

# Position Paper

## A Brexit that Works for the E-Commerce Industry

### Key Messages

- ☞ **The EU's Business to Consumer (B2C) e-commerce market accounts for 540 billion euros<sup>1</sup>.**
- ☞ **The eCommerce sector is vulnerable to the reintroduction of tariff and non-tariff barriers and we urge the European Commission and the Member States to consider the idiosyncrasies of this sector and in particular the needs of small and micro businesses shipping millions of parcels each day.**
- ☞ **Special customs procedures should be established to ensure the required speed of transactions.**
- ☞ **A transitional deal must be negotiated as early as possible to avoid market disruption. EMOTA calls on the European Commission and the Member States to pursue a transitional arrangement, which will ensure the benefits of the customs union and the single market, lasting between 3 and 5 years.**
- ☞ **An eCommerce Task Force, including government and stakeholders from across the supply chain must be created as soon as possible to propose pragmatic and durable solutions to the sector specific challenges, supporting the work of the European Commission Task Force throughout the negotiations.**
- ☞ **Concluding a mutually beneficial comprehensive Free Trade Agreement (FTA) between the EU-27 and the UK will help create the right environment for continued harmonization of rules and standards and ensuring the lowest level of disruption for the eCommerce sector.**

### Introductory Remarks

eCommerce is a significant component of the trade relations between the EU27 and the UK which cannot be ignored and has a direct effect on many SMEs across the EU. The adjustments required by BREXIT will likely be far-reaching: adjusting websites according to different consumer information requirements, reference to local complaints procedures, data protection requirements, and those issues relating to the shipment of products between the EU and UK.

<sup>1</sup><https://www2.deloitte.com/content/dam/Deloitte/be/Documents/tax/TaxAlerts/CustomsFlashes/Customs%20Flash%20-%20What%20do%20new%20EU%20VAT%20rules%20on%20e-commerce%20mean%20for%20your%20business%20-%2013%20December%202016.pdf>

EMOTA<sup>2</sup>, like many other sectoral organisations, is working to identify the risks and opportunities arising from Brexit and is seeking to help its members both prepare for the UK exiting the EU, but in addition enable them to offer their expertise and value to help ensure that government stakeholders understand the complexity of the value chains which risk being impacted. Ensuring business continuity is essential to enabling customers to enjoy as much certainty as possible as they go about their daily lives.

The main challenge for many businesses involved in the sector relates to the re-introduction of customs procedures for trade between the EU27 and the UK. The costs and complexity of adapting to these new procedures and the likely delays which may arise will stifle growth and ambition. eCommerce is increasingly dependent on consumer expectations of swift delivery and in an increasingly competitive sector this will disproportionately impact small and micro-businesses selling online. EMOTA's strong preference is for the UK and the EU to retain as close a relationship as possible.

EMOTA therefore urges the European Commission and the Member States to ensure that delays at EU-UK borders are kept to a minimum, with special arrangements for the border between Northern Ireland and the Republic of Ireland.

☞ **The challenges will be greatest for SMEs, many of whom will not have the option to establish separate operations (warehouses, delivery collection points, return locations) in the UK and the EU. However, all businesses will clearly be disrupted. In addition to shipping parcels to the UK, many businesses will need to have parcels returned – this aspect strongly influencing their cash flow and stock availability (in some businesses the return rates can be extremely high, higher than 50%).**

EMOTA also fears that the Brexit negotiations will not proceed at the pace and timeline initially suggested by the UK government and the European Commission Article 50 Taskforce, leaving a gap between the current arrangements for the UK as a Member of the EU and the newly established trading status the UK will have secured once the negotiations have been completed.

☞ **EMOTA calls for a three to five-year clear transitional arrangement, ensuring ample time to secure a well-defined trading relationship between the UK and the EU27 and implement the necessary technical mechanisms. Businesses will need sufficient time to adapt to the new trading relationships and negotiators on both sides should seek to provide early clarity to business. Thus, these arrangements should ensure the benefits of the single market and the customs union during the transition.**

## Key Challenges

Given the complexity of the negotiations and planned free trade agreement between the UK and EU27, EMOTA has identified the most pressing issues, which need to be addressed in the upcoming negotiations in order to have a Brexit that works for the eCommerce sector:

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<sup>2</sup> EMOTA, the European eCommerce and Omni Channel Trade Association, is the European level umbrella federation representing online and distance sellers across Europe. The main mission of EMOTA is to promote eCommerce and Distance Selling and help policy makers remove any barriers to cross-border selling. Transparency register N° 11251212351-96

**1. Customs, Supply Chain and Taxation:** the UK is one of the main destinations for many of the online traders across the EU, including Germany, the Nordics and wider afield. Failing to provide a viable trading relationship for these exports will lead to a significant loss in sales for the EU online traders.

