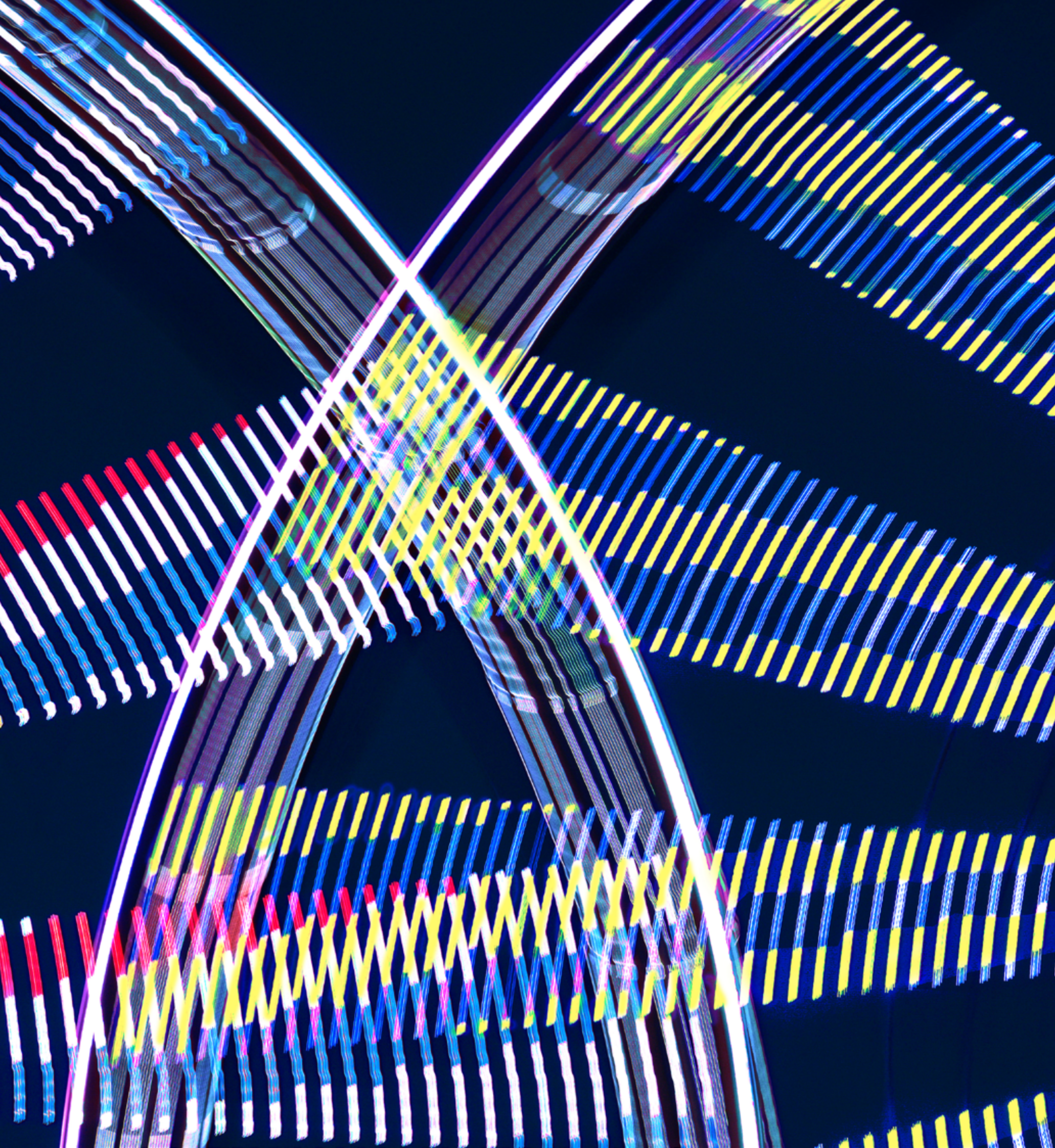


The background of the slide is a dark blue field filled with a complex pattern of diagonal lines. These lines are primarily yellow and light blue, with some green and purple accents. They appear to be composed of many fine, overlapping strokes, creating a sense of motion and depth. A faint, light-colored grid is also visible, intersecting the diagonal lines.

