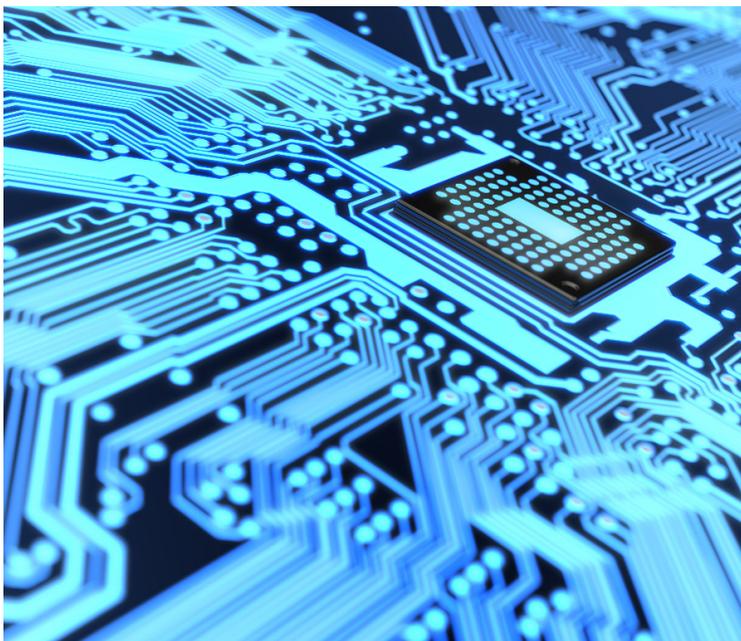




## Brexit Industry Insights Telecommunications

September 2019

With the UK's default to leave the EU without a deal, there are a number of steps businesses in the telecommunications sector can take to prepare. The sector is already faced with navigating increasing regulation and technological innovation, and will need to consider what adjustments are needed to adapt to the post-Brexit trading landscape, including in the areas of mobile roaming, supply chain for telecoms equipment and regulation. The winners will be those in the sector prepared for change and alive to the opportunities.



### Brexit and the Telecommunications sector

The telecommunications sector comprises the infrastructure and services that enable electronic communication both within the UK and internationally. The sector provides an array of networks ranging from fixed landline telephones through to wireless 5G broadband, and is considered to be part of the UK's "critical national infrastructure"<sup>1</sup>. It employs 190,000 people, of which approximately 5% are EU nationals<sup>2</sup>, and contributed £32 billion to the UK economy in 2017<sup>3</sup>.

Technological development is driving the sector, challenging firms to invest or risk being left behind. 5G is being rolled out across the UK and, together with increased demand for connected devices such as smart speakers, is facilitating the expansion of the "internet of things". Concurrently, radio is still thriving, with 47 million people listening to radio weekly or more in the UK<sup>4</sup>. Given the dynamism of the sector, the challenge will be finding the best area to invest for growth. At the same time, internet-based telecoms firms in particular will have to respond to increased regulatory coverage, as they come into scope of the European Electronic Communications Code (EECC).

### What does this mean for business?

Some of the key implications for businesses operating in the sector:



#### Regulatory Authority

Once the UK leaves the EU, the UK will lose the oversight of the European Commission and the Body for European Regulation of Electronic Communications (BEREC). The Broadband Stakeholder Group has called for a new oversight organisation, much like the Competition and Markets Authority, to be assigned a governance role for the industry. Business will therefore need to ascertain how its existing relationship with BEREC will change and forge new relationships with new stakeholders within a UK regulatory authority.

1. Telecommunications Sector Report, House of Commons Committee on Exiting the European Union. Available at: <https://www.parliament.uk/documents/commons-committees/Exiting-the-European-Union/17-19/Sectoral%20Analyses/37-Telecommunications-Report.pdf>

Although the UK government has indicated it would implement substantial provisions of the EECC into UK law even in the event of a no deal, moving forwards the possibility of regulatory divergence between the UK and EU could increase compliance costs and complexity.



### Broadcasting and on demand

In the event of no deal, the UK would be classed as a 'third party' under the EU's Audiovisual Media Services Directive, meaning UK broadcasters and on-demand providers may require authorisation from EU member states in order to continue their services in that country<sup>5</sup>. This particularly applies to services provided in Belgium, Denmark, Greece, Ireland, Luxembourg, The Netherlands and Sweden, which are not members of the European Convention on Transfrontier Television (ECTT). UK-origin broadcasts to the other 20 EU countries, which are ECTT signatories, should not require any further authorisation due to the freedom of reception granted by the ECTT. Vice versa, broadcast and on-demand services from ECTT countries should continue to have freedom of reception in the UK.



