

How to turn Brexit's devastating impacts into opportunities?^{1, 2}

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ABSTRACT

Brexit will take place by March 2019 and deeply impact project management contracts. Thus, as it is an important part of any project managers' job to plan and limit the risks that could negatively impact the project, visualize Brexit's possible specific scenarios to develop the most adapted responses shows crucial advantages to face this unique situation. The main purpose of the research is to demonstrate the effectiveness of this method and the positives impacts it provides to project management. The paper ran a literature review of Brexit's possible impacts on contracts based on recent research. Then, the paper highlights different behavior project managers can adopt to answer to this situation. Finally, the paper analysis the possible solutions and which one of them provides the best performances to project management. The results have shown that visualizing Brexit's possible specific scenarios to develop the most adapted responses considerably reduces risks for project management.

Keywords: Brexit – Impact – Commercial Contract – Forecast

INTRODUCTION

A referendum was held on Thursday 23 June 2016, to decide whether the United Kingdom will remain a member of the European Union or if it will leave it. "With a turnout reaching 71.8%, the leave won by 51,9% to 48,1%".³ These results triggered the first step of a long-term negotiating process planned to last several years. Do you know that contracts will get impacted by Brexit and that it is crucial to anticipate the potential outcomes to stay keep businesses safe after the United Kingdom leaves the European Union?

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³ EU Referendum Results. (2018, October). Retrieved from https://www.bbc.com/news/politics/eu_referendum/results

By March 2019, the United Kingdom won't be part of the European Union anymore. Among the multitudes of treaties, bilateral and multilateral contracts that are going to be renegotiated, there are some commercial contract clauses that are going to be impacted. It appears that the United Kingdom will lose more than 750 international arrangements and will have to renegotiate many of them. Businesses between the United Kingdom and the European Union were highly facilitated by common treaties. Project managers from both the European Union and the United Kingdom will observe an impact on their contract's clauses.

Most companies are already preparing themselves for this important event and are trying to forecast the potential impact Brexit will have on their contracts. Additionally, Brexit is a lesson to all project managers all over the world: "As a project manager, this is a chance you can't afford to take. Even when you're absolutely certain something won't happen, always have a back-up plan ready just in case that "impossible" thing comes to pass"⁴.

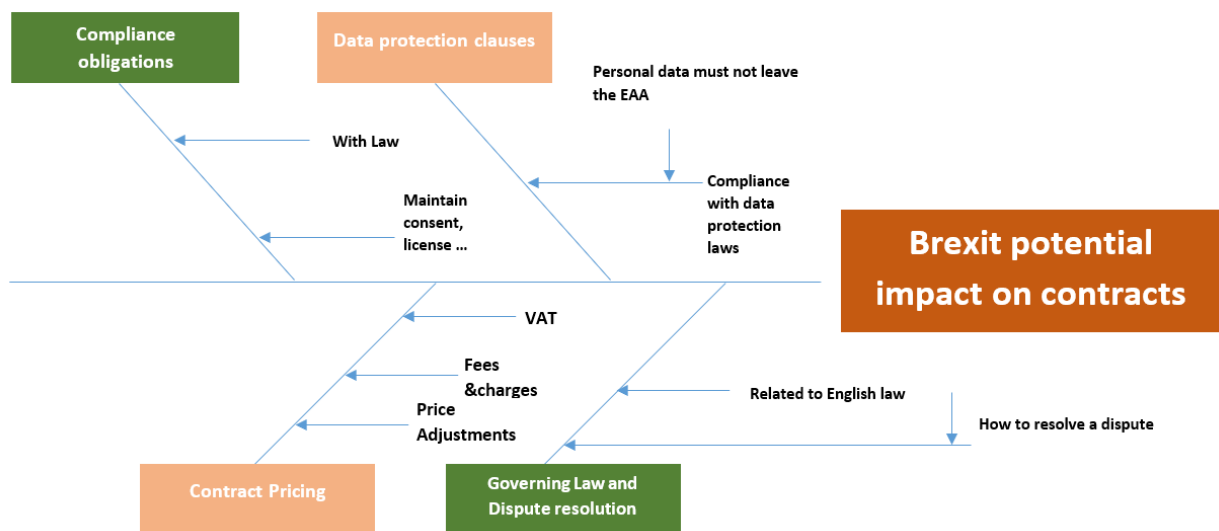


DIAGRAM 1. Brexit potential impact on contracts.⁵

Contractors from both the United Kingdom and the European Union must anticipated the impact caused by Brexit on major clauses and define strategic solutions if they want to stay efficient and profitable. Few major clauses are already identified and should trigger contractor's attention such as contract pricing, DATA protection clauses which depend on whether a country is part of the European Union or not, compliance obligation especially regarding licenses but also dispute resolution clauses which are crucial in this very complex situation.

