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A higher degree of clarity is urgently needed

At the time of writing we do not yet know when the real negotiations about the future relationship between the UK and the EU will begin but one does have the feeling that not much real progress has been achieved so far.

We all thought that the “no deal is better than a bad deal” scenario had finally been buried after the Prime Minister’s speech in Florence. Unfortunately, this does not always appear to be the case. The impression is that reality has not yet fully sunk in with the British negotiators as, apart from lofty visions about a future relationship with the EU, not much real substance has been provided so far.

Theresa May’s recent comments on the uncertain future status of EU citizens in the UK were also not overly helpful and have not been well received by many of the 3 million EU citizens living and working in the UK. This continued insecurity will contribute to making the country a less attractive place for foreign talent, possibly resulting in a negative effect on the longer-term economic potential of the UK as it is unlikely that the skills provided by recent immigrants can easily be replaced by home-grown talent.

On the other hand, the EU needs to show some more flexibility in terms of coming to an agreement with the UK. For example, it is difficult to sort out the Northern Ireland border issue if it is not clear what kind of trading arrangement both parties will enter into once Britain has left the EU.

It is important to note that if significant clarity about the future direction is not provided by the end of this or the beginning of next year, more and more international companies will have to implement contingency plans for their operations in the UK. British companies will have to do the same for their operations and activities on the continent. These will be costly exercises, which will have a negative impact on the economy, especially in the UK. Therefore, in addition to showing a higher degree of flexibility on the part of the EU, we can only urge the British government to develop a clearer and realistic approach to what it wants the future to look like – to have your cake and eat it was never and will never be a realistic outcome.

Dr Ulrich Hoppe
Director General, German-British Chamber of Industry & Commerce
“You have to take opportunities as they arise and follow your instinct”

Richard Carter has held the position of Managing Director BASF UK & Ireland since January 2016 and is responsible for developing the business as well as building relationships with key stakeholders, trade associations and government departments. As a leading global chemical company, BASF plc supplies a wide range of materials to most industries in the UK & Ireland through its ten production sites. Richard has enjoyed a long career with BASF and has worked in Germany, Malaysia, Portugal and the USA. In our interview Richard reveals his pivotal moment in his career and explains why digital social media will never substitute face to face interaction.

1 What advantages does membership of the German-British Chamber bring you?

For us at BASF membership of the Chamber is extremely important as it provides an excellent network via which we can connect with other companies with possibly similar interests and challenges. And for me personally it provides an array of personal contacts with whom I can discuss current topics and who I can go to if I need a piece of advice as well as providing the range of events which the Chamber runs on top.

2 What are the trends for your company/field of industry?

A key topic for us going forward is the frequently quoted topic of 4.0 and robotics. We are closely analysing what the potential impacts will be on us as a company and also on our customers. It provides great opportunities for us in terms of increasing quality via enhanced automation in our production sites but goes far broader, across all functions of the enterprise. And for our customers it will potentially revolutionise working methods e.g. in agriculture via drone and satellite data. But above all it means that the challenge of life long learning for all of us becomes more important. Here we must help one another understand the opportunities and discuss intensely with those who see it as a threat. First mover advantages will be harvested by the bold!

3 What are the most important lessons you’ve learnt in business?

You don’t learn anything by talking but by listening! This I see as key in trying to figure out unmet market needs and looking for real win-win situations with partners. If you want to succeed there is no substitute for face to face interaction in today’s 24/7 social media world because ultimately it is still people who do business.

4 How did you decide to pursue the career that you are working in today?

I wanted to combine languages with business, in particular German, in an international environment. Therefore I decided to do an exchange degree programme between the (then) Middlesex Polytechnic and the Fachhochschule Reutlingen. This set the direction for my future.

5 What was a pivotal moment in your career?

Opportunity usually doesn’t knock twice! I believe that you have to take opportunities as they arise and follow your instinct. One such pivotal experience was when I was asked whether I would go on a one year assignment to Malaysia and given an hour to decide: I said yes immediately.

