declared that it would make up for this by covering the costs for UK universities that participate in consortia in Erasmus+ and Horizon 2020. At present it is not clear whether UK entities could remain project coordinators of any EU co-funded projects. Furthermore, UK partners would not count towards the minimum number of EU partners required in a consortium, which means that some consortia would no longer fulfil the eligibility criteria. There might in some cases be specific limitations for third countries in the original call as well, where consortia with UK partners could be affected.

Erasmus+ is potentially more complicated due to the decentralised nature of parts of the programme. Again, the UK government would pay for UK partners, but how these payments will be done in practice is not clear, nor is the status of UK partners regarding their Erasmus Charter. As mentioned, issues regarding residence permits for UK students will also have to be dealt with.

For the management of EU programmes, answers should come from the European Commission, its respective executive agencies responsible for programme implementation, the Erasmus National Agency (notably for decentralised actions) or the National Contact Points for the EU research framework programme.

Data

- Data protection rules: In the case of a no-deal scenario, the UK would by definition not be compliant with the EU General Data Protection Regulation (GDPR), even if the UK does still have the same rules as the EU. It will be relevant for universities to see what data is shared with UK partners, if any is sensitive, and if practices need to be changed. Affected areas could, for instance, be the exchange of research data or student and staff data. In some cases, this will not be necessary, but EJA recommends having an overview.

Here, answers to questions about managing the change should come from universities' legal experts.

Trade

- Tariffs and standards: Rules regarding buying goods and services from the UK will change radically with the framework of the relationship changing from the EU Customs Union and Single Market to the rules of the World Trade Organisation (WTO). This will relate to physical goods that might be subject to tariffs or other restrictions depending on their nature, or goods that will require phytosanitary checks (for example animal products), which might be particularly difficult due to the necessity to set up a system for these checks in a very short time.

It will also be relevant to see how services bought in the UK would be affected and how the rules for procurement would change if the UK becomes a third country over night.

Conclusion

It is important to keep in mind that while the questions raised by a no-deal scenario may seem numerous and complicated, the issues should be resolvable once the appropriate answers have been found. The university sector remains relatively uncomplicated compared to many other sectors, and even a no-deal Brexit should not prevent universities on our continent from cooperating in the years to come.

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