By the end of this research, we should be able to take the right decisions about post Brexit contracts especially about specifics clauses: contract pricing, DATA protection, compliance

⁴ EU Referendum Results. (2018, October). Retrieved from https://www.bbc.com/news/politics/eu_referendum/results

⁵ By author

obligations and Governing Law and dispute resolution. This paper will focus on potential solutions for all these clauses and enable project managers to anticipate Brexit's impact on these clauses.

METHODOLOGY

1. Problem definition

Throughout this research will try to solve several problems:

- Is it worth taking actions to anticipate Brexit potential impact?
- What should we do to face this situation efficiently?

2. Feasible alternatives

To answer all the questions above, we need to compare the effectiveness of the solutions. The comparison's purpose is to determine whether:

- Project manager should anticipate the impact by elaborating several scenarios that might occur
- Do nothing because we are sure enough about the possible impact caused by Brexit
- Try to influence parts of the UK government involved in the Brexit negotiations.

3. Development of the outcomes⁶

Foremost, before going more in-depth in our analysis, we should focus on why it is crucial for project manager to forecast the potential impacts of Brexit on few clauses of contracts. According to the International Association for contracts and Commercial Management (IACCM), almost 80% of the terms, are not significant legal concerns, but rather business and financial terms. Brexit is going to deal with commercial and financial terms and project manager should anticipate to possible outcomes on their projects. Contracts convey "important information inside and between organizations; define relationships; establish organization structures; create shared meaning; motivate; bring organizational learning; create, allocate and protect value."⁷

3.1 Contract pricing clauses⁸

⁶ Travers Smith, T. (2017, March). *Brexit: the impact on contracts*. Retrieved from [https://www.traverssmith.com/assets/pdf/legal-briefings/Brexit - impact on contracts - March 2017.PDF](https://www.traverssmith.com/assets/pdf/legal-briefings/Brexit_-_impact_on_contracts_-_March_2017.PDF)

⁷ Haapio, H. (2007). An ounce of prevention—contracting for project success and problem prevention. Paper presented at PMI® Global Congress 2007—North America, Atlanta, GA. Newtown Square, PA: Project Management Institute.

⁸ *Brexit: impact on long term commercial contracts insights dla piper global law firm*. (2018, April 6). Retrieved from <https://www.dlapiper.com/en/france/insights/publications/2016/04/brexit-at-a-glance/brexit-contract-terms/>

Among the contract pricing clauses, we shall focus on fees and charges which might get impacted due to the imposition of imports quotas and tariffs. As a result, using flexible pricing models appears as the best solution.

3.2 DATA protection clauses⁹

With Brexit, the UK might not be part of the EEA (European Economic Area) anymore. Thus, companies might not be allowed to keep personal information after Brexit. The most suited protection to this might be to sign new contracts which include European-Union approved model clauses.

3.3 Governing Law¹⁰

The English court judgments might lose of its power in European-Union countries. In such a situation, two effectives solution appear: to give non-exclusive jurisdiction to the English court or to use arbitration.

4. Selection of criteria

At this stage, several outcomes have been identified for three different clauses in relation with post Brexit impacts. Now we are going to assess different criteria to each of these possible solutions to decide whether they are reliable or not. Some of those criteria come from an article written in the CN Construction news website and the others come from my personal knowledge about the subject.¹¹

- **Cost¹²**, to evaluate the amount of money involved to set up the solution.
- **Timeless¹³**, to determine whether the solution in time-consuming or not.
- **Simplicity¹⁴**, to assess how difficult the solution is to put in place.
- **Level of expertise required¹⁵**, to know how skilled the human resources should be to achieve it.
- **Reliability¹⁶**, to which point are the solutions effectives.

⁹ Travers Smith, T. (2017, March). *Brexit: the impact on contracts*. Retrieved from

[https://www.traverssmith.com/assets/pdf/legal-briefings/Brexit - impact on contracts - March 2017.PDF](https://www.traverssmith.com/assets/pdf/legal-briefings/Brexit_-_impact_on_contracts_-_March_2017.PDF)

¹⁰ *Brexit: impact on long term commercial contracts insights dla piper global law firm*. (2018, April 6). Retrieved from

<https://www.dlapiper.com/en/france/insights/publications/2016/04/brexit-at-a-glance/brexit-contract-terms/>

¹¹ *Brexit: Construction contracts and changes in law*. (2017, 18). Retrieved from <https://www.constructionnews.co.uk/best-practice/legal/legislation-updates/brexit-construction-contracts-and-changes-in-law/10021552.article>

¹² *Brexit: Construction contracts and changes in law*. (2017, 18). Retrieved from <https://www.constructionnews.co.uk/best-practice/legal/legislation-updates/brexit-construction-contracts-and-changes-in-law/10021552.article>