6 What would you say is the area in business that you are most passionate about and why?

Creativity and innovation are topics that fascinate me as they hold the key to unleashing an individual’s and an organisation’s potential and the power of continual improvement. I am passionate about Diversity as a diverse team will always deliver better results. From 1988 to 2016 I worked outside the UK in different countries and was thus a “foreigner”. Through this experience I gained valuable insights from which I profit now I am back “home”.

7 What challenges do you anticipate for your company/industry in the coming years?

Brexit! Minimising disruption. I am spending an inordinate amount of time on this subject.

8 If you had one piece of advice to someone just starting out, what would it be?

Learn a language! Unfortunately language is too often seen in the UK as “transactional” when in fact it is all embracing reflecting culture, history and psyche. I experience this when I visit our plant on the Isle of Lewis, Outer Hebrides, where I am exposed to Gallic which I don’t understand but find very enriching.
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FROM POLAR WATERS TO THE AMAZON

It is believed that it brings good luck to new ships if you weld a coin inside a steel block and Karl J. Pojer, CEO of Hapag-Lloyd Cruises made sure to adopt this ship-building tradition when introducing the construction stage of HANSEATIC Nature, the first of two expedition new-builds.

Hapag-Lloyd will soon offer unique travel experiences and truly magical moments for explorers. The company is taking a pioneering role in the expedition sector, offering extraordinary expedition routes with special facilities.

Fitted with cutting-edge equipment and environmental technology, both new vessels, the HANSEATIC Nature and the HANSEATIC Inspiration, will each accommodate up to 230 guests. Whether you want to experience the mysterious wonders of the Polar regions, the tropical beauty of the south seas or the exotic thrill of the Amazon – E-Zodiac boats and on-board Zodiac boats will allow travellers to land in remote expedition areas.

The christening and maiden voyage of the HANSEATIC Nature is planned for April 2019 and reservations can be placed now. International guests can call Hapag-Lloyd Cruises’ free-of-charge phone numbers when requesting or booking a cruise. UK: 0800 0513 829, all other countries call +49 40 30703070 or send an email to salesteam@hl-cruises.com. www.hl-cruises.com

Celebrating Excellence in International Legal Services

The Law Society’s 11th annual Excellence Awards is celebrating the very best work in the legal profession and ebl miller rosenfalck, a leading European business law specialist with its main office in London and associated offices in Düsseldorf, Frankfurt, Paris and Wuppertal, has been shortlisted in the category ‘Excellence in International Legal Services’.

It is the fourth time ebl miller rosenfalck has been nominated for this significant award which will be made to the firm that has broken new ground and actively developed new export markets.

Senior partner Steen Rosenfalck is delighted to have been shortlisted for this prestigious award again as it is highlighting the international impact of the firm’s work for mid-sized businesses across Europe. Especially as a boutique firm, it is a great achievement that their efforts have been recognised by the judges.

New European Sales Academy in London

PowerCall Global Training Ltd, a leading provider of sales training solutions across EMEA, has joined efforts with Sales Expand Ltd to open up a new European Sales Academy based in London.

Both organisations have noted in the last few years that many companies have placed significant focus on product development, especially when trying to grow new innovative products. But many SMEs as well as larger companies often lack the strategic approach to accelerate their expansion in the best manner by setting up a local sales team that is capable of effective expansion, particularly when this involves expanding into other European countries.

To address this gap in the training and development market, Sales Academy is set to equip companies with approaches, techniques and coaching to support their efforts in expanding across Europe. It will also bring people from different European countries together, helping them learn from each other in the challenging political and economic environment.
Privacy as a concept is broad and far reaching. For this reason, the GDPR impacts many areas of an organisation, not just legal and compliance. It also engages functions tasked with information technology and security, data governance and information management, as well as sales, marketing and digital.

After four years of negotiations, the EU General Data Protection (GDPR) is upon us and will be enforced from 25 May 2018. The new law will introduce a range of requirements that will have significant impacts on organisations, large or small, around the world and not just in the EU.

