

# 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 the consequences of 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 transition period the Withdrawal Agreement (and the UK Withdrawal Acts implementing it) provide for EU law to continue to apply in the UK as if the UK is still a Member State, so nothing has yet really changed. It is at the end of the transition period that the full legal implications of the UK leaving the EU take effect and at the time of writing, it is uncertain as to whether a trade deal will be reached between the EU and UK.

The transition period is expected to end at 11pm on 31st December 2020, as this is the date and time set in the Withdrawal legislation, and the Government has categorically ruled out any further extensions. This is therefore the date referred to below from which key changes are expected to take place. There is a technical possibility, however – which would require UK legislation and the agreement of the EU - that the transition period end date could be pushed back (for example, were the Government and EU to decide that the Covid-19 pandemic justified a change in policy). If that were to occur, we will update these pages to reflect the potential consequences. However, it seems unlikely at the time of writing.

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 transition period, although it does intend to make the laws regulating advertising foods high in fat, sugar and salt stricter as part of its obesity strategy.
  - **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 has already had to implement the changes required by recent revisions to the Audio-visual Media Services Directive as the obligation took effect during the transition 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 EU 'country-of-origin' approach may no longer apply to UK-originated audio-visual media services from the end of the transition period, but will continue to apply until that date
- UK broadcasters may still be able to take advantage of the EU 'country-of-origin' approach if they can show that they are also 'established' in an EU Member State: this depends upon various factors including: location of head office; where editorial decisions are taken; where a significant proportion of the workforce are based.

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

- Once the EU 'country-of-origin' principle falls away, 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 end of the transition period; but it may equally be possible to demonstrate an established EU base from which broadcasts will continue to receive the benefit of the 'one-stop shop'
- Broadcasters based in the UK may 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 end of the transition period, have to clear rights separately in all Member States that their signal reaches; but it may be possible to demonstrate an established EU base from which broadcasts will continue to receive the benefit of the 'one-stop shop'
- The UK has taken steps to transpose into UK law the changes required by recent revisions to the Audio-visual Media Services Directive (from 19th September 2020)
  - **Actions:** audio-visual service providers should review the revised Directive for its potential impact; the changes are 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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