DIGITALEUROPE

The Digital Tech Sector Priorities and Gap Analysis in a EU-UK cliff-edge scenario

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INTRODUCTION

1. General Comments

Following the start of the BREXIT negotiations, DIGITALEUROPE welcomes the opportunity to provide input where the key areas of concern lie for the tech sector.

Our members are keen to provide our extensive expertise of navigating global supply chains, customs systems and regulatory frameworks to mitigate the damaging effect of the imposition of a 'hard border' to the greatest extent possible.

The tech sector's key concerns are centred around the risk of non-tariff barriers being introduced. While most IT goods are low or zero rated for tariffs, issue such as increased documentation requirements, customs delays, future regulatory divergence, lack of free flow of data and access to highly skilled talent all risk having significant negative impacts on the sector. To minimise risk and disruption as much as possible, DIGITALEUROPE strongly encourages the EU and the UK to move to the discussions on the future trading relationship between the European Union and the United Kingdom as early as possible in the negotiations around the UK's secession from the Union.

We also believe that a transitional arrangement of adequate duration will be essential. The transition should provide sufficient lead time for business to implement the system and process changes required under the future UK / EU trade terms. Any cliff edge would risk serious disruption to business, leading to significant operational and financial challenges as well as impacting on the ability to deliver service levels expected by customers.

In limiting disruption, a transitional deal should not require a 'two step' approach whereby businesses have to adapt to a transition environment before adapting to the circumstances of any final deal. Therefore, the transitional period should be based on the UK continuing to be part of both the Single Market and the Customs Union for an interim period.

2. Relevant characteristics of our sector

The tech sector comprises a rich mix of hardware, software and services from both micro-businesses and global platforms. Services account for some 96% of the digital business in the UK and probably somewhat less in other member states. Total employment in the sector is 6.5 million, 80% of which in services. Companies can be in simple supply chains of two or highly complex networks of many organisations, across Europe and beyond.

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This is exemplified by the fact that 49% of inputs of goods and services to the UK's ICT-producing sectors are imported, compared to 28% for the economy as a whole. All products currently placed on the EU market, as well as services delivered to it, are subject to a wide range of regulations.

Innovation is a crucial driver of growth in the sector. The ICT sector has a long history of company involvement in EU research and innovation programmes, such as Horizon 2020, creating innovation ecosystems for collaboration between skilled researchers in large industry, SMEs, research institutes and academia across and beyond European borders. As a result, many of our member companies have established long-standing bilateral collaborations with research and higher education organisations in the UK.

Of the UK's 3million workers, 18% are foreign-born, of which one third, i.e. 6% in all are from the EU. Although the figures may not be as high on the continent, worker mobility is clearly an important requirement if the EU ICT sector is to make the most of the shift to services.

IMPACT OF A 'HARD BORDER'

1. Non-tariff barriers: increased costs and delays

As mentioned in our introductory remarks, the main concerns for the tech sector lie around the issues of non-tariff barriers. Accepting the statements made by the UK Government that they will seek to match, as far as possible, EU schedules at the WTO, and that this would include joining the WTO Information Technology Agreement (ITA), which provides for zero-tariffs on hundreds of ICT products, parts and components, tariffs themselves are not likely to be a major issue for the sector.
Considering that many of our member companies' distribution models are based on having only a small number of logistics centres in the EU, the risk of non-tariff barriers at the border in the form of the reintroduction of red tape and administrative burdens is significant in a WTO-only scenario.

Without an agreement, Brexit will create a border between the UK and the Member States of the European Union. Given the complex nature of many digital goods, new costly and burdensome controls to import and export declarations likely risk having a significant effect on UK/EU digital goods trade.

Of particular concern are rules surrounding Rules of Origin requirements, which may have a greater impact on the tech sector given the complex nature of sourcing component parts, many of which are produced across the EU. Complying with Rules of Origin, and ensuring compliance within a supply chain, may prove burdensome for many within the tech sector, particularly smaller businesses without the capacity to fully manage their own supply chains.

There are also numerous other concerns, including: reporting and compliance management for import and export; increased interaction with multiple customs and export authorities; multiple duty VAT points and possible associated increases, as well as new transit rules; brokering costs; compliance and audit costs. All of these are likely to have an impact on EU/UK trade in the event of a 'no deal scenario'.

Such cost and delays carry with them high risks of disruptions to and cancellations of production systems and supply chains, in particular for those companies who operate within the « just in time » approach.

It is difficult to quantify the level of impact in this hypothetical scenario, though again, it is clear that the difficulties will be more acute within smaller businesses who cannot internalize the costs of such additional barriers.