For global organisations, the GDPR harmonises much of the currently fragmented legal framework for privacy across Europe, providing one data protection regulation for all EU member states. It also introduces a new maximum monetary penalty of 4% of annual global turnover that can be imposed in cases of serious non-compliance.

The GDPR mandates organisational accountability and will require organisations to implement robust privacy governance and in general take a more proactive approach to privacy compliance, and be able to demonstrate compliance. In addition, documented privacy risk assessments will be required for new systems and technologies, and security breaches will have to be notified to regulators within 72 hours. Organisations based outside the EU that process data to offer goods or services to European citizens, or to monitor the behaviour of European citizens, will also be subject to GDPR requirements. How enforcement will apply in practice remains to be seen, but organisations that are not in scope of current EU data protection rules may find themselves subject to significant new requirements.

In the Legal and Compliance area, privacy strategies, resourcing, and organisational controls will all need to be revised. Boardrooms will need to be engaged more than ever before, and the accountability burden of proof will now fall on the organisation, rather than the individual.

In technology and digital, new GDPR requirements will mean changes to the ways in which technologies are designed and managed. Breach reporting is required within 72 hours of detection, and Privacy-by-Design (PbD) recognised good practice becomes law, including Privacy Impact Assessments (PIA), for new uses of personal data where the risk to individuals is high.

In Data Management, those tasked with information management will be challenged to provide clearer oversight on data storage, journeys, and lineage. Data inventories are required, and strong rights for consumers to request deletion of their data (right to be forgotten) and request standardised copies of data (right to data portability) come into force.

All of the above, combined with the increasing demands from consumers, mean privacy is now firmly positioned at the top of the corporate agenda.

The effect of the EU membership referendum decision may impact the UK’s adoption of the GDPR. Nevertheless, the GDPR will still apply to UK businesses offering goods or services within the EU. A further consideration is whether the UK can and will attain ‘adequacy’ status when operating outside of the EU, allowing the free flow of personal data to and from the EU to continue. Whatever happens with the UK adoption of GDPR, an update to the Data Protection legislation seems likely, and any UK successor legislation will likely have to deal with similar requirements.

At its heart, the GDPR aims to strengthen consumers’ rights, and those organisations that are transparent and open are more likely to reap the rewards.

GDPR should not only be seen as a challenge, but also as an opportunity. Organisations can look to turn the data they hold into a competitive advantage, using it to support better and more efficient decision making processes. They can use it to develop a more trusted and connected relationship with clients, employees, patients and other organisations.

Peter Gooch
Partner – Cyber Risk Services | Deloitte LLP

"Privacy is now firmly positioned at the top of the corporate agenda."
How can botifying the digital side of my business benefit me?

The first thing that comes to mind when hearing the word “Avatar” is probably the James Cameron movie from 2009. But in this case we are not talking about a hybrid human-alien but about the new trend of ‘botification’. Have you heard about chatbots, even talked with one, and wondered what the point is? Well, Business Insider predicted in Dec 2016 that by 2020, 80% of all businesses will want one. That means quite likely you and your company.

So what is it that you will need from a bot developer? A customised (chat)bot that can:

- Use Emotional Intelligence to build relationships with your customers, clients and stakeholders
- Deal with Frequently Asked Questions so your staff can be freed up to work on more essential and pressing enquiries
- Improve customer and client satisfaction by dealing more efficiently and effectively with how queries are processed
- Conduct and supervise routine transactions like shopping cart purchases or bookings of services online

The current problem with the ‘bot market’ is that since last year when the CEOs of both Facebook and Microsoft declared them the best form of digital interaction – better than click-through-links, videos and digital banner ads – the market has now become swamped with myriad applications of varying quality and levels of performance. Personalisation – or “botification” as we call it at www.velmai.com – is simply personalising your brand’s digital interactions with those wanting to deal and quickly communicate with your company. It does this by creating an avatar which can be a person, cartoon, or company logo that will represent your brand on any chat app platform or when integrated into your website or blogs.

