

# Countdown to Brexit Series

What should you be doing now?

The second in our series of Countdown to Brexit -  
New Market Surveillance Rules for Suppliers into the EU

## **New regulation**

In June, the EU Commission published the Market Surveillance Regulation. The Regulation complements the EU's 'Goods Package', a policy first coined in 2017 to promote a better functioning European market for goods.

The Regulation aims to ensure that products imported into the EU for sale are compliant with EU legislation.

The Regulation will impact suppliers based outside of the EU, requiring them to have an EU-based representative, subject to exceptions. EU representatives will be tasked with communicating with regulatory authorities on behalf of non-EU suppliers, in addition to holding documentation demonstrating that a product complies with all applicable EU law.

The Regulation will sit alongside existing legislation relating to products considered to require enhanced regulation (for example medicinal products and food products), which already impose comparable obligations in relation to those products.

Regulatory frameworks can vary drastically between products. Consequently, a single supplier may be obliged to comply with multiple pieces of legislation. Non-compliance with any applicable legislation is treated seriously by regulatory bodies and will often see those in breach subject to significant sanctions.

## **What will change?**

UK businesses are currently permitted to supply products to EU purchasers in the same way they would domestically, by virtue of the UK's membership of the European Union. Post-Brexit, UK suppliers will be treated in the same way as suppliers in other non-member states and may be subject to additional regulatory requirements, including having an EU-based representative, if they are to continue supplying products caught by the Regulation to customers in the EU.

The sale of products online is particularly problematic in the context of complying with the Regulation. Goods are automatically presumed to be supplied into the EU if online sales activities are 'directed to any EU member state'. Products sold online are readily accessible to people in other jurisdictions and suppliers will need to account for this fact, meaning that the Regulation is likely to have the biggest effect on online retailers and suppliers.

It is unclear at this stage whether additional obligations imposed by the Regulation will be reciprocated to EU-based suppliers exporting to the UK after Brexit.

## **When?**

The requirement for non-EU suppliers to have an EU-based representative will take effect from 16 July 2021.



## What should you be doing now?

1. Consider the extent to which products you supply are subject to regulatory requirements imposed by EU legislation
2. Consider the extent to which you will become subject to further regulatory obligations post-Brexit by virtue of your European operations
3. Begin planning a strategy to implement measures to address additional regulatory obligations in a way that is comprehensive and cost-effective.



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