**Baker
McKenzie.**

Brexit: Key Implications for the Technology, Media & Telecommunications Sector



Key Implications for Business

With the post-Brexit transition period ending on 31 December 2020 and the prospects of a no-deal Brexit having increased, technology, media and telecommunications (TMT) businesses need to continue to prepare for the key challenges ahead as the UK continues to negotiate a trade deal with the EU.

The TMT sector is very broad in nature and includes businesses involved in major electronics manufacturing, software, hardware, media and creative, cloud services, telecoms and online technology platforms to name but a few. In this publication, we focus on the key sector-specific issues (from a no-deal perspective, though as any deal becomes clear, it is possible that some of these areas may be covered).

The global nature of our Firm and the clients we represent means that we have a number of experts who can provide advice that is tailored to your organisation and the challenges that you face. If you would like help navigating the complicated, evolving landscape, please contact a member of our dedicated team of specialists (contact details below) or your usual Baker McKenzie contact. Additionally, for further analysis of more general key legal and regulatory issues resulting from Brexit, please see our **'No deal' Brexit Checklist: Key Implications for Business**.

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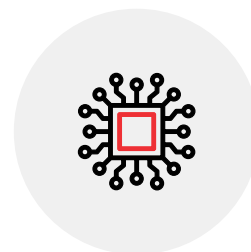


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Technology



In the era of digital transformation, the technology sector covering a broad range of digital goods and services is a key pillar of the UK economy and will be affected by Brexit in a number of ways. After the transition period, the UK will no longer form part of the EU Digital Single Market (DSM). Consequently, various DSM regulations and directives intended to promote e-commerce and the digital economy through a harmonised legal framework will no longer apply in the UK (unless transposed into national law) potentially increasing the regulatory burden for companies operating in both the UK and the EU-27. And naturally, the UK will cease to be an influential voice in shaping DSM initiatives.

E-commerce

At the end of the transition period, the country-of-origin principle established by the e-Commerce Directive (ECD) will no longer apply to the UK. This means that online service providers based in the UK will no longer be able to only rely on UK rules when providing online services within the ECD's coordinated field to other EEA countries (and vice versa). The coordinated field includes rules relating to: online information; online advertising; online shopping; and online contracting.

With the expiry of the transition period, EEA-based online service providers providing services in the UK will need to be compliant with UK regulations (and vice versa). However, depending on the nature of the online services, applicable businesses may already be compliant with the rules that apply in the territories in which they operate. UK-based online service providers should consider now whether existing compliance processes should be built on to ensure ongoing compliance with legal requirements relating to online activities in each EEA country.

Intermediary liability and copyright reform

The ECD also contains provisions relating to intermediary liability and prohibitions against imposing general monitoring obligations. The government has stated that it has no current plans to change the UK's intermediary liability regime or its approach to prohibition on general monitoring requirements.

The government has also stated that it has no plans to implement the new Copyright Directive, which imposes additional obligations on online content-sharing service providers in relation to user uploads of copyright-protected content. The UK and EU regimes will therefore diverge shortly after the end of the transition period, as EU Member States implement the Copyright Directive in advance of the implementation deadline on 7 June 2021. Providers of online content-sharing services should monitor the UK's independent regulatory agenda following Brexit.

P2B Regulation

The EU Regulation on platform to business relations (2019/1150) (P2BR) came into effect on 12 July 2020 and aims to promote fairness and transparency for business users of online intermediation services and online search engines.

