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How Brexit will affect US Companies

For many US companies, the United Kingdom has been the first port of call when doing business in the European Union. This is mainly due to the geographic situation and the fact that people in both countries share the same language and cultural background. For many years, this seemed to be an ideal condition for a US company. The UK's membership in the European Union was the guarantor for doing business swiftly from or through the UK with the other 27 EU countries.

This will definitely change after March 29, 2019.

The European Union is based on four core principles:

- Free movement of goods
- Freedom to provide services
- Free movement of capital, and
- Free movement of individuals, namely workers.

These four freedoms will, however, not be in force anymore between the UK and the EU after March 29, 2019 unless there will be a Withdrawal Agreement between the EU and the UK in place which at least grants some more time for negotiations. And even with a Withdrawal Agreement major challenges for the business between the UK and the other 27 member countries of the European Union will come up.

US subsidiaries based in the UK could enjoy the same privileges as any other UK Company with regard to the four freedoms, which means that they could hire workers easily from the EU working in the UK or send employees to one of the other member states. They could sell their goods to any other member state without any customs clearance or other bureaucratic impediments.

Without a deal between the UK and the European Union, the UK, its people and companies, including foreign subsidiaries, will be considered as third parties vis-à-vis the European Union. The main purpose of the Withdrawal Agreement is to guarantee both individuals and companies their vested rights which they acquired when the UK was a member to the European Union. The other major advantage of a Withdrawal Agreement, however, would be a transition period (until the end of 2020) that would allow for the negotiation of a new framework of relationships between the UK and the European Union.

Given the many uncertainties with regard to the future status of the UK vis-à-vis the European Union, companies which are now doing business out of the UK towards Europe should take into consideration that it will become more difficult

- To hire workers from the European countries into the UK or send workers from the UK to other European countries;



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- To sell goods from the UK to the other European countries (there may be tariffs/VAT imposed on the exported/imported goods and also new requirements in place as to product safety and licenses, such as the CE-mark);
- To render services from the UK to the other European countries will become more difficult, as long as there are no new „passporting“ rules in place;
- To enforce UK-judgments in the other EU countries, and vice versa;
- To move capital cross-border will possibly be subject to new regulatory measures.

US companies should also be aware of the fact that if they have registered trade marks only in the UK, they may have to re-register them in other countries of the European Union. If they already have a community trademark registered in all European countries, this will continue to apply in the European Union but not necessarily in the UK.

If the contractual territory for, e.g., a distribution or agency agreement is defined by the term „European Union“, there will be doubt whether the territory of the UK will in the future still be covered by this clause. If a sales agreement refers to certain Incoterms which relate to tariffs (such as DDP=Delivery Duty Paid), the seller will have an additional burden in form of possible tariffs and customs clearance.

Any industry depending on regulatory licenses or admissions will need to check whether the products or services will be affected by the Brexit.

The above list of topics is, of course, far from being exhaustive. As a general rule, companies and businesses should check their contractual agreements in place as to possibilities to renegotiate or, as measure of ultima ratio, terminate them rather than taking new burdens resulting from the Brexit. For many companies, it will also make sense to establish a subsidiary on the continent in order to continue barrier-free business with the European Union.