This image or icon becomes your brand personified. velmai is a new member of the German-British Chamber of Industry & Commerce because we have won First Mover clients in Germany, Switzerland, Italy, the UK and the Asia Pacific region. We are competing with the US tech giants in the Emotional Intelligence stakes – that means we have one of the best customisable bot interfaces money can buy.

Artificial Intelligence Performance

velmai is streamlined due to the effectiveness of our Artificially Intelligent proprietary algorithm that uses Machine Learning for its AI performance. This allows us to finetune the Emotional Intelligence and bespoke requirements of our clients as a boutique BaaS newcomer. We have independent servers and maximum cybersecurity. You know where your data is and how it is being used with velmai. And it is fully protected and encrypted.

In 2017-2018 this British bot developer with strong ties to Germany has deployments in the travel industry, hospitality, tourism, universities, HR, retail and automotive sector. We are venturing into 3D hologram AI bots with voice and using speech recognition and autotranslation for Augmented Reality applications in heavy industry.

If you would like to find out more, please talk to velmai’s Online Butler Albert, who also functions as the co-founder Dr Tania Peitzker’s Private Secretary. Albert lives on www.velmai.com and you can talk with him anytime on any device. Dr Peitzker is an alumnus of the University of Potsdam and lived in Berlin for 20 years until setting up a base on Lake Constance in 2015. www.velmai.com
From Paris to London: New leadership for German National Tourist Office in London

The German National Tourist Board (GNTB) has appointed Beatrix Haun (left) as the new director of the German National Tourist Office (GNTO) for the UK and Ireland. Ms Haun was previously director of the GNTB in France, based in the Paris office and is now looking forward to further developing the highly successful work in the UK and Ireland for Destination Deutschland.

She has every reason to be optimistic: the United Kingdom ranks third in Europe as an important incoming source market for Germany with a record 5.6 million overnight stays registered in 2016. Furthermore, Germany is among the 10 best countries to live in, according to the latest edition of the international lifestyle magazine Conde Nast Traveller. The magazine explains its reasoning with the statement that “Germany can position itself in the top 5 with its leadership position on issues of energy efficiency, technological development and a high standard of education. Germany is prominently represented on the world stage, as one of the strongest economies in the world and the most populous country in the EU.”

As well as being a popular destination for cultural holidays and city breaks, among the top reasons to travel to Germany cited were that the country has an above average share of the international business travel market. Promotable business trips to Germany by Europeans (trade fairs and exhibitions, conferences & conventions and incentive travel) have the largest market share, with 6.7 million in 2016.

To highlight the fact that Germany offers a range of unforgettable travel experiences for everybody, the marketing and press campaigns of the German National Tourist Office include a variety of popular travel themes such as Christmas Markets, active and nature holidays, Palaces, Parks & Gardens as well as camping and BarrierFree (accessible) travel. The GNTO will work on these campaigns with trusted partners such as German Rail and Lufthansa but also with organisations such as The UNESCO World Heritage sites in Germany and the towns and cities of the Historic Highlights of Germany. And, looking ahead, the travel themes for the coming years will include Culinary Germany, 100 years of Bauhaus, the 250th Beethoven anniversary and in 2020, the Oberammergau Passion Play.

“I’m really looking forward to working with all our partners to present Germany as a country with a 2,000 year history but also as an innovative and forward looking professional marketing organisation that embraces social media and digital channels” states Beatrix Haun.

The World Travel Monitor, compiled by market research company IPK International, revealed that 53.6 million trips were made to Germany in 2016, up by 3.0 per cent on 2015.
New Councillor:  
Til Schlummer

Til Schlummer joined Commerzbank AG in 2011 and is currently Regional Board Member UK & CEO London Branch. He began his career in 1984 at Deutsche Bank and occupied various senior global roles in Risk, Finance and Corporate Finance. He has worked for 17 years in the City and holds a Master’s Degree in Business Administration.

OBITUARY: Wolfgang Klerner 1929 – 2017

It is with great sadness that we report the passing of Mr Wolfgang Klerner, Representative in the United Kingdom of the Association of German Chambers of Industry and Commerce from 1971-1974.

