



Brussels, 7 March 2018

NOTICE TO STAKEHOLDERS

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

The United Kingdom submitted on 29 March 2017 the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union. This means that, unless a ratified withdrawal agreement¹ establishes another date, all Union primary and secondary law will cease to apply to the United Kingdom from 30 March 2019, 00:00h (CET) ('the withdrawal date').² The United Kingdom will then become a 'third country'.³

Preparing for the withdrawal is not just a matter for EU and national authorities but also for private parties.

In view of the considerable uncertainties, in particular concerning the content of a possible withdrawal agreement, stakeholders are reminded of legal repercussions, which need to be considered when the United Kingdom becomes a third country.

Subject to any transitional arrangement that may be contained in a possible withdrawal agreement, as of the withdrawal date, EU legislation in the field of the provision of information society services, in particular Directive 2000/31/EC (Directive on electronic commerce)⁴ and Regulation (EU) 2015/2120 on open internet,⁵ will 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

¹ Negotiations are ongoing with the United Kingdom with a view to reaching a withdrawal agreement.

² Furthermore, in accordance with Article 50(3) of the Treaty on European Union, the European Council, in agreement with the United Kingdom, may unanimously decide that the Treaties cease to apply at a later date.

³ A third country is a country not member of the EU.

⁴ 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.

⁵ 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.

society services⁶ 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 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 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)

As of the withdrawal date, information society service providers established in the United Kingdom and providing information society services into the EU 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, companies established in the United Kingdom providing information society services into the EU will fall under the jurisdiction of each individual EU-27 Member State. Each EU-27 Member State will be entitled 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. NET NEUTRALITY

Regulation (EU) 2015/2120 on open internet 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, as of the withdrawal date, no longer apply to the United Kingdom, they will continue to govern the provision of internet access services into the EU-27, no matter where the information society service provider is established.

The website of the Commission <https://ec.europa.eu/digital-single-market/en/e-commerce-directive> provides general information concerning e-commerce and information society services. This page will be updated with further information on the United Kingdom's withdrawal, where necessary.

European Commission
Directorate-General for Communication Networks, Content and Technology

⁶ 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.