Baker McKenzie.

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

Key Implications for Business

The Brexit trade deal, more formally known as the new Trade and Cooperation Agreement (TCA), which applies from 1 January 2021, marks the start of a new relationship between the UK and the EU. Now that we know the terms of the deal, Technology, Media and Telecommunications businesses immediately need to revisit their Brexit planning as they continue to prepare for the key challenges ahead.

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 that arise from the trade deal.

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 **Brexit Deal Checklist: Key Implications for Business**.

KEY CONTACTS

London

Steve Holmes
Partner, IP Tech

+ 44 20 7919 1151
steve.holmes@bakermckenzie.com

London

Kate Alexander
Partner, Tax

+ 44 20 7919 1908
kate.alexander@bakermckenzie.com

London

Jennifer Revis
Partner, EU Competition and Trade

+ 44 20 7919 1381
jennifer.revis@bakermckenzie.com

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 is affected by Brexit in a number of ways. The UK is no longer 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 no longer apply in the UK (unless they have been transposed into national law) potentially increasing the regulatory burden for companies operating in both the UK and the EU-27. And naturally, the UK now ceases to be an influential voice in shaping DSM initiatives at a time when many landmark changes in regulation of digital services providers are in the legislative pipeline, including the proposed Digital Services Act and Digital Markets Act.

E-commerce

From 1 January 2021, the country-of-origin principle established by the eCommerce Directive (ECD) no longer applies to the UK. This means that online-service providers based in the UK are no longer 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.

EEA-based online service providers providing services into the UK now 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 applying in the territories in which they operate. The TCA commits the UK and the EU to broad alignment on the core principles of consumer law (but not the details) when it comes to online trade. In particular, the parties agreed to require traders to act in good faith and abide by fair commercial practices and to provide comprehensive pre and post contractual information.

At this stage no immediate changes are required and regulatory drift is unlikely in the short to medium term, so compliance with EU consumer law is likely to deliver substantive compliance with UK law as well. However, UK-based online service providers should keep under review whether existing compliance processes should be built on to ensure ongoing compliance with legal requirements relating to online activities in each EEA country.

Online Dispute Resolution (ODR)

UK consumers and traders no longer have access to the ODR platform for the resolution of disputes. This means that:

- UK consumers can no longer submit complaints on the ODR platform.
- UK traders can no longer access the ODR dashboard.
- EU consumers can no longer use the ODR platform to complain about a UK trader or send their case to a UK dispute resolution body.
- EU traders can no longer act on any ongoing cases concerning UK consumers in the platform or suggest UK dispute resolution bodies.

Governing Law & Jurisdiction

The English law of contract is largely governed by English common law, not EU law. There are certain exceptions where the impact of EU law has been greater — for example, consumer contracts — however, for commercial entities conducting international transactions, English contract law is largely unaffected by a UK withdrawal from the EU and the choice of law should be made on the same basis as previously.

Choosing English courts as the forum to resolve disputes (as opposed to arbitration) may result in a longer and more costly enforcement process. However, the UK has taken steps to join international conventions, which, if accepted, may reduce this time and cost. The Hague Convention on Choice of Court Agreements will apply to most commercial contracts entered into on or after 1 January 2021 where the parties agree a two-way exclusive jurisdiction clause in favour of the English courts. This will allow streamlined enforcement in EU Member States of English court judgments.

As to the recognition and enforcement of an EU member state judgment in the English courts (excluding the transitional provisions applicable to those proceedings initiated prior to the end of the transition period i.e., by 31 December 2020), where the judgment arises out of an exclusive choice of court agreement entered into on/after 1 October 2015, the provisions of the Hague Convention on Choice of Courts Agreements will apply. Where the Convention does not apply, the English common law regime is likely to apply.

Intermediary liability and copyright reform

The ECD also contains provisions relating to intermediary liability and prohibitions against imposing general monitoring obligations. It appears that the UK intends to stay aligned with the ECD, at least in the medium term. The UK government stated in July 2020 that it had no plans to change the UK's intermediary liability regime or its approach to the prohibition on general monitoring requirements. Moreover the UK government White Paper on Online Harms, which proposed a new regulatory framework to tackle illegal and harmful content online, stated that the proposed framework will be compatible with the ECD (although specific monitoring may be mandated for tightly defined categories of illegal content).