We therefore believe that both EU and UK negotiators should be as ambitious as possible in agreeing a custom-free border between the EU and UK. We should not rule out any options, including continued participation in the EU's customs union and free circulation areas, and should be prepared to explore new models and innovative solutions to avoid a damaging and economically costly border.

At the very minimum, EMOTA believes that the following challenges need to be addressed before the UK exits the EU:

- **The absence of duties/taxes** – there are several implications dependent on whether duties and taxes will be reinstated, if the UK is considered a third country, operating outside of the customs union. The application of regular WTO tariffs would likely significantly raise the price of certain product categories. This could affect competition, making cross-border sales uncompetitive, and should therefore be avoided.
- **The sudden application of duties and taxes** on shipments to the UK – could also constitute a market access barrier and without the correct customs resourcing at the border could also lead to delays when transporting goods across borders.
- **Measures to enable the release of goods** as soon as possible – On average goods can travel between the EU and UK in 12 hours or less. Given this short transit time, trade will benefit from enabling goods to move before customs checks are complete and processing customs information pre-departure and arrival. eCommerce is ever dependent on consumer expectations of fast delivery, allowing them to remain competitive in relation to brick and mortar retailers, and thus delays at crossing EU-UK borders should be kept to a minimum. Without the right procedures, goods might spend even days in transit before they are cleared to enter the two markets.
- **Equally important is the possibility for merchants to benefit from a fast procedure for the return of goods.**
- A solution has to be found related to the **application of the Union Customs Code** and the mechanisms envisaged by the Code. Time will be needed for the systems to be put in place to deal with the new context. Policy makers should also consider that the EU customs authorities will require further resources and time to adapt and implement systems to deal with the originating UK goods.
- **Introducing clearance simplifications** to ensure fast movement - any rules for claiming preferential treatment under any FTA type arrangement are simple and easy to apply. Existing concepts should be reviewed, such as bonded warehouses, to ensure they can be easily used to reduce the burden introduced by Brexit.
- A forward-looking agreement on the **application and registration for VAT** should be carefully considered as it is unclear whether the UK will remain part of the EU VAT 'One Stop Shop' mechanism, despite the obvious benefits that this would bring in terms of facilitation for business and consumers alike.
- **Additional customs duties** may make it impractical for SMEs to share inventory between the EU and UK, thereby reducing selection for customers and sales for SMEs. Post-Brexit cross-border VAT rules will be more complicated for SMEs, creating an additional barrier to trade. Reduced duty rates and VAT simplifications, such as self-accounting for import VAT on the return would serve to counterbalance these risks.

☞ Customs procedures will inevitably result in higher costs and delays for online traders shipping goods from the EU to the UK and vice versa. Thus, the implementation of a simplified, fast track procedure for tangible goods is required and should be a priority issue for any future trade negotiations between the EU and UK.

**2. A Coherent Legal framework:** eCommerce is an industry with high volumes and efficiencies which are based on a low level of fragmentation. EMOTA members fear that once the UK's membership to the EU expires, there will be a gradual divergence in regulation between the EU and UK, leading to increased complexity and costs for the e-commerce sector. Thus, concluding a mutually beneficial comprehensive

Free Trade Agreement (FTA) between the UK and EU27 will help create the right environment for the continued harmonization of rules and standards and ensuring the lowest level of disruption to the eCommerce sector.

☞ To prevent significant divergence in regulatory regimes, a future EU-UK FTA should include a chapter on regulatory cooperation, with a formal UK-EU cooperation body. This would help to ensure that the rules and regulations of the EU27 and UK remain and continue to be aligned or equivalent as much as possible in the future to minimize trade disturbance and ensure a level playing field for online traders in both markets.

**3. Free movement of people:** the EU and UK should be aiming for a reasonable immigration scheme that provides businesses with access to a workforce with the appropriate skills across the country. Thus, transitional arrangements will be necessary to minimize disruptions with a view to ensuring that current investments operated by EU online traders in the UK are not lost.

☞ In the long term, the EU should envisage a cooperation mechanism with the UK enabling businesses to travel and work without significant barriers or costs.

#### Priority Areas for Regulatory Alignment in Future FTA

**Mutual Recognition in Standards such as Product safety** – Product safety is one of the most expensive and complex aspects of online sales. A scenario where the UK is no longer part of the current enforcement and early warning mechanisms (RAPEX, CPC, etc.) will have important consequences for online traders and enforcement authorities alike. This becomes even more complicated if product rules diverge over time. A product deemed safe in the EU could then be considered unsafe in the UK and vice versa. Warnings may no longer have an EU-wide reach, leaving both sides potentially unaware of dangerous products circulating on the market.