The P2BR is part of retained EU legislation, so will continue to apply from 1 January 2021, and there are therefore no immediate, specific actions that providers need to take. However, the UK has introduced a number of key changes that will affect the way the retained P2B legislation operates and is enforced in the UK. The UK P2B rules will only apply where business users and consumers are located in the UK, so non-UK business users (including EU business users) directing goods and services to UK consumers will not be protected by either the EU or UK P2B rules. Where providers are subject to UK P2B legislation, there are restrictions on when they may identify mediators outside the EU. Finally, "public bodies" (such as the Competition and Markets Authority) are unlikely to be empowered to enforce the UK legislation. Individual business users, or organisations or associations representing them, will have to pursue enforcement through the courts.

In addition, the EU enforcement regime will no longer apply. Future decisions of the CJEU on the interpretation of the P2BR will not be binding in the UK, and so there is scope for future divergence in application.

Geo-blocking

After the end of the transition period, the Geo-Blocking Regulation will cease to apply to goods and services in the UK. The Geo-Blocking Regulation aims to prevent discrimination between EU customers from different markets. As the Geo-Blocking Regulation will no longer apply in the UK, UK customers may now be treated differently from EU customers when buying goods and services from the EU. Businesses selling goods and services into the UK should consider whether existing practices need to be updated in light of the Geo-Blocking Regulation no longer applying.

Data

Data monetisation and free movement of data underpin the business model of many technology businesses. Being able to transfer data efficiently between the EU and UK (and vice versa) from 1 January 2021 with minimal additional cost and regulatory complexity is crucial.

In the event of a no-deal exit, the UK will, however, become a 'third country,' meaning that any transfer of personal data from the EU to the UK would need to be legitimised by appropriate safeguards, such as model clauses or binding corporate rules. The UK could still get an adequacy decision at a later stage recognising that it provides an adequate level of data protection, but this has been complicated by the recent Schrems II decision. TMT businesses should analyse data flows between the UK and EEA to determine which require safeguards in order to legitimise transfer.

In respect of transfers from the UK to the EU, the UK has indicated that it will recognise all EEA countries, Gibraltar and the EU institutions as providing an adequate level of data protection, such that appropriate safeguards will not need to be put in place to legitimise these transfers. Business should continue to comply with the Data Protection Act 2018 (which incorporates the GDPR into UK legislation).

Tax

Businesses that trade in goods and/or services are subject to the UK's VAT legislation based upon the EU VAT Directive. The UK will retain a VAT system but will be a third country as far as the EU is concerned. This means that the movement of goods between the UK and EU-27 will cease to be subject to existing EU rules applicable to intra-EU movements (distance sales and intra-Community acquisitions), and instead become subject to import and export rule, with import VAT becoming payable (subject to any applicable postponed accounting regime). Existing simplifications, such as call-off stock and triangulation, may no longer be available, and so businesses should carefully review their existing supply chains. Non-EU and UK businesses who supply digital services to EU-based consumers and who are registered in the UK for the Mini One Stop Shop (MOSS) to report those services are likely to need to register for MOSS in an EU Member State instead and will require a standalone UK VAT registration. Similarly, if any EU or non-EU businesses are currently reporting UK VAT on digital services via a MOSS registration in another Member State, they will also need to register in the UK. In addition, VAT rules applicable to online marketplace and travel operators will change, which will significantly impact how VAT is accounted for by those businesses, albeit the rules applicable to marketplace sales broadly mirror those due to be introduced in the EU from 1 July 2021.

Whilst the UK will no longer fall within any future EU-wide initiative on digital economy taxation, it has enacted its own UK digital services tax, effective from 1 April 2020 with first payments due in 2021. The UK digital services tax will be charged at a rate of 2% on revenues of social media services, search engines and online marketplaces that derive value from UK users. However, the application of the digital services tax regime will be restricted to businesses with worldwide revenues (group basis) of more than GBP 500 million arising from the above-mentioned activities and where in excess of GBP 25 million of such revenues derive from UK users.