¹³ *Brexit: Construction contracts and changes in law*. (2017, 18). Retrieved from <https://www.constructionnews.co.uk/best-practice/legal/legislation-updates/brexit-construction-contracts-and-changes-in-law/10021552.article>

¹⁴ By author

¹⁵ By author

¹⁶ *Brexit: Construction contracts and changes in law*. (2017, 18). Retrieved from <https://www.constructionnews.co.uk/best-practice/legal/legislation-updates/brexit-construction-contracts-and-changes-in-law/10021552.article>

- **Level of influence required**¹⁷, the level of influence required by the leaders to achieve the goal.
- **Leadership skills required**¹⁸, the leadership skills involved to set up the solution.
- **Legal compliance risks**¹⁹, how important is the risk not fulfill legal compliance.

These criteria are assessed in the following table. That process will help identifying the most effective solution in the following SWOT analysis.

Selection of attributes	Doing nothing: no anticipation	Influence part of the UK government	Identify specific scenarios
Cost (man per hour)	MEDIUM	MEDIUM	LOW
Timeless	MEDIUM	MEDIUM	MEDIUM
Simplicity	LOW	HIGH	MEDIUM
Reliability	HIGH	MEDIUM	MEDIUM
Level of expertise required	LOW	HIGH	MEDIUM
Level of influence required	LOW	HIGH	LOW
Leadership skills required	LOW	HIGH	LOW
Legal compliance risks	HIGH	LOW	LOW

Table 1: Ranking criteria for each feasible alternative²⁰

The table above highlights the importance of each criteria for the three feasible alternative we are focusing on. We can observe that the solution “doing nothing: no anticipation” is low in several criteria. It is crucial here to precise that those criteria are low by nature because doing nothing does not required any skills. However, the criteria in medium (cost and timeless) and in high (legal compliance risks and reliability) are extremely impactful any project and the project manager. The two remaining solutions offers interesting outcomes as they both bring an effective response to the most important criteria: legal compliance risks.

FINDINGS

5. Analysis and comparison of the alternatives

We have been able to assess quantitative criteria to compare whether project managers should take actions regarding those clauses potentially impacted by Brexit or not. To support further

¹⁷ Strategy&, part of the PwC network. (2016, December 12). How To Build A Post-Brexit Business Strategy. Retrieved from <https://www.forbes.com/sites/strategyand/2016/12/12/how-to-build-a-post-brexit-business-strategy/#2324f7d35ed0>

¹⁸ By author

¹⁹ How Companies Should Prepare for Brexit. (2018, August 13). Retrieved from <https://www.bain.com/insights/how-companies-should-prepare-for-brexit-wsj/>

²⁰ By author

these results, we will achieve three SWOT (Strengths, Weaknesses, Opportunities and Threats) analysis:

<p>Strengths</p> <ul style="list-style-type: none"> ➤ No additional costs involved ➤ Not time consuming ➤ No skills required 	<p>Weaknesses</p> <ul style="list-style-type: none"> ➤ Not trying to get one step ahead ➤ The bad effect won't be faced now but later ➤ Accepting a very high level of uncertainty for the future ➤ Passive behavior that all companies will not necessary choose.
<p>Opportunities</p> <ul style="list-style-type: none"> ➤ None 	<p>Threats</p> <ul style="list-style-type: none"> ➤ When Brexit will occur, no plans on how to adapt ➤ Other compaignies which will have anticipated may take advantage of the situation

Table 2: SWOT analysis of the potential solution: "Do nothing".²¹

In this analysis of the possible solution "do nothing" we understand the high level of threats and weaknesses. We can identify very few strengths which are cost-oriented and aren't relevant in a long-term aspect.

²¹ By author

<p>Strengths</p> <ul style="list-style-type: none"> ➤ Global response ➤ Enable relations with other leaders to give a greater impact ➤ Be closer to entities which will take decision ➤ Get the most precise information about Brexit potential changes on contracts 	<p>Weaknesses</p> <ul style="list-style-type: none"> ➤ Requires a high level of influence ➤ Takes time and in extension its expensive ➤ May have no consequences at all
<p>Opportunities</p> <ul style="list-style-type: none"> ➤ Creating more business relations while regrouping and discussing with other leaders 	<p>Threats</p> <ul style="list-style-type: none"> ➤ Might be followed by mass medias and give a bad image if communication fails ➤ Other leader might try to influence decisions in way we do not desire

Table 3: SWOT analysis of the possible solution: "Try to influence parts of the UK government involved in the negotiations".²²

This SWOT analysis emphasize an overall interesting solution as it provides many strengths, but it is a very limited solution which may apply to influent compaignies only.

