

Is your website Brexit ready?

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As the possibility of the UK leaving the EU with no deal increases, organisations are redoubling their efforts to finalise Brexit plans. But what does this mean for your website?

There is some good news when it comes to preparing your online presence for Brexit. New EU rules which prevent [unjustified geoblocking](#) and other forms of discrimination based on a customer's nationality or place of residence will no longer apply in UK law post Brexit (although their extra territorial reach means they may still apply to UK websites selling into the EU).

However, a number of other EU rules may become more challenging by virtue of the UK leaving the EU 'club'. For example, you may no longer qualify to use a .eu domain name (see the Government's [no deal guidance](#) for more information) and your privacy policies and data processes may need refreshing once the UK is no longer part of the EU's data protection regime (see our [Brexit: Edging Closer](#) briefing for more IP and data protection implications).

In this briefing we focus on changes you may need to make to your website, and the processes which sit behind it, as a result of changes to the UK's e-commerce regime following Brexit - in particular the loss of the 'country of origin principle'.

Changes to the e-commerce regime

If you are an information society service (ISS) provider, such as an online retailer or ISP, and are established in the UK, then you currently benefit from the E-Commerce Directive's (the Directive) 'country of origin principle'. This reciprocal arrangement means that EEA-based ISS providers

which sell goods and services across the EU only need to comply with the rules of their own country where those rules fall within the 'co-ordinated field'. The co-ordinated field covers areas such as online advertising and contracting but not issues like safety standards and other laws relating to goods. These ISS providers are also exempt from any prior authorisation schemes or similar requirements, and only need to follow the basic information requirements set out in the Directive (for example, regarding information to be provided to users).

What is an ISS?

An information society service or ISS is defined in the Directive as any service normally provided for remuneration (which can be direct or indirect), at a distance, by electronic means and at the individual request of a recipient of the services

Once the UK leaves the EU, these benefits will be lost. Organisations established in the UK will instead need to comply with the rules that govern online activities in each EEA state in which they operate. They will therefore need to check what laws and regulations will apply to them, and whether changes to their website, selling methods and underlying processes are necessary in order to comply.

[E-commerce EU Exit Guidance](#) from the UK Government published earlier this year confirmed that it will try to minimise disruption to business by continuing to align UK law with the provisions in the E-Commerce Directive. For example, the Directive contains specific rules around the

liability of intermediary service providers, such as those hosting data, and the UK will continue this approach (although the EU confirmed, in its [E-commerce Brexit notice to stakeholders](#) that, from an EU perspective, these rules will no longer apply to UK organisations following Brexit). However, the UK will not continue to mirror the Directive in relation to the country of origin principle, as there is little the UK can do unilaterally to mitigate its loss.

In addition, while UK ISS providers will lose the benefit of the country of origin principle from exit day, ISS providers based in other EEA countries who sell into the UK will not. They will continue to benefit from the country of origin principle when operating in the UK until the UK Government removes the right from the various pieces of UK legislation implementing the E-Commerce Directive. It has said it will do this "when parliamentary time allows", although it intends there to be a transitional period for ISS in the field of financial services.

What can UK organisations do now?

A first step may be for an organisation to determine where its 'place of establishment' is in relation to each ISS it provides, to see if it may still be possible for it to fall within scope of the Directive. An ISS provider with UK and EU operations may have several places of establishment (a point discussed in recital 19 of the Directive). Other steps organisations can take include:

- ✓ reviewing their online activities to check which jurisdictions, and laws, will be relevant to their online activities;
- ✓ updating the processes they have to ensure compliance with legal obligations - these processes should cover the laws of any relevant additional EEA countries and be capable of monitoring changes in law to ensure ongoing compliance; and
- ✓ checking whether they may now be caught by any EEA licensing regimes.

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