

FAQ: Business and Human Rights After Brexit

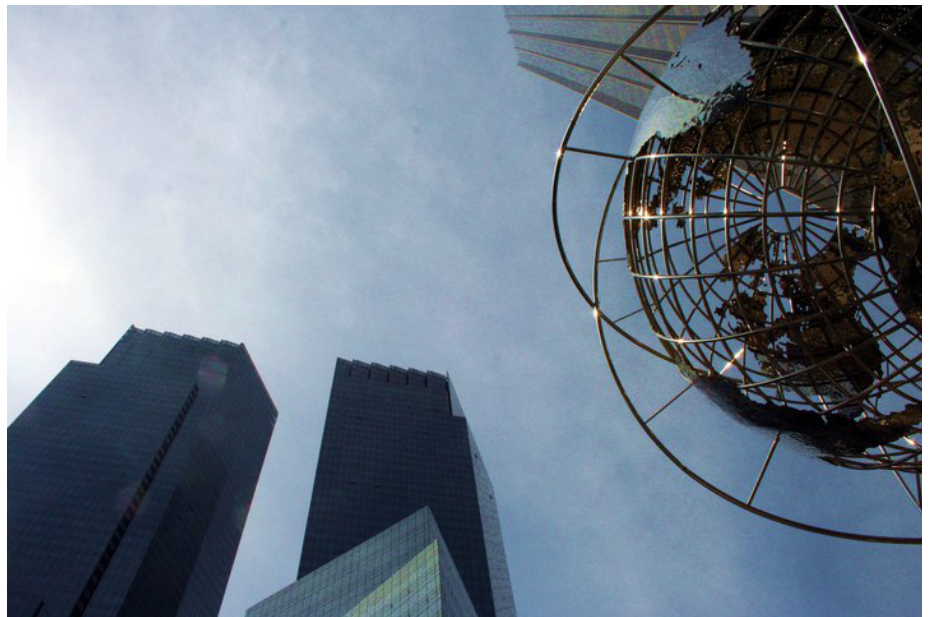
September 2017

Contents

This FAQ discusses:

- How the current business and human rights framework is likely to be affected by Brexit
- How Brexit will affect the application of the current EU legal framework on business and human rights
- The impact of Brexit on legal proceedings brought for corporate violations of human rights
- How the UK framework around business and human rights will be affected by Brexit
- Whether industry standards and multi-stakeholder initiatives are likely to be affected by Brexit

It is intended to provide a brief overview of some key issues, and is therefore not comprehensive.



Q: Will the current business and human rights framework be affected by Brexit?

A: Insofar as the current framework for business and human rights is set out at international level in the [UN Guiding Principles on Business and Human Rights](#) (UNGPs), it will be largely unaffected by Brexit. The provisions of other international instruments which echo the UNGPs, such as the [OECD Guidelines for Multinational Enterprises](#), the [International Finance Corporate \(IFC\) Performance Standards](#) and the [Equator Principles](#), will remain similarly unchanged.

In particular, the international law obligations of the United Kingdom and individual EU Member States to protect human rights, including against abuses by business enterprises operating within their jurisdiction or territory, will remain in force.

However, the application of certain EU and UK regulatory instruments may be affected with respect to companies based or operating in the EU or the UK.

Q: How will Brexit affect the application of the current EU legal framework on business and human rights?

A: Corporate behaviour is regulated extensively at EU level by a myriad of legal provisions, including on areas which cover human rights protection without explicitly using human rights language, such as health and safety, consumer protection, and environmental laws. Even where these laws are currently incorporated into UK law, their monitoring and enforcement often takes place at EU level, such as with many environmental measures.

In addition, certain EU regulations explicitly regulate corporate behaviour with respect to human rights. For example, the EU Non-Financial Reporting Directive (2014/95/EU) requires certain large companies to report on non-financial indicators, including relating to human rights. This Directive was incorporated into sections 414CA and 414CB of the UK [Companies Act \(2006\)](#) in December 2016.

