

Brexit: Advertising, Marketing & Media

Broadly speaking, Brexit will not have any major immediate impact upon the way that regulators such as the Advertising Standards Authority, Ofcom and Competition & Markets Authority operate in these sectors.

The following analysis looks at potential consequences based upon the UK having left the EU on 31st January 2020 but subject to the transition or 'implementation period' set out in the Withdrawal Agreement negotiated by the Johnson government with the EU. During the implementation period the Withdrawal Agreement (and the UK Withdrawal Acts implementing it) provide for EU law to apply in the UK as if the UK is still a Member State, so nothing really changes. But at the end of that period – currently expected to be 11pm on 31st December 2020 – the full legal implications of the UK leaving the EU take effect.

However, the impact of Brexit in the Advertising, Market & Media sectors will be limited because:

- To a major extent the relevant EU law has been incorporated directly into UK statutes and regulatory Codes, which will not be affected by Brexit, and the government has not indicated any immediate plans to make changes at the end of the implementation period
 - **Action:** For UK-based broadcasters, however, there are two areas in which helpful EU 'country-of-origin' principles may no longer be available after Brexit: see the 'Regulation of Broadcasting & VoD' below for further details
- The UK will have to implement the changes required by recent revisions to the Audio-visual Media Services Directive as the obligation to make these changes arises during the implementation period

Regulation of Broadcasting & Video-on-Demand

- The EU Audio-visual Media Services Directive establishes a 'country-of-origin principle' which currently allows media service providers to comply only with the law and regulatory requirements in the EU Member State of origin of the service, rather than with all of the laws/requirements in every Member State in which the service is received
- A similar 'country-of-origin' principle applies to copyright clearance for satellite broadcasting
- The 'country-of-origin' approach will no longer apply to UK-originated audio-visual media services from the end of the implementation period, but will continue to apply until that date
- The timing of this change (we use the phrase 'implementation

period end date' when referring to it below) is expected to be from 11pm on 31st December 2020, as this is the date that the Government has set in its Withdrawal Act. There is just a possibility, however – depending upon how trade negotiations go between the UK and EU - that the implementation period end date could be pushed back, or even that no trade deal is reached. If so, we will update these pages to reflect the potential consequences.

What are the key changes and what actions can be taken?

- Once the 'country-of-origin' principle falls away on the implementation period end date, UK-originated services would in theory have to comply with the law and regulatory requirements of each EU Member State in which the service is received (in addition to registration with Ofcom and compliance with UK rules such as the Ofcom Code)
- However, in respect of broadcasts (but not video-on-demand) there is a separate Convention that provides similar reciprocal arrangements for 20 EU Member States, but not for Belgium, Denmark, Greece, Ireland, Luxembourg, Netherlands & Sweden
 - **Action:** For VoD services, and for broadcasts to the 7 countries listed above, separate licensing (in addition to by Ofcom) and regulatory compliance activity may be required from the implementation period end date
- Broadcasters based in the UK will no longer benefit from the EU rules that mean copyright clearance only needs to be undertaken in the Member State from which satellite/cable signals are introduced
 - **Actions:** UK-based satellite broadcasters providing services to EU customers may, from the implementation period end date, have to clear rights separately in all Member States that their signal reaches; but it may be possible to establish an EU base from which broadcasts will continue to receive the benefit of the 'one-stop shop'
- If the implementation period lasts as expected until 31st December 2020, then the UK will be obliged to transpose into UK law the changes required by recent revisions to the Audio-visual Media Services Directive (by 19th September 2020)
 - **Actions:** audio-visual service providers should review the revised Directive for its potential impact; the changes would be particularly important for Video Sharing Platforms, which are brought within the Directive's net for the first time, but there are also note-worthy changes to other areas such as advertising scheduling

For more information



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