Competition & antitrust

Tech businesses have been a prime target for European competition and antitrust enforcement activities. At the end of the transition period, the UK Competition and Markets Authority is expected to take responsibility for larger and more complex merger, cartel and competition enforcement cases that were previously reserved for the European Commission. However, it has been indicated that there are no current intentions to make fundamental changes to the existing UK competition law regime. Tech businesses should anticipate potential further costs, regulatory burden and uncertainty that may result from the need to comply with the two separate EU and UK competition law regimes (which may diverge further in the future). Tech businesses with activities in both in the UK and EU: (i) will need to ensure that their agreements and practices continue to be EU and UK competition law compliant; (ii) should be mindful of the potential risk of parallel cartel investigations and their leniency strategy in light of such potential dual investigations; and (iii) should consider the impact of dual UK and EU merger filings on deal planning and strategy. In respect of state aid, the UK is seeking to relax restrictions on state aid following Brexit, which may allow for government-backed investments in technology infrastructure (including broadband); however, this remains a contentious negotiation point.

Talent

The government has indicated that workers' rights will be protected and we consider it unlikely that there will be substantive changes in the immediate to short term. That said, the government may look to depart from some principles of EU-derived law at a later date (the tech industry should, for example, keep a close watch on any changes to existing TUPE legal rights in the UK in future years). The UK may also have to commit to a certain level of ongoing employment protection in order to reach a trade deal with the EU. The main areas that will be immediately affected in a no-deal Brexit at the end of the transition period are the European Works Councils regime and certain social security rules for workers posted after the transition period.

The tech industry has long been a focus sector supported by the UK as the government seeks to ensure the UK stays globally competitive as a technology hub. Whilst freedom of movement for EEA nationals ends on 1 January 2021, the tech sector can usually sponsor visas relatively easily because of its highly skilled workforce and competitive salary packages. Changes to the skills threshold for skilled work, following the end of the transition period mean that more of the junior positions, technical and IT support roles and technicians should qualify for work visas.

Product certifications

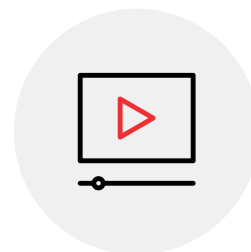
It is critical for manufacturers and retailers of technology products destined for the UK market to review the new product conformity and certification rules that will apply from the end of the transition period. The headline change is that a new "UKCA" mark will be applicable to goods sold in Great Britain (covering England, Scotland and Wales) from 1 January 2021, for which a CE mark is currently required (note that "existing stock" fully manufactured before 31 December 2020 and already conformity marked is exempt). There is, however, a transitional one-year period in respect of many goods, including electrical equipment. This means a CE mark can continue to be used instead until 31 December 2021 for so long as the EU and UK conformity requirements that must be met in order to apply such marks remain the same. There are no current UK plans to diverge at this time. Note, however, that there are important changes in respect of products that need to be conformity assessed by third-party assessment bodies. Also Authorised Representatives based in the EU (appointed by non-EU manufacturers) will no longer be recognised in Great Britain from 1 January 2021. There is no transition period in this instance, so these entities, if required, will need to be based in the UK for products made available on the market in Great Britain. Finally, goods can carry both the UKCA and CE marks so long as they are fully compliant with both UK and EU regulations. More detailed information in our client alert [here](#).

Trade

Post-Brexit, exporters of software will have to consider the export and import of dual-use controlled hardware, software and technology/information between the EU and UK and vice versa. In particular, businesses that transfer encryption items from the UK to the EU will need to register for and comply with the terms of the UK to EU Open General Export Licence. Going the other way, businesses that export encryption software from the EU to the UK will need to register and comply with the terms of EU General Export Authorisation EU001. Many other types of equipment, including sophisticated computer hardware, electronics, and telecoms equipment, will be subject to the same controls.