The UK government elected not to implement the Copyright Directive, which imposes additional obligations on online content-sharing service providers in relation to user uploads of copyright-protected content. Also the EU's proposed Digital Services Act, published in December 2020, which updates the intermediary liability regime (including inserting a 'Good Samaritan' provision, harmonising notice and take down mechanisms and important transparency requirements on content moderation and advertising) will not apply to the UK. The UK and EU regimes therefore are now beginning to diverge as: (i) EU Member States implement the Copyright Directive in advance of the implementation deadline on 7 June 2021; and (ii) the EU finalises and enacts the Digital Services Act in the form of a Regulation (anticipated by 2022).

Providers of online content-sharing services should closely monitor the UK's independent regulatory agenda such as the upcoming Online Safety Bill which, while broadly maintaining the existing position in terms of intermediary liability, will include a new statutory duty of care for service providers to protect users from harmful, as well as illegal, content backed by significant enforcement powers for Ofcom and onerous fines.

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 continues to apply in the UK after 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 are now not 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 no longer applies. 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

From 1 January 2021, the Geo-Blocking Regulation (GBR) ceases to apply to goods and services in the UK. The GBR aims to prevent discrimination between EU customers from different markets.

As the GBR no longer applies in the UK, UK customers may now be treated differently from EU customers when buying goods and services from the EU. EU traders can therefore block, limit or redirect UK customers to a specific version of the website which might be different from the one which the customer originally sought to access. UK customers will no longer have the ability to "shop like a local" (i.e., benefit from the same prices/conditions in relation to provision of goods/services and benefit from protection against different payment transaction conditions).

Traders from the UK, EU and other non-EU countries will no longer have to comply with the GBR for customers based in the UK. They will therefore not be prohibited from discriminating between EU customers and UK customers. However, note that the GBR does apply to all traders operating in the EU regardless of whether those traders are established in the EU or a third country (i.e., outside the EU).

Businesses selling goods and services into the UK should consider whether existing practices need to be updated given that the GBR will no longer apply.

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 the minimum of additional cost and regulatory complexity is crucial.

From 1 January 2021, the UK is a "third country" for the purposes of international data transfers, which in normal circumstances would mean that transfers of personal data from the EEA to the UK need to be legitimised by appropriate safeguards, such as standard contractual clauses or binding corporate rules (BCRs). However, the European Commission is still considering whether to adopt a decision recognising that the UK provides an adequate level of data protection, such that these safeguards are not necessary. The TCA therefore provides that international data transfers from the EEA to the UK may continue without safeguards from 1 January 2021 for a period of four months, which will be automatically extended by a further two months if neither the UK nor the EU objects. This is on the condition that the UK continues to apply the GDPR (as it is incorporated into national law, known as the "UK GDPR").

In respect of the transfer of personal data from the UK to the EEA, the UK recognises all EEA countries, Gibraltar and the EU institutions as providing an adequate level of data protection, such that appropriate safeguards do not need to be put in place to legitimise these transfers. However, this designation may be withdrawn at any time.

Businesses should therefore 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 on the EU VAT Directive. The UK retains a VAT system but is now a third country as far as the EU is concerned. The exception to this is for goods supplied to and from Northern Ireland (NI), which continue to be treated as intra-EU trade for VAT purposes. This means that the movement of goods between the UK and EU-27 ceases to be subject to existing EU rules applicable to intra-EU movements (distance sales and intra-Community acquisitions), and instead becomes subject to import and export rules, with import VAT becoming payable (subject to any applicable postponed accounting regime). Existing simplifications, such as call-off stock and triangulation, are no longer able to be applied in the same way as before. Businesses relying on a UK VAT registration to apply triangulation for goods moving between EU Member States need to consider their eligibility to continue to use the simplification. They may be required to register in the EU. Therefore TMT businesses should carefully review their existing supply chains.

Businesses registered in the UK for Mini One Stop Shop (MOSS) to report digital services sold to consumers in the EU need to register for MOSS in an EU member state. Non-UK businesses reporting UK VAT on digital services via a MOSS registration in another EU member state need to register for VAT in the UK to account for UK VAT on these services. 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.

VAT may apply differently to cross-border supplies of advertising and broadcasting services, transfers and assignments of copyright, patents, licences, trademarks and similar rights, supplies of staff and hire goods, among other things, where one counterparty is in the EU and one in the UK, particularly where the services are supplied to non-taxable persons. This is because the place of supply rules may be affected for such services.