²² By author

<p>Strengths</p> <ul style="list-style-type: none"> ➤ Enable to prepare an answer for several scenarios ➤ A solution with the most effective time spent/outcomes received ratio ➤ Considerably reduces the uncertainty risks as it covers many scenarios ➤ Enable to focus on the most important scenarios (those which might have the biggest impact on the project) 	<p>Weaknesses</p> <ul style="list-style-type: none"> ➤ Requires a high level of knowledge to identify correctly both the possible scenarios and the solutions ➤ Very time-consuming methods
<p>Opportunities</p> <ul style="list-style-type: none"> ➤ Enable to have a global picture of what is likely to happen as it covers many scenarios ➤ All the information gathered about the possible scenarios might be a strong resource for other companies to be shared or sold 	<p>Threats</p> <ul style="list-style-type: none"> ➤ None

Table 4: SWOT analysis of the possible solution: "Visualize Brexit's possible specific scenarios to develop the most adapted responses".²³

This SWOT analysis focuses on the last possible solution we are evaluating in this paper: visualize Brexit's possible specific scenarios to develop the most adapted responses". We can clearly realize the strengths and opportunities this solution brings in opposition with the few weaknesses and threats it provides.

From this analysis, we can clearly understand that Project Manager anticipating the possible Brexit impact on contracts are overperforming those who are not taking actions to forecast the changes. Both visualizing Brexit's possible specific scenarios to develop the most adapted responses and the trying to influence part of the UK government involved in the negotiations are effective solution and clearly appears as a behavior to adopt before Brexit occurs. We can highlight that trying to influence part of the UK government involved in the negotiation of Brexit is a more global but also political solution which requires a high level of influence and strong leadership skills.

²³ By author

6. Selection of the preferred alternatives

Based on the previous literature review, our criteria evaluation and on the three SWOT analysis, we can come to these results: anticipating the Brexit possible impacts on contracts by visualizing Brexit's possible specific scenarios to develop the most adapted solution has a positive impact on project management.

7. Performance monitoring and post evaluation of result

Protecting a business from Brexit potential impact is not an easy task and it entirely relies on the company/project management willingness to act and react properly. Therefore, it is crucial to find and collect relevant information from numerous and expert sources. The expertise required to understand how deep Brexit will impact contracts for Project manager is high and that is why it appears mandatory to ensure all the different sources used to base the decision-making process are reliable.

Thus, even if the main idea is to identify and limit the impact of potential changes, it is still important to deal with it. It might be possible to create a sub-team devoted to discovering and assess the most harmful risks for the project and to figure out which solutions should be implemented. There are still many questions that are required to be answered such as how can we decide whether the cost of implementing a solution is worth it or not?

I do believe that anticipating those possible impacts due to Brexit might look costly and time-consuming but at the stage of Brexit we are today, it is getting easier to find relevant information and little by little, information are getting closer to what will actually happen. In addition, the amount of work achieved to forecast Brexit's impact on contracts is most likely going to be the first step all businesses dealing with Brexit will have to undertake to keep working efficiently.

CONCLUSIONS

This paper has assessed whether Project Manager should anticipate and find solutions for the potential risks due to Brexit on contracts or just decide to do nothing.

❖ How and to what extend can Brexit impacts project management?

Brexit is an event that has never occurred as it is the first time a country asks to leave the European Union. After decades of commercial exchanges between the United Kingdom and Europe, project management will have to face a situation they've never dealt with before. It will most certainly impact many contracts clauses and will lead project managers to lose in efficiency and, as a consequence, lead companies to lose money. Fortunately, it is possible to anticipate those possibilities and it is even easier as the Brexit date is approaching because all the related information is becoming more and more reliable.

❖ **How can visualizing Brexit's possible specific scenarios to develop the most adapted solutions might be the most effective answer?**

In the analysis part, the results pointed out how crucial it is to take a decision rather than doing nothing. This research also highlighted the positive outcomes of anticipating the possible impacts of Brexit on contracts:

- Reduces the uncertainty risks as it covers many scenarios
- Project managers are able to focus on the most relevant scenarios in regards of their project
- Spend more time on money now to avoid excessive expenses in the future
- Keep the project one step ahead
- Ensure the project can legally keep going (regarding law changes that might apply)
- Maintain the project at a satisfying level of effectiveness and productivity

❖ **What are the limits of visualizing Brexit's possible specific scenarios to develop the most adapted solutions?**

Even though this research suggests anticipating the potential changes due to Brexit on contracts, it remains limited by two factors.

The first one is the relevance of the current data available about Brexit impacts on contracts. We should focus carefully on the sources they use to take their decisions. Checking all the governments publications might be a bright decision.

The other factor is the time we need to forecast correctly these circumstances. As the positive impacts we pointed out are not going to be measurable immediately but by March 2019, some project managers might decide to delay the actions to undertake and to focus on their day-to-day activities.

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