Mr Klerner paved the way and laid the foundation for the German-British Chamber of Industry & Commerce in 1971. He was a strong supporter of furthering business relations between Germany and the UK and of bringing the two countries together. "Nobel prizes cannot be won in such an organisation" he once said but "the German-British Chamber of Industry & Commerce in the UK reinforces the spirit of enterprise and initiative."

The timing of the inauguration of the Chamber on 11th February 1971 could not have been more appropriate as it was exactly the time when Her Majesty’s Government presented the result of its negotiations with the European Communities to Parliament and public. Mr Klerner stated very fittingly in his inauguration speech that “trade between the United Kingdom and the Federal Republic of Germany deserves every possible promotion. In other words: we require this Chamber whether Britain joins the EEC or delays a decision until further notice.”

Now, 46 years later, these words ring as true as they did then. With the decision of the United Kingdom to leave the EU, it is more important than ever to offer a strong network, enhance relationships and support trade between the two countries. Wolfgang Klerner, a visionary and a passionate advocate of German-British relationships, would certainly have agreed.

Anniversaries

In 2017 we are celebrating anniversaries with the following members who joined the German-British Chamber of Industry & Commerce 20 and 25 years ago. Congratulations!

For regional committees, email: members@ahk-london.co.uk
ANNUAL DINNER

Attended by nearly 200 members of the German-British business community, the prestigious Annual Dinner is the flagship event of the German-British Chamber of Industry & Commerce. It was held on Thursday, 8 June 2017 at the Rosewood London, featuring a reception and three-course meal. Guest of Honour and Speaker was Mr Thomas Kielinger, author and journalist of Die Welt.
AUTUMN RECEPTION

An old nautical saying goes “If you can’t tie a knot, tie a lot” and our Members’ Autumn Reception on 28 September 2017 on board The Yacht London was the perfect way to tie new contacts and enhance business networks. Over 130 members enjoyed lively conversations, stunning views across the river Thames and live Jazz Music. Special thanks go to our partner Hapag-Lloyd Cruises who kindly supported the event and presented a fantastic prize on the evening.

Ms Britta Kayne, Axada Ltd

Dr Peter Ammon, German Ambassador to the Court of St. James’s addresses the guests

Mr Matthew Mansell and Ms Meriam Ahmed, both Ward Williams

Ms Katharina Sellner and Mr Markus Mattes, both TÜV Rheinland UK Ltd

Mr Gregor Neumann, SEB Private Banking and Mr Markus Haldammen, SEB Bank

Ms Johanna Schallert, DZ BANK AG, London Branch and Dr Franziska Sohns

Mr Andrew Gunman, Mayr-Melnhof Cartonboard UK Ltd and Mr Clemens Richter, CMR Controls Ltd

Mr Michael Steffl, Manager International Sales at Hapag-Lloyd Cruises introduces their new expedition vessels

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EVENTS CALENDAR

TUESDAY, 7 NOVEMBER 2017
BREAKFAST SEMINAR: INVESTING IN GERMAN REAL ESTATE
Venue: Shoosmiths LLP, 1 St. Martin’s Le Grand, London EC1A 4AS
Time: 8:00am – 10:00am
Cost: Complimentary

TUESDAY, 14 NOVEMBER 2017
THE FUTURE OF WORK: DIGITALISATION AND ARBEITEN 4.0
Venue: Liverpool Town Hall, High St, Liverpool L2 3SW
Time: 8:00am – 5:30pm
Cost: £100 per person + VAT

THURSDAY, 16 NOVEMBER 2017
MIDLANDS CHRISTMAS RECEPTION
Venue: The Council House, 1 Victoria Square, Birmingham B1 1BB
Time: 3.00pm
Cost: Complimentary

TUESDAY, 21 NOVEMBER 2017
IBT INTERNATIONALER BERATUNGSTAG
Venue: IHK Stuttgart
Time: 9:00am – 4:00pm
Cost: tbc

WEDNESDAY, 22 NOVEMBER 2017
SCOTLAND AUTUMN RECEPTION
Venue: WEST Brewery, Templeton Green, Glasgow G40 1AW
Time: 6:00pm – 8:30pm
Cost: Complimentary

