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dated 7 March 2018

NOTICE TO STAKEHOLDERS

WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES IN THE FIELD OF ELECTRONIC COMMERCE AND NET NEUTRALITY

Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a “third country”.¹ The Withdrawal Agreement² provides for a transition period ending on 31 December 2020.³ Until that date, EU law in its entirety applies to and in the United Kingdom.⁴

During the transition period, the EU and the United Kingdom will negotiate an agreement on a new partnership, providing notably for a free trade area. However, it is not certain whether such an agreement will be concluded and will enter into force at the end of the transition period. In any event, such an agreement would create a relationship which in terms of market access conditions will be very different from the United Kingdom’s participation in the internal market,⁵ in the EU Customs Union, and in the VAT and excise duty area.

Moreover, after the end of the transition period the United Kingdom will be a third country as regards the implementation and application of EU law in the EU Member States.

Therefore, all interested parties, and especially economic operators, are reminded of the legal situation after the end of the transition period.

¹ A third country is a country not member of the EU.

² Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, OJ L 29, 31.1.2020, p. 7 (“Withdrawal Agreement”).

³ The transition period may, before 1 July 2020, be extended once for up to 1 or 2 years (Article 132(1) of the Withdrawal Agreement). The UK government has so far ruled out such an extension.

⁴ Subject to certain exceptions provided for in Article 127 of the Withdrawal Agreement, none of which is relevant in the context of this notice.

⁵ In particular, a free trade agreement does not provide for internal market concepts (in the area of goods and services) such as mutual recognition, the “country of origin principle”, and harmonisation. Nor does a free trade agreement remove customs formalities and controls, including those concerning the origin of goods and their input, as well as prohibitions and restrictions for imports and exports.

Advice to stakeholders:

Stakeholders, notably information society service providers (e.g. professional websites, online platforms, online search engines) established in the United Kingdom, are in particular advised to assess the consequences of the end of the transition period in view of this notice.

Please note:

This notice does not address

- EU rules specific to online purchase with subsequent parcel delivery;
- EU rules on geo-blocking; and
- EU rules on VAT.

For these aspects, other notices are in preparation or have been published.⁶

After the end of the transition period, the EU rules in the field of the provision of information society services, in particular Directive 2000/31/EC (Directive on electronic commerce)⁷ and Regulation (EU) 2015/2120 (Regulation on open internet access),⁸ no longer apply to the United Kingdom. This has in particular the following consequences:

1. COUNTRY-OF-ORIGIN PRINCIPLE (ELECTRONIC COMMERCE)

In accordance with the internal market clause (also referred to as country-of-origin principle) of Article 3 of the Directive on electronic commerce, a provider of information society services⁹ is subject to the law of the EU Member State in which it is established, and not to the various laws of the EU Member States where its

⁶ https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/preparing-end-transition-period_en

⁷ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ("Directive on electronic commerce"), OJ L 178, 17.7.2000, p. 1.

⁸ Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access, OJ L 310, 26.11.2015.p. 1.

⁹ Information society service is defined as "any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services" (see Article 1(1)(b) of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services OJ L 241, 17.9.2015, p. 1).

Examples of services covered by the Directive on electronic commerce include online information services (such as online newspapers), online selling of products and services (books, financial services and travel services), online advertising, professional services (lawyers, doctors, estate agents), entertainment services and basic intermediary services (access to the Internet and transmission and hosting of information). These services include also services provided free of charge to the recipient and funded, for example, by advertising or sponsorship.

services are provided, although the clause does allow for certain exemptions. The clause is complemented by a rule prohibiting prior authorisation schemes and similar requirements which apply specifically and exclusively to providers of these services (Article 4 of the Directive on electronic commerce). Furthermore, the Directive sets out certain basic requirements on information to be provided to users, online contracting and online commercial communications (Articles 5-11 of the Directive on electronic commerce). The liability of intermediary service providers is restricted in certain cases (Section 4 of the Directive on electronic commerce).

After the end of the transition period, information society service providers established in the United Kingdom will no longer be able to rely on the country-of-origin principle and said rule precluding prior authorisation schemes. The basic information requirements set out in the Directive on electronic commerce no longer apply to them. As a consequence, the provisions of the Directive on electronic commerce will no longer limit the possibility for each EU Member State to subject the provision of such services to its national rules, including, for instance, prior authorisation schemes or rules on information to be provided to users. Moreover, the limitations of liability set out in the Directive on electronic commerce no longer apply to intermediary service providers established in the United Kingdom.

2. PLATFORM-TO-BUSINESS RELATIONS (E-COMMERCE)

Regulation (EU) 2019/1150¹⁰ on platform-to-business relations lays down harmonised rules on fairness and transparency for business users and corporate website users of, respectively, online intermediation services and online search engines. The rules cover issues such as contractual clarity and predictability, unfair commercial practices and alternative dispute settlement.

After the end of the transition period, Regulation (EU) 2019/1150 will no longer apply to providers of online intermediation services or of online search engines which provide or offer to provide their services (1) to business users and corporate website users established in the United Kingdom or (2) to business users and corporate website users which, although established in the EU, provide or offer their goods or services to consumers located in the United Kingdom, without providing these also to consumer located in the EU. In contrast, Regulation (EU) 2019/1150 will continue to apply to providers of online intermediation services or of online search engines, including those established in the United Kingdom, if they provide or offer to provide their services to business users and corporate website users, respectively, that have their place of establishment or residence in the EU and that, through those online intermediation services or online search engines, offer goods or services to consumers located in the EU. This is the case regardless of whether the online intermediation services or online search engine services are offered or provided exclusively to EU businesses or both to EU and UK businesses.

¹⁰ Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services, OJ L 186, 11.7.2019, p. 57. This Regulation applies from 12 July 2020.

3. NET NEUTRALITY

Regulation (EU) 2015/2120 on open internet access provides for common rules on equal and non-discriminatory treatment of traffic in the provision of internet access services and related end-users' rights. While these rules will, after the end of the transition period, no longer apply to the United Kingdom, they will continue to govern the provision of internet access services into the EU, no matter where the information society service provider is established.

The website of the Commission on the Directive on electronic commerce (<https://ec.europa.eu/digital-single-market/en/e-commerce-directive>) provides general information concerning e-commerce and information society services. These pages will be updated with further information, where necessary.

European Commission

Directorate-General for Communication Networks, Content and Technology