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 (DST), effective from 1 April 2020 with first payments due in 2021. The DST is charged at a rate of 2% on revenues of social media services, search engines and online marketplaces which derive value from UK users. However, the application of the DST regime is restricted to businesses with world-wide revenues (group basis) of more than £500 million arising from the above-mentioned activities and where in excess of £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. The substantive application of competition law remains essentially the same and there are no fundamental changes to the previous UK competition law regime.

Since 1 January 2021, the UK Competition & Markets Authority (CMA), sectoral regulators and English courts have flexibility to depart from pre-Brexit EU case law in certain specified circumstances. However, the TCA wording relating to competition tightly mirrors that of the EU legislation, such that our view is that a material departure is unlikely. From 1 January 2021 the CMA takes responsibility for larger and more complex merger, cartel and competition enforcement cases that were previously reserved to the European Commission.

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. Tech businesses with activities in both 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 no longer bound to follow the EU State aid rules. In place of these rules, it must however introduce its own independent system of subsidy control. The design of this system must however incorporate certain broad principles strongly influenced by the EU's State aid regime.

Talent

The UK and EU have agreed not to regress from labour and social standards in force as of 31 December 2020, where that would affect trade or investment between them. It is unclear how much flexibility this will give the UK. For example, could departing from EU holiday pay calculation rules be said to affect trade or investment? In any event there are currently no proposals to alter EU-derived employment law, so 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 main areas that are immediately affected after 1 January 2021 are the European Works Councils regime and certain social security rules for workers posted after 31 December 2020.

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 ended on 1 January 2021, the tech sector can usually sponsor visas relatively easily due to its highly skilled workforce and competitive salary packages. Changes to the skills threshold for skilled work that followed 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. Finally, in terms of professional qualifications, those working in the UK with equivalent EEA qualifications will see little change to the previous system of mutual recognition of professional qualifications, but those with UK qualifications working in the EEA will need to check the rules of their host state. There is a specific regime in place for practising lawyers.

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 apply from 1 January 2021. Companies in Great Britain (GB) previously qualifying as EU importers for product regulatory purposes in respect of goods sourced from non-EU sellers have lost that status. EU distributors who buy goods from British companies now have more onerous "importer" obligations and labelling requirements under CE product laws. In the same way, GB distributors now have GB importer status (with associated obligations) for product regulatory purposes if they are bringing products from the EU/EEA into GB for the GB market.

The new UK Conformity Assessment (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 will continue to be accepted for most products until 31 December 2021 for so long as the EU and UK conformity requirements remain the same. There are no current UK plans to diverge conformity requirements (e.g., technical product standards) 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. British conformity assessment bodies have now lost their status as accredited entities for EU product conformity assessments, but the UK continues to accept products for the Great Britain market that are CE-marked under certificates issued by EU conformity assessment bodies until 31 December 2021. Additionally, Authorised Representatives and responsible persons based in the EU (appointed by non-EU manufacturers) are no longer recognised in Great Britain as from 1 January 2021. Likewise, UK-based Authorised Representatives and responsible persons are no longer recognised in the EU. 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 GB. 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 is available in our client alert **here**.

Trade

Although the TCA removes tariffs and tariff rate quotas for many originating goods, businesses must still consider the new trade and customs formalities.

Companies should consider any additional licensing requirements that apply to the export and import of dual-use controlled hardware, software and technology/information between the EU and UK. In particular, businesses that export controlled goods, software or technology (such as certain encryption items, computer hardware and components, electronics, and telecoms equipment) from the UK to the EU 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 controlled items from the EU to the UK need to register and comply with the terms of EU General Export Authorisation EU001. Looking ahead, there is no guarantee for ongoing alignment of UK and EU export control laws, and as a result the structure and implementation of the UK and EU's export licensing regimes could change and diverge in future (including as a result of proposals to reform the EU Dual Use Regulation).