THURSDAY, 23 NOVEMBER 2017
EXPORTTAG BAYERN 2017
Venue: IHK Akademie München
Time: 8:00am – 4:30pm
Cost: €90 per person + VAT

THURSDAY, 7 DECEMBER 2017
MEMBERS’ CHRISTMAS RECEPTION
Venue: German-British Chamber of Industry & Commerce, 16 Buckingham Gate, London SW1E 6LB
Time: 6:00pm – 8:30pm
Cost: Complimentary

THURSDAY, 4 JANUARY 2018
MEMBERS’ NEW YEAR’S RECEPTION
Venue: German-British Chamber of Industry & Commerce, 16 Buckingham Gate, London SW1E 6LB
Time: 11.00am – 1:00pm
Cost: Complimentary

Please see our webpage for updates and to register for events:
www.germanbritishchamber.co.uk
Brexit and the impact on companies in Great Britain
Ever since the UK voted to leave the European Union there has been an element of uncertainty over the effect of Brexit on companies in Britain. As the specifics of how the UK will exit the EU will be the subject of the negotiations, the exact implications are still difficult to predict at the moment. However, in order to offer some practical support we have asked our in-house experts from the Legal, Tax and Marketing departments to answer frequently asked questions from companies based in Great Britain.

**TAX QUESTIONS**

Dr Gunnar Pohl  
Head of Tax Services

Q I sell goods on Amazon to private customers in Germany and other EU countries. I am based in the UK. Does Brexit affect my trading in terms of VAT?

So far the UK referendum has brought no changes to VAT rules, neither in Germany nor the UK and this applies to all sectors. However, you should be aware that Germany, like all EU countries, has a so called distance selling threshold in place. When your UK sales to private customers in Germany exceed a value of €100,000, you must register for German VAT and tax your sales with the correct German VAT rate. If you do not exceed this threshold, you should charge UK VAT. Post Brexit – and provided no interim arrangements between the EU and the UK are agreed to keep the status quo – the distance selling threshold may no longer be applicable. This would mean that you have to register for and charge German VAT on all your sales to private customers in Germany.

Q Which other tax implications could Brexit have on UK businesses?

The number of possible tax implications of Brexit is just as numerous as the number of possible outcomes of the negotiations. The correct taxation of your business transactions could change post-Brexit, depending on the structure of your company or group, bearing in mind that the UK will no longer be bound to specific Directives such as the EU Parent-Subsidiary Directive or the Interest and Royalties Directive. However, the double taxation agreement between Germany and the UK will stay in place post-Brexit as it is a separate bilateral agreement.

Q We are a UK-based trader and deal with pharmaceutical products worldwide. We sell mainly in Europe and usually source our goods from overseas. The goods are shipped into our German warehouse and we generally supply the EU market from the German warehouse. Occasionally, UK producers stock our German warehouse from the UK. Due to the nature of our products we deliver “just in time” to our customers. We are VAT registered both in Germany and in the UK. How will Brexit affect us?

The extent to which you might be affected will depend on the outcome of the negotiations. Should customs borders be re-introduced between the UK and the EU, your supplies from the UK to your German warehouse would then be treated as imports into Germany on your German VAT return (and no longer as EC acquisitions). For this scenario it is likely that import VAT (and possibly customs duties) will be due in Germany. This is an important consideration for your cost and cash flow management. Deliveries from the German warehouse to the UK would correspondingly be treated as exports from Germany and as imports in the UK.

You should also be prepared for additional administrative tasks such as customs declarations and controls in ports which may affect delivery times. Therefore, your accounts department – in co-operation with your logistics and supply chain management – should consider various scenarios and prepare accordingly. We recommend to closely follow the Brexit negotiations and involving both your company’s tax advisor (who might have optimised your current supply chain in terms of VAT) and logistics supplier to identify the necessary steps.

**MARKETING QUESTIONS**

Sven Riemann  
Head of Marketing Services

Q I would like to exhibit at one of the German trade fairs, can I still bring along all my equipment from the UK?