From a customs perspective, all movements of goods between the UK and EU will become subject to customs controls, including payment of import VAT. The UK government is phasing in controls at the border between 1 January and 1 July 2021. Even if there is no deal between the UK and EU, the customs duty impact is more limited than in other sectors as many technology products benefit from duty-free treatment under the WTO Information Technology Agreement (ITA). However, there are a number of notable exceptions to this (e.g., television sets), so it is important for businesses to ensure that they have correctly classified and valued their goods, and are complying with origin requirements under relevant free trade agreements. Businesses should also ensure that they have properly allocated responsibility for customs compliance, including setting up entities in the EU and UK that can act as importer/exporter, and engaging the services of customs brokers.

Media



The UK is a creative industry hub. Over 140,000 employees work in the sector, more than in any other EU Member State. IP intensive sectors contribute 4.7% to UK GDP. 75% of Ofcom licensed broadcasters serve non-UK territories. Brexit will throw up significant legal and regulatory challenges for the sector.

Content licensing

Under a no-deal Brexit, UK-based broadcasters and producers will lose the benefit of a number of favourable EU laws, and we are likely to see reallocation of infrastructure and personnel to other EU Member States. Importantly, the many media service providers (including video-on-demand (VOD) services) licensed only by Ofcom will no longer be able to rely on the (revised) AVMS Directive and its country-of-origin principle to broadcast into the EU Member States. There is currently no precedent for a third country securing access to the single market for broadcasting.

The European Convention on Transfrontier Television (ECTT) framework does provide a freedom-of-reception right, but it has limitations: only 20 of the 27 remaining EU Member States are signatories, the way the right is given effect will depend on how the ECTT has been implemented locally, and it does not apply to VOD services.

For media service providers broadcasting into the UK and which are correctly licensed in another ECTT country, no action is needed. Media service providers licensed by Ofcom that want to broadcast into those EU countries that are not signatories to the ECTT (i.e., Belgium, Denmark, Greece, Ireland, Luxembourg, The Netherlands and Sweden), and all VOD service providers, will have to establish themselves in an EU Member State to maintain market access to the entire EU-27. Media service providers this applies to will have already started making operational changes to their organisation, such as moving their head office, editorial decision making and/or a significant part of their workforce to an EU Member State to ensure they can establish jurisdiction in the EU for the purpose of the AVMS Directive and apply for a licence from the regulator of the relevant EU Member State.

Additionally, UK licensed media service providers will no longer benefit from the country-of-origin principle under the EU Satellite and Cable Directive for licensing of copyright material in cross-border satellite broadcasts. UK broadcasters should secure the copyright owner's permission for satellite broadcasts in individual EU Member States.

Promotion of European works

The AVMS Directive requires audiovisual media service providers to promote European works. After the end of the transition period, EU-27 broadcasters will continue to be under an obligation to promote UK works as European works. This is because the AVMS Directive defines European works not only as works originating in EU Member States, but also as works originating in countries that are party to the Convention on Transfrontier Television. The UK is a party to the convention.

On its part, as a signatory to the Convention on Transfrontier Television, the UK will be required to promote works whose production is controlled by European natural or legal persons. Under the Broadcasting (Amendment) (EU Exit) Regulations 2019, after the end of the transition period, UK broadcasters will have an obligation to reserve a proportion of transmission time to European works under Articles 16 and 18 of the AVMS Directive.

Film funding and state aid

There is a risk that approximately EUR 1.46 billion of direct EU funding will become unavailable to UK production houses or production houses shooting in the UK. Direct EU funding is open to EU Member States. In some situations, it is also open to third countries (e.g., EFTA countries and countries covered by the European Neighbourhood Policy). Depending on the deal that the UK strikes with the EU, the UK may or may not be one of these third countries. Indirect access to EU funding by the UK industry may remain an option. For example, UK producers may enter into coproduction arrangements with producers in the EU-27.

Currently, EU law prohibits the distortion of intra-EU competition by means of state support that favours certain types of production. Post-Brexit, EU state aid rules will cease to regulate UK subsidy and tax incentive regimes. The UK will have more flexibility to structure funding support and tax reliefs for the production of UK content.