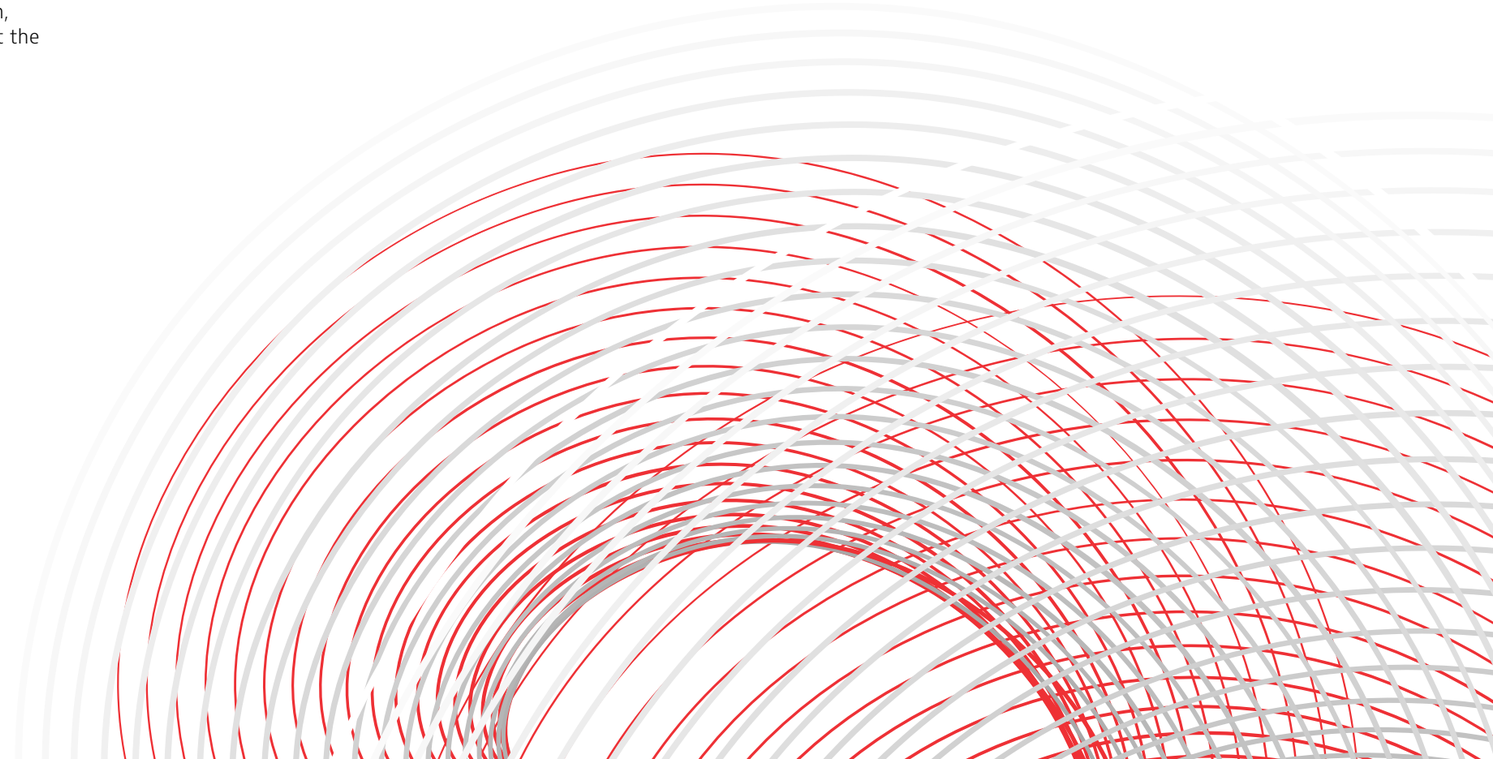
From a customs perspective, goods moving between the UK (with the exception of NI, for which there is a special regime, set out further below) and the EU are not subject to customs duties or tariff rate quotas, provided that the goods meet the relevant rule of origin set out in the TCA for the particular goods (which typically require that the goods are substantially manufactured, worked or processed in either the EU or UK). Goods that do not meet the applicable rule of origin requirements are subject to standard duties at the EU's and UK's most favoured nation (MFN) rates of duty.

The impact of not meeting these rule of origin requirements is more limited in the TMT sector than in other sectors, as many technology products benefit from duty-free treatment on import into the UK or EU under the WTO Information Technology Agreement (ITA), irrespective of where those products are manufactured. However, there are a number of notable exceptions to this (e.g., television sets, which are subject to 14% duty on import into the UK and 14% duty on import into the EU unless preference can be claimed). If businesses wish to claim preferential duty rates (e.g., 0%) on import into the UK or EU under the TCA, they will therefore need to ensure that they have correctly classified their goods for customs purposes, and that the goods meet the relevant rules of origin under the TCA.