Currently, there is no documentation required in order to take all your exhibition equipment to a trade fair in Germany. This may change post-Brexit and you may then wish to consider arranging for an “ATA Carnet” for commercial samples, professional equipment or goods for presentation, trade fairs and exhibitions. The ATA Carnet is an international customs document permitting the duty-free and tax-free temporary export and import of goods for up to one year. This can be obtained from the London Chamber of Industry & Commerce.

Depending on the final outcome of the Brexit negotiations you may also need to arrange for Schengen Visas and short term work permits for your British employees who will staff your exhibition stand in Germany.

**LEGAL QUESTIONS**

Ina Redemann  
Head of Legal Services

Q I am a British business currently considering establishing a German subsidiary in the form of GmbH. Could Brexit prevent me from following through with my plan in future?

After the UK’s exit of the European Union British businesses/nationals will still be able to establish a German GmbH. Brexit will have no immediate negative impact on the process of setting up the company itself. Currently, foreign nationals can generally establish a GmbH from abroad but will always be required to provide a German postal address.

The impact British owners of a GmbH based in Germany might feel in future will more likely be linked to the principle of the freedom of movement for people, i.e. with regard to sending their British employees on assignments to the German subsidiary. However, the impact on the freedom of movement will in the end be dependent on the final post-Brexit deal.
Post BREXIT: How will EU-Judgments be enforced in the UK?

Among the many not yet answered questions related to the Brexit, one is of particular importance for businesses: how will judgments of other EU countries be enforced in the UK, and vice versa, after March 2019.

Today, the UK and 27 other countries within the European Union have a very sophisticated and efficient system of mutual recognition and enforcement of foreign judgments in place, laid down in the Recast Brussels Regulation (EU 1215/2012). Judgments handed down by a court of one member state which has competence according to the provisions on international jurisdiction will automatically be enforced by the judicial authorities of any other EU member state. No specific recognition proceedings are necessary. The Recast Brussels Regulation also contains extensive rules on the determination of the competent courts and ways to choose the venue in a contract. Similarly, the EU-Regulation 1896/2006 provides a simplified procedure for obtaining a European Order for Payment between companies in different member states of the EU. It is applicable to undisputed amounts owed by a company located in a member state different from the creditor’s country (EU-Regulation 1896/2006 is not applicable in Denmark, though).

With the Brexit taking effect end of March 2019, the UK will, however, automatically leave these systems and a solution for this situation will have to be negotiated between the UK and the European Union. But what happens if a “hard” Brexit happens with no negotiated solution?

In the event that the UK and the EU do not reach any compromise on the matter, the national rules in each of the European member states on the recognition of foreign judgments will apply in just the same way as if the applicant were an overseas company (e.g., from the US). The statutory provisions for such exequatur procedures vary from country to country but, for example, in Germany and France they consist of a test of international regularity which will be the case if (a) the judgment was handed down by a judge who had jurisdiction over the dispute and (b) it does not contravene the public order of the country where it is to be enforced. There may be more requirements for recognition of foreign judgments in other countries. All criteria for recognition are determined by the national laws of the country where recognition is sought for.

The UK might look out for alternative solutions which do not require the unanimous consent of the remaining countries of the European Union. In 2005, the EU and – so far Mexico and Singapore – agreed on the Hague Convention on choice-of-court agreements. The UK is currently not an autonomous member of this Convention but only as part of the EU. However, after leaving the European Union, the UK might apply for acceding the Hague Convention directly and thus benefit from the regulations of this Convention which is, however, only applicable to contracts where the contractual parties chose an exclusive place of jurisdiction of one of the Contracting States.

The UK could also become a member of the Lugano Convention on the recognition and enforcement of judgments from one member state in another member state. The Lugano Convention is applicable between the EFTA-states (European Free Trade Association) and can be considered as a predecessor of the Brussels Convention. However, adhesion to either EFTA or the Lugano Convention directly will require the consent of the other members, mainly identical with the members with the countries of the European Union. Thus, the UK will only be able to make use of this alternative by way of negotiations.