Despite the current harmonized framework, cross-border trade mechanisms are complex and well-developed. Significant changes to current mechanisms as the UK exits the EU risk disruption for businesses who will need to adapt their internal processes and mechanisms and may have knock-on impacts for customers. It is essential for both competitiveness and value for consumers that common EU standards and regulations apply for trade with the UK. Differences in such standards not only reduce consumer selection, but also limit markets available to SMEs.

☞ BREXIT negotiations on a future FTA should secure the best possible cooperation on enforcement, preferably by UK authorities remaining involved in RAPEX procedures. Moreover, the EU-27 and UK

**should look to align rules and regulations in this area as much as possible in the future to minimize trade disturbance, as well as ensure a level playing field for online traders in both markets.**

**Data Protection** rules have a great impact on the operations of online traders, but our priority is to ensure the highest standards of data protection and privacy for our European customers. The General Data Protection Regulation will be applicable as of 25 May 2018 and in addition the EU ePrivacy Regulation will most likely apply in 2019. The EU Commission and the 28 DPAs will also produce guidance and standards for the application of data protection rules. We are keen to see an EU-UK agreement on data adequacy that is subject to the kinds of high data protection standards embedded in the GDPR.

☞ **A fragmented approach in this area will be catastrophic for businesses. Data flows must be unrestricted and the rules must be enforced in the same coherent way across EU and UK.**

**Postal Services** are an essential part of the e-commerce supply chain. Having different rules on labelling, the dimensions of parcels, and addressing formats will increase costs significantly for SMEs. Moreover, a regional approach to postal services could negatively impact competition.

☞ **The UK government and postal operators should continue to work together with EU counterparts on issues increasing interoperability, like InterConnect, or CEN.**

**Consumer protection** rules are still not fully harmonized across the EU, although important progress has been made in recent years. Despite this, there remains a high-risk that the EU and UK will take diverging approaches to consumer protection legislation, which could dramatically increase compliance costs and create a significant disadvantage for online traders, especially SMEs. In addition, new aspects will have to be considered in terms of applicable law, applicable jurisdiction and the way the two legal systems will cooperate in cases of enforcement and judicial action. Certain laws and legal provisions are unlikely to apply to the UK, such as the Injunctions Directive, Online Dispute Resolution and Alternative Dispute Resolution Directive, together with the infrastructure they provide. EMOTA calls on policy-makers to ensure the two systems remain coordinated and for the EU and UK to cooperate on consumer protection issues, with online traders having at their disposal the appropriate solutions for addressing the various issues.

☞ **Given its importance, consumer law and protection should be considered in any free trade arrangement between the UK and EU27, ensuring continued and coordinated cooperation.**

**Competition Law** - Following the EU competition inquiry, competition law will become an important enforcement mechanism in eCommerce. EMOTA sees three specific dangers in this area: (i) diverging legislation; (ii) uncoordinated enforcement, creating fragmentation and inefficiencies and leading to legal uncertainty; and (iii) double notification (e.g. mergers or acquisitions), sanctions and double enforcement for the same infringements. Companies should not be forced into lengthy and complex enforcement cases which in the end are finalized with double penalties, both in the EU and in the UK. There will also be additional questions regarding collective judicial action and how damages will be calculated and implemented.

☞ **A chapter on competition law should also be envisioned for an agreement between the EU and UK, with a deepened judicial and cooperation competition mechanism.**



**Intellectual Property Rights** are one of the most important obstacles in the digital single market. Intellectual Property Rights (IPR) has a major impact on everything: from innovation, how business processes are structured, to how businesses deliver their products and services. EMOTA Members are concerned that both in the transitional period and in the scenario where the UK is no longer an EU Member, the rights and obligations around IPR will become difficult to manage and implement. Enforcement mechanisms will also most likely no longer be coordinated.

☛ **A high-level of coordination and enforcement of IPR rights must be put in place.**

Small and micro-enterprises face significant obstacles when trading in third country markets, in particular information asymmetries and other administrative and regulatory barriers. In order to preserve Europe's existing vibrant SME e-commerce segment, Brexit negotiations on a future FTA should include a dedicated small business chapter to ensure the smallest companies have access to the information they require to export and invest abroad.

☛ **A small business chapter should be envisioned for an agreement between the EU and UK.**

## Conclusion

EMOTA and its members are keen to minimize the risks and identify opportunities that will occur as a result of the UK exiting the EU, in the best interests of our customers, SMEs and business operations. We are willing to discuss our proposals further and receive feedback.