However, none of these mitigations to UK withdrawal from the Customs Union could be completed in sufficient time in the event of a 'no deal scenario', meaning the full impact of this disruption would be felt by those businesses operating across border.

2. Dual-Use Export Authorisation

Companies in the EU currently have the ability to apply for an EU General Export Authorisation (EUGEA) which, once approved, allows them to export dual-use goods from any location in the EU. When the UK leaves the EU, companies based there will clearly no longer be able to physically export from EU locations and they will no longer have the ability to rely on the EU General Export Authorisations.

We would recommend that the EU and UK maintain as far as possible the procedures and rules (including dual use control lists), thus enabling the EU and the UK to seek agreement on the mutual recognition of the EU and the UK's export licences.

3. Regulatory divergence: behind the border – market access barriers

Looking ahead, the EU and the UK need to avoid unnecessary complexity deriving from diverging product standards and regulatory approaches which could impede cross-border flows of goods. Deviating standards and regulatory approaches would increase compliance costs for businesses and would ultimately lead to increased costs for consumers.

This divergence covers areas as wide as:

- Product safety, radio equipment, mobile terminals, audio-visual terminals and e-accessibility.
- Spectrum Management and assignment.
- Rules tackling geo-blocking and Audio-Visual Media Services Directive (AVMS-D).
- Rules on digital contracts.
- Environmental and energy rules: circular economy package, eWaste, energy efficiency requirements, energy labelling, RoHS, REACH.

Maintaining alignment of UK regulation with EU rules or at least mutual recognition schemes whereby the EU and UK agree to respect and accept goods conforming to each other's regulatory frameworks should be considered alongside new efforts to promote business-led global standards. The goal must be seamless market access for EU products compliant with EU regulations to the British market as well as vice versa without any additional or different requirements.

In order to help achieve this aim, consideration should also be given to the ability of UK regulators to retain participation within EU regulatory bodies. This could include granting UK regulators 'observer status' in such bodies. This would be beneficial both to preventing divergence and giving EU institutions access to the continued expertise of UK regulators such as OFCOM, whose participation in BEREC is widely recognised as advantageous to EU level decisions. For example, of the 4,600 TV channels established in the EU, 1,400 are UK based, with 1,000 of these broadcasting across the EU.

TRADE IN SERVICES

The UK is highly expected to be a member of the GATS agreement and will likely also, according to its political indicators, become a party to TiSA as and when negotiations are successfully concluded.

However, GATS and in particular in a no-TiSA scenario, still leaves a significant market access and regulatory gap considering the relatively limited trade liberalisation in services on WTO level compared to the deep integration of the single market ensuring the right to offer services cross-border.

These risks are far-reaching:

- No guarantee that the UK will follow the Central Product Classification for Services.
- No joint discipline on digital trade e.g. cooperation on cybersecurity, protection of source code and promotion of commercial encryption.
- Risk of fragmentation of the cyber framework if the UK deviates from the general principles of the Directive on Security of Network and Information Systems (NIS).
- Fragmentation of rules on digital communication networks and services, in particular divergent approaches to regulation of communication services increases the cost of delivering services from the UK into the EU.
- Data flows: no guarantee that personal data can still flow between the EU and the UK, see further below.
- No access to the right Skills.
- No reciprocal access to Public procurements.

Below we set out in more detail the risks as related to data flows, skills and public procurement as they represent some of the key priorities for the digital tech sector.

1. Data flows

Data flows are at the forefront of the areas of risk foreseen by DIGITALEUROPE considering its centrality to both the digital economy and, given increasing digitisation of all business sectors, the economy as a whole. With a high proportion of trade in services, new business models of manufacturing industries enabled by data flows and considering the increasing growth in this area, the continued free flow of data between the EU and the UK is of crucial importance for the digitisation of both EU and UK industries.

The UK is responsible for 11.5% of global cross border data flows. 75% of this traffic is with other EU Member States. The UK is also home to 43% of the Tier 1 Data Centres located within the EU, meaning that it is home to much of the data housed across the EU. Moving these data centres would require significant capital expenditure on behalf of business and would not be possible in the case of a cliff edge 'no deal' scenario.

There are a number of ways in which cross-border data flows could be retained, including via a Free Trade Agreement, through companies applying Standard Contractual Clauses, or through User Service Agreements. However, all these methods pose significant risk. The recent Japan/ EU trade deal shows the complexity of achieving a data agreement through a Trade Deal, while evidence suggests that Standard Contractual Clauses and similar mechanisms risk being too costly to allow smaller businesses to comply.