It goes without saying that any result achieved through negotiations between the “parties“ (UK and EU) is better than no agreement at all. The EU Council already made a proposal suggesting that at least all judgments handed down before the UK’s withdrawal (end of March 2019) shall continue to be enforceable in accordance with the current rules (Directives of the EU Council on the Brexit-negotiations, published on 11 May 2017). But, again, also this small achievement is subject to mutual consent.

As a practical advice, existing contracts between EU companies and UK companies should be reviewed in due course with regard to jurisdiction and choice-of-law clauses. Obviously, it is too early to determine effective jurisdiction clauses under the post-Brexit regime. However, parties to existing and new business contracts should consider arbitration clauses as an alternative to jurisdiction before public courts. Recognition and enforcement of arbitral awards is not related to the membership to the European Union. It is governed by the New York Arbitration Convention. The vast majority of the member countries of the United Nations (154 out of 193 member countries) have adopted the New York Arbitration Convention, including the UK and all other EU member states. Thus, the UK’s withdrawal from the EU will have no impact on the enforceability of arbitral awards.

Mutual recognition and enforceability of judgments is of high value for businesses in a globalised world.

Mutual recognition and enforceability of judgments is of high value for businesses in a globalised world. Indirectly, it even determines payment behaviours of companies and individuals. Thus, this topic should be given some priority in the Brexit negotiations.

As a practical advice, existing contracts between EU companies and UK companies should be reviewed in due course with regard to jurisdiction and choice-of-law clauses. Obviously, it is too early to determine effective jurisdiction clauses under the post-Brexit regime. However, parties to existing and new business contracts should consider arbitration clauses as an alternative to jurisdiction before public courts. Recognition and enforcement of arbitral awards is not related to the membership to the European Union. It is governed by the New York Arbitration Convention. The vast majority of the member countries of the United Nations (154 out of 193 member countries) have adopted the New York Arbitration Convention, including the UK and all other EU member states. Thus, the UK’s withdrawal from the EU will have no impact on the enforceability of arbitral awards.

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Rechtsanwalt und Abogado / Buse Heberer Fromm Rechtsanwälte
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Thoughts on contractual drafting for Brexit

Brexit clauses based on English law

Companies entering into a long term cross-border contract which is likely to continue to be in force after the UK’s exit of the European Union are well advised to consider expressly drafting for Brexit scenarios. If parties are unprepared they might risk an obligation to fulfil a contractual responsibility even though it is no longer cost effective or even impossible to fulfil. Whether Brexit clauses are in fact desirable will usually depend on the individual circumstances of each contractual arrangement.

Clauses already included in commercial contracts

Many commercial contracts will already contain certain clauses such as force majeure or hardship clauses. Whether these clauses can generally be triggered by Brexit related events is questionable. Parties should not automatically rely on such clauses and review their long term cross-border contracts with Brexit in mind.

Clauses with a specific consequence

Companies could include specific clauses such as Currency Exchange Rate Clauses into their commercial contracts. For example, if the exchange rate appreciates or depreciates to a predetermined level the price of the product will automatically be adjusted. A Currency Exchange Rate Clause does not necessarily need to be linked to Brexit and does not require proof of causation.

Clauses with the possibility of renegotiation and/or termination

In addition to specific contractual drafting, companies could also consider more general clauses to try and minimise their risks when a certain scenario occurs. For example, if tariffs will be introduced as a consequence of the Brexit negotiations, parties might wish to have the right to renegotiate their commercial agreement and if a new agreement cannot be reached, they might want to have the right to terminate the contract.

There will be a number of questions surrounding the contractual drafting for possible Brexit scenarios. For instance, companies should consider whether Brexit clauses are meant to be invoked prior to the UK’s exit of the European Union or not. Another important consideration is the issue of causation and if the party invoking a particular clause will need to prove that Brexit has caused the specific change or impact on the contractual agreement.

Ina Redemann
Head of Legal Services
German-British Chamber of Industry & Commerce
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