Tax

UK tax reliefs available to UK productions will generally not be affected by Brexit. There may, however, be some impact on productions that wish to obtain UK tax reliefs but consist of European elements. Following Brexit, it may be more difficult for UK productions to access European tax credits. This will be depend on the nature of the changes on the requirements for British productions to qualify for EU Member States' tax credits. These changes are yet to be finalised.

Telecommunications



As the availability of telecoms infrastructure and services underpins much of today's economic (and social) activity across sectors, the UK considers the telecoms sector part of the UK's "critical national infrastructure."

Regulatory

The sector is regulated with the UK telecom regulatory framework mainly contained within domestic UK legislation, which implements the EU directives that make up the "EU Regulatory Framework" on telecoms. The EU Regulatory Framework regulates a wide range of issues including mandating telecommunications network access, radio spectrum management, use of electronic communications data, number portability and consumer access to emergency services. It aims to harmonise national telecoms regulatory rules across EU Member States, to promote the liberalisation and competitiveness of telecommunications markets, and to protect customer and end user rights.

Notably, the existing EU Regulatory Framework is currently being replaced by the Electronic Communications Directive (2018/1972), which establishes the European Electronic Communications Code (EECC). The EECC — to be implemented into national law by 21 December 2020 — addresses critical issues such as access to network infrastructure, regulation of new services and technologies (such as over the top services) and spectrum assignment and management.

The UK government has confirmed that it will transpose the EU Regulatory Framework (including the substantial provisions of the EECC) into UK law through national legislation. As a result, there will be no immediate consequences of a no-deal Brexit on the general telecoms framework that applies in the UK. The existing national legislation will continue to be valid and applicable following a no-deal Brexit. However, telecoms businesses should monitor future developments for any divergence of the UK telecommunication regime from the current EU Regulatory Framework that may develop over time.

Cross-border telecom services

Under a no-deal scenario, following the transition period, the UK will be trading services with the EU on the basis of the WTO's General Agreement on Trade in Services (GATS). Accordingly, whilst a UK-established company will continue to be able to provide cross-border telecom services into the EU on the basis of GATS, some EU Member States require telecom services providers to have a legal presence in an EU Member State in order to obtain the necessary telecom authorisations (either through establishment of a subsidiary, or branch/representative office). Following a no-deal Brexit, a UK-based entity would no longer fulfil this requirement and, if it intends to provide telecom services in countries in the EU/EEA, should check whether they would be subject to any such local laws.

Net neutrality

Following the end of the transition period, Regulation (EU) 2015/2120 — which provides for open internet access and establishes common rules on equal and non-discriminatory treatment of traffic in the provision of internet access services and related end-users' rights, so-called "net neutrality" — will no longer apply to the UK. Nonetheless, rules on net neutrality will continue to govern the provision of internet access services in the EU no matter where the electronic communication service (ECS) provider is established. Accordingly, ECS providers that continue to provide internet access services in the EU will need to remain compliant with net neutrality rules.

Spectrum

Following Brexit, the UK will no longer be subject to European Commission decisions and initiatives regarding the harmonisation of spectrum allocations and use across the EU. As a result, we could see the UK position on spectrum management and assignment deviate from the EU position. However, we consider major divergence unlikely as a harmonised framework is in the interest of UK operators and the UK will continue to be a member of the International Telecommunications Union, which harmonises certain uses of spectrum at a global level.

Funding schemes

Businesses active in the telecommunications sector may lose access to key funding schemes such as the Investment Plan for Europe, which is intended to boost investment in digital infrastructure and, in particular, broadband.

Data roaming

In the event of a no-deal Brexit, UK consumers (including employees of UK companies) will no longer be able to rely on the EU Roaming Regulation, which guarantees surcharge-free roaming when travelling throughout the EU and EEA countries. Whilst surcharge-free roaming will not be guaranteed from a legal perspective, the major mobile operators in the UK have stated that they have no current plans to change their mobile roaming policies (though this may to some extent depend upon how the roaming arrangements that UK MNOs enter into with MNOs around the EU develop).

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