

Germany

BRIEFING:
Brexit

Post-referendum realities and opportunities ahead

Business connections between the UK and Germany are now in limbo but there are specific areas that companies can immediately review and plan ahead



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Brexit-related uncertainties are likely to last until (at least) the end of the two-year deadline for a withdrawal agreement under Article 50 of the EU Treaty. In the meantime, businesses in the UK are well advised to quickly think about their current and future opportunities and to equally quickly start implementing the steps resulting from such analysis. From a German perspective, a myriad of aspects are to be considered by such UK companies, including the following:

- **Financial regulation:** the safeguarding of rights to act cross-border into the EU/EEA through an entity nationally licensed within the EU, which then can use the EU passporting system via cross-border business or EU/EEA branches, is relevant for banks, financial services institutions (including brokers/dealers), insurance companies, etc.

- **M&A:** where deals have been put on hold not only because of general uncertainty but because of currency dangers with the purchase price or because of problems with GBP-accounting London banks, companies could consider either switching to another currency or forex hedging, or involve banks with no such problems, such as those in Germany.

- **Company law:** English company law structures (both Ltd and LLP) used by German entities as well as European law structures (namely SEs or EEIGs) used by British entities are in danger and will require restructuring.

- **Tax:** the inapplicability of certain EU directives (e.g. the Merger Directive, Parent-Subsidiary Directive, Interest and Royalties Directive) and the status as a non-EU country will have an impact on direct taxes (especially for restructurings and relocations) and VAT (no 'intra-community supplies'). The possible comeback of customs will have an influence on indirect taxes.

- **Labour law:** should people be moved to and/or employed in Germany, visa and work permit requirements will have to be considered as well as 'individual employment contract'-related legal requirements and social security/insurance issues, plus German employee participation rights.

- **Real estate:** increasing demand for investments in German real estate, both commercial and retail, will

result in higher price tags. This will be particularly true for Frankfurt as one of the major relocation cities profiting from the Brexit. Time could be of essence.

- **Capital markets:** what has been said above about EU passporting is equally true in regard to UK issuers of capital markets instruments publicly offering or listing them in the EU/EEA. Generally it remains to be seen with which degree of verve the EU Capital Markets Union, until now very much pushed by retired EU commissioner Lord Hill, will continue to be progressed.

- **Investment funds:** what has been said above about EU passporting generally also applies to UK fund managers and their funds (UCITS and AIF). Should the UK keep the AIFMD requirements in place, the introduction of the marketing passport for non-EU AIFM within the EU, expected in 2017, might become crucial for the UK funds industry as it might allow the marketing of UK funds to (semi-)professional investors in the EU. If not, UK fund managers would have to relocate to an EU member state or to establish subsidiaries there.

- **IP:** IP rights that apply throughout the EU (e.g. EU trademarks) might no longer apply to the UK. Therefore, companies should consider at an early stage to what extent IP portfolios should be backed up by, for example, respective national filings in the UK.

- **Data protection:** data transfers from the EU to the UK might become more difficult, as they would have to be qualified as a transfer to a third country outside the EU/EEA (as in case of the US). Significant legal and bureaucratic boundaries might be the result. If no UK/EU data protection agreement similar to the EU/USA Privacy Shield agreement is in place, companies might have to establish so-called Binding Corporate Rules.

- **Dispute resolution:** British judgements might no longer be automatically recognised and enforced by EU courts. As a result, arbitration clauses are already becoming more and more attractive, as recognition and enforcement of arbitral awards will not be affected by the Brexit.

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