Tradepeers Ltd

April 2017

Bulletin

Meanwhile in the *digital* single market ...

Many new rules are on their way as Britain leaves the EU. TradePeers believes regulation is the biggest problem for business in relation to Brexit. What will apply and when? Below are two examples of new rules for the digital sector.

Contracts for digital content

Newly proposed contract rules aim to increase certainty for businesses. Through using a single set of provisions, they won't need to deal with country-specific requirements when supplying digital content. Sellers of, for example, streaming services, apps, games, software, as well as providers of cloud computing and sharing services, will have to amend their consumer contracts to sell to consumers in the European Economic Area.

T&Cs need to include provisions on:

- *Conformity* of the digital content
- *Remedies* available to consumers
- The *right to terminate* a long-term contract
- The *modification of the digital content* after it has been sold

Negotiations between Council and Parliament will start soon. The new rules may be effective from 2019.

European Electronic Communications Code

The European Electronic Communications Code (EECC) replaces four Directives regulating electronic communications.

The new code would:

- Guarantee ubiquitous and unconstrained internet connectivity
- Harmonise competences of national regulatory authorities (for example OFCOM)
- Harmonise spectrum issues (the allocation of radiowaves to industry and government) and rules on services

The EECC is necessary to facilitate the online economy and cater for the dependence on, and pervasiveness of, internet connectivity in our lives. The next step is a vote in the relevant European Parliament committees. However, it is unknown from when the EECC will ultimately apply to operators and services providers in the telecoms sector.

Brexit Alert

What happens with these rules when the UK leaves the EU?

Rules coming into force *before* UK leaves EU	**Rules coming into force *after* UK leaves EU**
It is expected the Government puts them on the UK statute book and *all* businesses will have to comply. Subsquently, after the UK has fully left the EU, including after a potential transition period, the Government will decide on whether to keep, amend or drop them.	UK businesses would not need to adapt to EU rules, *except*: • If the UK Government decides otherwise • If the rules are part of the negotiations for the forthcoming EU UK trade deal • If the rules carry international obligations to which the UK subscribes

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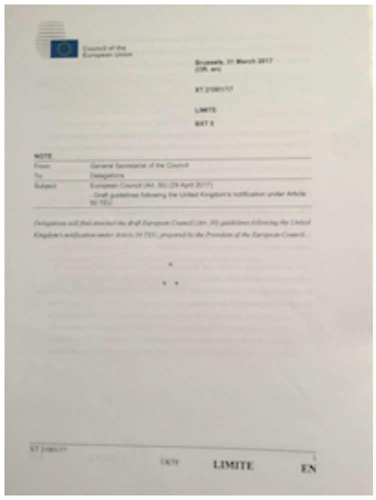
The Guidelines at a glance ...


Council of the European Union

Brussels, 31 March 2017

LIMITE

NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	European Council (Art. 50) (29 April 2017) - Draft guidelines following the United Kingdom's notification under Article 50 TEU

LIMITE EN

EU President Donald Tusk was quick to present draft guidelines for negotiations after the UK activated article 50 to leave the European Union. Here is our assessment of what they could mean for trade, if adopted by the EU27 on their summit on 29 April.

The EU is taking its time. It wants an orderly withdrawal through a phased approach. This means first negotiating a Withdrawal Agreement and then other agreements such as a trade deal. The UK, by contrast, prefers negotiations to be rolled into one and have them done by 29 March 2019. Let's look at the EU approach.

The following will need to be agreed for the Withdrawal Agreement:
- Rights of EU citizens in UK and UK citizens in the EU
- Border arrangements
- Payments due
- Transitional arrangements

The negotiating parties have 16 months to agree on those. If there is 'sufficient enough progress' with them, the parties may also decide to make a start with negotiations on:
- EU UK free trade, including arbitration
- Customs arrangements
- Judicial and security cooperation
- EU funds and scientific cooperation

The parameters for negotiations are unprecedented. For example, there are 54 trade agreements, but there is no country that has a deal with the EU that has:
- Free access to the EU single market without free movement of people
- All of the EU rules already on its statute book
- A customs agreement without a common external tariff, and with a domestic trade policy
- Inclusion of the financial and audiovisual sectors

Also, the EU's red lines are:
- A balance between rights and obligations
- No sector-by-sector agreements, nor 'cherry-picking'
- Indivisibility of the four freedoms (of movement of goods, funds, services and people)
- No separate agreements ('Nothing is agreed until everything is agreed')
- As long the UK is an EU member, even during transition, it has to play (and pay) by the rules.

The above is what an 'orderly and phased approach' means. On the one hand, it is good for businesses to get gradually used to life outside the EU and reduce uncertainty. They can also enjoy full access to the world's biggest market on their doorstep, at least for the next couple of years. On the other hand, if the UK is bound by EU rules, during transition, it would not be able to strike deals with other countries until it has fully left the EU, which may take years.

However, the world is moving fast. The UK is going it alone and needs to be part of the international dealing room sooner rather than later. Also, it is estimated that the majority of growth will originate outside the EU. Finally, the shaping of trade rules is moving from multi-country deals to bilateral deals, which is in the UK's favour. If it has to wait until everything with the EU is agreed, it may miss out on the the current reshuffling and newly forming trade alliances. Both positions of (1) a phased approach and (2) concurrent negotiations are fully understandable, and speed will have to be balanced against orderly withdrawal and legal certainty.