### Mobile roaming

The EU Roaming Regulation which currently governs mobile roaming between EU member states/the EEA mandates a cap on wholesale fees (i.e. the fee a domestic operator can charge a foreign operator for connecting the latter's customers) and prohibits the charge being passed onto the customer. It applies a €50 financial limit for mobile data usage and requires operators to alert customers when they are reaching (80%) and have reached (100%) the data roaming limit. Under a no-deal exit there will no longer be a limit to what EU mobile operators could charge UK operators to provide roaming services, and surcharge-free roaming would not be guaranteed.

The UK government position states roaming will become a commercial matter leaving business to make commercial arrangements to maintain the status quo. Operators in the telecoms sector therefore face the prospect of newly negotiated arrangements with EU counterparts and should be ready for this. More generally business should understand existing roaming policies and T&Cs, and be alert to risks of increased costs. For example, consumers based in Northern Ireland run the inadvertent risk of incurring charges if using their mobile devices close to the Irish border where signal from the Republic of Ireland network may be stronger.



### Cross-border trade of telecommunication services

The EU and UK have taken commitments at the World Trade Organisation (WTO) under the General Agreement on Trade in Services and additional obligations under the Telecommunication Services Reference paper. These commitments are to allow the cross-border transmission of telecoms services, foreign direct investment in existing companies as well as the establishment of new companies, and competition in basic telecommunications<sup>6</sup>.

### In focus: European Electronic Communications Code (EECC)

The EECC updates the EU common regulatory framework for telecoms, and was published in the Official Journal of the EU on 17 December 2018. If the UK leaves the EU without a deal, it is not obligated to transpose the EECC into UK domestic legislation; however the UK government has indicated it may implement substantial provisions into UK law regardless, in support of the UK's policy objectives. The key objectives of the EECC are:

- Clear and inclusive rules with a vision of a single telecoms market.
- Higher quality of service through fostering increased investment in 5G.
- Competitive prices by helping markets work more efficiently.
- Consumer protection, including widening the definition of electronic communications to cover over the top services.
- Harmonisation to support efficient and effective use of radio spectrum frequencies.
- Addressing the security of networks and services.

The government is holding a consultation on implementing the EECC, ending in September 2019.

2. DCMS Sectors Economic Estimates 2018: Employment, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/811903/DCMS\\_Sectors\\_Economic\\_Estimates\\_2018\\_Employment\\_report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/811903/DCMS_Sectors_Economic_Estimates_2018_Employment_report.pdf)

3. DCMS Sectors Economic Estimates 2017 (provisional): Gross Value Added, <https://www.gov.uk/government/statistics/dcms-sectors-economic-estimates-2017-gva>

The OECD has ranked the UK as having a better-than-average level of restrictions on trade in telecoms. The report analysed restrictions on foreign entry, regulatory transparency, restrictions on the movement of people and barriers to competition<sup>7</sup>.



## Data Flows

The technology sector relies on the flow of information to deliver its services, some of which can fall under the category of personal data. Personal data flows are regulated by the EU. The EC has the power to determine whether a country outside of the EU offers an adequate level of data protection and assesses this either through its domestic legislation or international commitments into which it has entered. The EC will provide an adequacy decision if it deems the non-EU country to have local data protection laws of the same or similar standard as the EU. The process of adoption of an adequacy decision involves a number of steps and can be a lengthy process. The Commission is not expected to start this process in respect of the UK until after the UK leaves the EU.

The UK's Information Commissioner's Office (ICO) has indicated for a time-limited period in a no-deal scenario it will recognise EEA states as providing an adequate level of protection for personal data. However, this statement has not been matched by the EU and so business must assess their personal data flows originating from the EEA. Unless the UK and the EU enter into a separate legal agreement, businesses will need to ensure appropriate legal safeguards (e.g. standard contractual clauses and for intra-group transfers, binding corporate rules) are in place to facilitate cross-border flows of personal data.

Consideration will also need to be given to the arrangements the UK has in place with third countries. The UK will also preserve the effect of existing EU adequacy decisions with third countries for a transitional period. A number of these countries have also indicated they will continue to allow data to flow to the UK. Modified arrangements will apply in relation to the EU/US Privacy Shield for UK/US personal data flows.



## Supply Chain

Telecoms firms rely on imported materials and components to construct their physical infrastructure. Brexit has the potential to significantly disrupt the supply of goods coming in from both the EU and non-EU countries, and additional costs have been a key cause of concern. Key issues, especially in a no-deal scenario, are:

- Limited visibility of suppliers (including raw materials, spare parts, logistics companies) could cause hidden risks and costs.
- Additional tariffs and the costs associated with complying with new customs procedures.
- Systems upgrades to manage import/export declarations, and training of staff to manage compliance.