All movements of goods between the UK (with the exception of NI, see further below) and EU are now subject to customs controls, including submission of customs declarations and proof that the goods meet rule of origin requirements, if applicable, and payment of import VAT. The UK government is phasing in customs controls at the border between 1 January and 1 July 2021, meaning businesses can delay the submission of customs declarations by up to six months, for goods imported up to 1 July 2021. The EU has not provided for a similar phased introduction, therefore full customs declarations are required at the EU border for goods shipped from the UK.

The situation with NI (part of the UK) is slightly nuanced, and under the Withdrawal Agreement NI remains part of the EU Single Market for goods. This means that shipments from NI to the EU are not subject to customs duties or customs controls (e.g., customs declarations). However, NI must apply the EU border at its ports, meaning imports from the UK to NI require customs declarations, and EU customs duties will be payable on shipments from the UK to NI if the goods are considered "at risk" of onward shipment to the EU.

Businesses should consider the Incoterms used in their supply chain contracts and who is responsible for any additional duties and customs clearance requirements. They 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. However, the TCA expressly excludes audio-visual services from its scope, and media service providers must therefore make changes (which of many have already been put in place) to maintain market access in the EU.

Content licensing

UK-based broadcasters and producers from 1 January 2021 lost the benefit of a number of favourable EU laws. Importantly, the many media service providers (including video-on-demand (VOD) services) licensed only by Ofcom are no longer able to rely on the (revised) AVMS Directive and its country-of-origin principle to broadcast into the EU Member States.

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, now have to establish themselves in an EU member state to maintain market access to the entire EU27. Media service providers that this applies to have already made or are 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 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. UK broadcasters having now lost this one-stop-shop face a more complex process in rights acquisition and clearance.

Promotion of European works

The AVMS Directive requires audiovisual media service providers to promote European works. From 1 January 2021, EU27 broadcasters 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 which are party to the ECTT. The UK is a party to the ECTT.

On its part, as a signatory to the ECTT, the UK is required to promote works the production of which is controlled by European natural or legal persons. Under the Broadcasting (Amendment) (EU Exit) Regulations 2019, from 1 January 2021 UK broadcasters have an obligation to reserve a proportion of transmission time to European works under Articles 16 and 18 of the AVMS Directive.

Tax

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

Film funding and State Aid

The UK's access to direct EU funding under the Creative Europe programme ended from 1 January 2021, although international training courses and industry initiatives funded by the programme will remain open to UK participants under the new programme from 2021 to 2027. The UK will also continue to participate in the EU's research and innovation programme Horizon Europe, which includes a strand supporting "Culture, Creativity and Inclusive Society", until 2027; further guidance is awaited on the terms of the UK's participation.

Indirect access to EU funding by the UK industry may remain an option. For example, UK producers may enter into co-production arrangements with producers in the EU-27.

The UK is no longer bound to follow the EU State aid rules. In place of these rules, it must introduce its own independent system of subsidy control. The UK will have more flexibility to structure funding support and tax reliefs for the production of UK content.

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, as well as enabling measures to support applicable EU Regulations. 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 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 transposed 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 Brexit on the general telecoms framework that applies in the UK. The existing national legislation will continue to be valid and applicable. However, telecoms businesses should monitor future developments for any divergence of the UK telecommunication regime from the current EU Regulatory Framework which may develop over time. For example, the UK's transposition of the EECC excludes number-independent interpersonal communications services from the regime.

Cross-border telecom services

As of 1 January 2021, the UK is 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). From now, a UK based entity would no longer fulfil this requirement and, if it intends to provide telecom services into countries in the EU/EEA, should check whether they would be subject to any such local laws.

Net neutrality

As of 1 January 2021, 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", continues to apply to the UK, although in an amended form (see The Open Internet Access (Amendment etc.) (EU Exit) Regulations 2018). Accordingly, ECS providers that continue to provide internet access services in the UK need to remain compliant with net neutrality rules.

Spectrum

The UK is no longer 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 in the future. 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

Moving forward, 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).

Baker McKenzie helps clients overcome the challenges of competing in the global economy.

We solve complex legal problems across borders and practice areas. Our unique culture, developed over 65 years, enables our 13,000 people to understand local markets and navigate multiple jurisdictions, working together as trusted colleagues and friends to instil confidence in our clients.

bakermckenzie.com