After Brexit, the application of these EU legislative instruments to companies operating in the UK will depend on the extent to which these provisions are incorporated into the UK legislative framework. Effective incorporation would need to include provisions for the enforcement of these standards by UK bodies, and for judicial recognition of EU jurisprudence on these standards. Similarly, trade agreements would have to guarantee that standards which protect human rights, such as those relating to consumer health and safety, will be maintained on imported goods.

Q: How will Brexit affect legal proceedings brought for corporate violations of human rights?

A: To date, many of the prominent civil law claims for corporate human rights impacts have been brought in UK courts. Currently, important aspects of the procedural principles applicable to these claims are contained in two EU Regulations:

- Prior to the adoption of the [recast EU Brussels I Regulation \(1215/2012\)](#), claims based on corporate human rights harms which occurred outside of the UK were frequently dismissed based on the exception of *forum non conveniens*, the doctrine that allows Courts to halt proceedings initiated before it on the basis that it is not the most appropriate forum for the matter. The Brussels I Recast establishes jurisdiction for the courts of the relevant EU member state provided the defendant company is domiciled or operating in that member state. Brussels I Recast also provides for mutual recognition and enforcement of judgments within other EU member states.
- Where non-contractual claims are brought for human rights harms which took place in another jurisdiction, the [EU Rome II Regulation \(864/2007\)](#) determines that the relevant law applied by the court would be the law of the jurisdiction where the harm occurred.

Once the UK leaves the EU, it remains to be seen whether the UK will:

- Incorporate and uphold the principles of Brussels I Recast and Rome II, in order to safeguard access to UK courts for cross-border human rights litigants against UK companies, and to clarify the civil procedure as to the choice of law; and
- Make alternate arrangements for the mutual recognition and enforcement of judgments to ensure effective enforcement of orders for injunctive relief or specific performance in host states, such as those requiring clean-up operations.

Please see our FAQ on [Litigation Post Brexit](#) for further information.

Q: How will the current UK framework around business and human rights be affected by Brexit?

A: The current UK regulatory framework which contains human rights obligations for business enterprises, such as the [UK Modern Slavery Act \(2015\)](#), [Companies Act \(2006\)](#) or the [Gangmasters Licensing Act \(2004\)](#), should not be affected by the UK's exit from the EU.

However, after Brexit it would be possible for the UK legislature to remove protections that were incorporated into UK law as transposition of EU laws, such as the EU non-financial reporting requirements which have been incorporated into the [Companies Act of 2006](#).

In practical terms, the number of companies affected by current UK legislative requirements may change as companies choose to increase or decrease their presence and operations in the UK. For example, the Section 54 of the [UK Modern Slavery Act](#) provides that the Act applies to "a body corporate (wherever incorporated)" carrying on a business in the UK and with a turnover of at least £36 million per annum. Depending on the scope of their UK operations, companies which relocate to other EU or non-EU jurisdictions after Brexit may no longer be covered by the provisions of this Act.

Currently, supply chains which operate across the EU rely on the free movement of goods and services, and in certain circumstances on other EU trade benefits such as agricultural subsidies. After Brexit, companies operating in the UK may decide to increasingly source from suppliers located in non-EU jurisdictions. Some of these jurisdictions may not offer the same human rights protections as could be expected from the EU-based suppliers.

Accordingly, the UK legal framework for human rights protection within supply chains may need to be strengthened to ensure adequate human rights protection in UK companies' global supply chains. It is noted that the [UK Modern Slavery Act](#) applies to slavery, forced labour and trafficking, but does not cover other human rights abuses, such as right to health, indigenous land rights or right of access to justice in supply chains. The UK legal framework would also need to provide legal certainty to UK companies which have become accustomed to human rights protection in their EU supply chains through EU standards, monitoring, enforcement and cooperation.

Q: How will industry standards and multi-stakeholder initiatives be affected by Brexit?

A: Industry standards which are set at an international level, such as the [Global Network Initiative](#) (in the telecommunications sector) and the [International Code of Conduct Association](#) (in the private security sector) should remain unaffected by Brexit.

Where these guidelines are formulated by multi-stakeholder initiatives which include states, such as the [Voluntary Principles on Security and Human Rights](#), they would remain unaffected provided that such state participation takes place at national level rather than at EU level.