## What can businesses to do prepare?

- Continue to monitor key sources of information including:
  - Government advice from the UK government (Department for Business, Energy and Industrial Strategy, Department for Exiting the European Union and the Department for Digital, Culture, Media & Sport), the EU, and other countries in which your business operates in.
  - Trade associations, industry bodies and regulators including the UK Competitive Telecommunications Association and Ofcom.
- Continue to engage with and encourage your existing workforce to certify their residency status while also reviewing recruitment strategy for critical roles. Concurrently, monitor information from countries in which you operate to ensure you understand local visa and work permit requirements.
- If you export dual-use items from the UK to EU, analyse the new European dual-use licence processes requirements and apply for a new licence.
- Make sure you know how to complete and submit the necessary customs declaration procedures and forms for imports and exports. Register for an Economic Operators Registration and Identification (EORI) number and assess INCOTERMS for who bears the impact of losing beneficial trade terms.
- Undertake a regulatory review to understand what changes to the standards or regulatory regime could mean for your products and services where they are delivered, produced and sold - in particular with regards to the transfer of personal data and the GDPR.

4. Deloitte predicts UK technology, media and telecoms sector trends for 2019. Available at: <https://www2.deloitte.com/uk/en/pages/press-releases/articles/deloitte-predicts-uk-technology-media-and-telecoms-sector-trends-for-2019.html>

5. <https://www.gov.uk/government/publications/broadcasting-and-video-on-demand-if-theres-no-brexit-deal/broadcasting-and-video-on-demand-if-theres-no-brexit-deal>

- The impact of potential delays and longer lead times for goods to move across the border.
- Complexity of reviewing contracts, including International Commercial Terms (INCOTERMS) to assess who bears Brexit-related risks and costs.

## Regulation

Suppliers of telecoms equipment may need to obtain EU authorisations to continue to supply the EU market or appoint new EU-based distributors to help them meet regulatory obligations. Some of the regulatory areas that could be impacted include:

- Dual use of EU and UK notified bodies to prove conformity with respective product standards.
- Dual EU and UK registered addresses to meet regulatory requirements.
- Labelling updates (e.g. to include new addresses as well as new UK replacement for CE mark).

## Export Controls

Export controls may apply to some items which can be used for both civil and military purposes. Licences will be required for exports from the UK to the EU and vice versa, and an export licence issued by one of the 27 EU countries will no longer be valid for export from the UK.

## Commercial Contracts

Contracts may need updating to manage some of the potential risks arising from Brexit or in response to Brexit-related restructuring. Areas of focus include: reviewing risk allocation between parties, such as which counterparty bears the risk of border delays and tariff costs, definitions of key terms, changes to pricing structure or frequency of pricing reviews and changes to payment terms and contract enforcement.

- Perform a legal review to identify potential contractual risks as a result of Brexit. Identify impacted terms and plan response, e.g. the creation of a precedent bank of terms for future re-negotiation, immediate re-negotiation or repapering.
- Ramp up your operational response capability and take steps to manage disruption as and when it occurs, including accelerating imports/ shipments, identifying warehousing space as well as alternative suppliers and/or markets.
- Develop a strategy for government engagement on the issues that matter most to the business in order to influence future policy.
- Manage all key stakeholders to understand commitments and expectations. Engage with audit committees and liaise with trade bodies and regulators on preparations.



6. [https://www.wto.org/english/tratop\\_e/serv\\_e/telecom\\_e/telecom\\_e.htm](https://www.wto.org/english/tratop_e/serv_e/telecom_e/telecom_e.htm)

7. <http://www.oecd.org/trade/topics/services-trade/documents/oecd-stri-sector-note-telecommunications.pdf>

## How can Deloitte help?

Deloitte has been supporting multiple businesses across a range of industries to understand the implications of, and prepare for, the UK's withdrawal from the EU. We have supported many clients with their Brexit planning. Our teams combine Brexit insights, industry knowledge and technical expertise to support our clients with their Brexit readiness planning – from risk assessment to applying the lessons learned to optimise for the future trading environment.

**For further information please contact [brexitsupport@deloitte.co.uk](mailto:brexitsupport@deloitte.co.uk)**

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### Further reading

#### **Official no-deal guidance for automotive**

#### **UK No-deal Technical Note:**

[Meeting business regulations](#)

[How telecoms businesses will be impacted if there's no Brexit deal](#)

#### **UK Business Preparation Tool:**

[Prepare your business or organisation for Brexit](#)

#### **European Commission Brexit Preparedness:**

[Communications Networks, Content and Technology](#)

#### **Information Commissioner's Office**

[Data protection and Brexit](#)

[Leaving the EU - six steps to take](#)

#### **Industry Associations and Regulators**

[Ofcom - FAQs on broadcasting in the UK after the UK leaves the EU](#)

**This no-deal guidance is not exhaustive. Companies should routinely review the latest official updates and technical guidance as and when they are published by the UK, EU, and individual EU member states.**

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