An adequacy agreement between the EU and the UK is therefore viewed by the sector as the most appropriate mechanism to secure the free flow of data. While there are clearly difficulties to securing an adequacy agreement, for example surrounding national security rules within the UK, we strongly encourage the Commission to look favourably on an adequacy application from the UK, given the economic importance of data to the future of the European economy.

Ultimately, we believe that it is critical to ensure the highest standards of data protection and privacy. We strongly support continued UK implementation of the General Data Protection Regulation (GDPR) as the best chance to preserve data flows after Brexit, and welcome the UK Government's announcement of a Data Privacy Bill to fully implement GDPR before May 2018. DIGITALEUROPE is keen to see EU/UK reach agreement on a mutual data adequacy decision.

2. Access to talent

DIGITALEUROPE would like to highlight concerns on the continued access to a highly skilled workforce and the ability for companies who operate cross-border within Europe to continue to be able to have some degree of ability to have a mobile workforce. DIGITALEUROPE members have existing staff and will continue to need to have staff that moves across border within Europe on a daily basis, e.g. for sales, technical services, research and development. They constitute major employers of EU citizens in the UK and of British citizens in the EU27.

Our immediate priority is to provide as much certainty as possible for our employees and we strongly support the commitment from the EU27 to guarantee in the negotiations the reciprocal rights of each other's citizens. This should include provisions to ensure that EU Citizens within the UK (and vice versa) can travel and live elsewhere, including outside the EU, without losing any rights confirmed as part of a deal during the negotiations. This is important for tech businesses wishing to second workers to other countries, often for long periods.

Once an agreement has been found to ensure the continued reciprocal rights of each other's citizens already living in the EU/UK, it is crucial that the negotiations on the future relationship also includes reciprocal provisions on skilled workers that is sufficiently flexible to enable businesses to continue filling skills gaps and vacant positions.

In addition to the needs of businesses to be able to fill positions within their businesses, any future UK/ EU deal must also recognise the need for businesses to be able to move staff rapidly across Europe to service their business needs. For example, for those global tech businesses whose European base is, and will remain, in the UK, the ability to transfer a senior engineer to another Member State to deal with a sudden technical fault or cyber-attack is critical. Should a post-Brexit system require visa applications or delays, this will severely hamper the ability to deal with the growing problems of cyber security where time delays have large impacts both on security and on financial considerations.

Finally, any significant restrictions in the ability of businesses to employ people based away from their main 'hub' could restrict their ability to recruit and retain expert staff. Anecdotal evidence suggests that many companies have a senior engineer living in the UK, working remotely for a business base in another Member State, including the UK. Reasons for these arrangements vary, for example a worker's desire to keep their children in a particular education setting, while still operating in a global market.

A Brexit scenario which prevents this kind of off-site, out of country, employment, risks preventing businesses in EU Member States with larger skills gaps from being able to compete for the skills they need in a challenging recruitment environment.

PUBLIC PROCUREMENTS

In a WTO-only scenario, reciprocal access to the public procurement markets will be significantly disrupted as the EU regime offers a liberalised and non-discriminatory market access across the EU. This is the case even in the better scenario, where the UK, as widely expected, becomes party to the WTO Government Procurement Agreement (GPA) as the risks associated with public procurement are not only linked to the level of commitments/market access but equally to the practical implementation and application of rules and procedure. As such the EU public procurement directives do not only provide the market opening rule but a full set of procedures and processes, incl. rules on tender notices and advertisements, selection and contract award criteria and procedures, incl. e-procurement and, not least, legal recourse.

Some of the risks to public procurement could be mitigated with the UK joining the GPA with commitments aligned to those of the EU schedules in order that the parties can seek to include provisions on continued reciprocal access to public procurement markets. The EU and UK should also seek to reach an agreement on a mechanism to ensure the future convergence of public procurement laws and procedures.

INTELLECTUAL PROPERTY RIGHTS

We would urge the UK to remain committed to the WTO agreement on Trade-Related aspects of Intellectual Property Rights (TRIPS) principles. The EU and UK need to ensure that there will be seamless and commensurate protection of community IP rights at national level. We believe that it would be beneficial for all parties if the UK would remain part of the agreement for Unitary Patent and the Unitary Patent Court and to affirm the legal status of the UK's continued participation to enhance user confidence in the system. There should be also no further fragmentation on copyright rules between the EU and the UK.

COLLABORATION in EU RESEARCH AND INNOVATION PROGRAMMES

The UK government has stated that they guarantee funding for British participants until the end of Horizon 2020. However, the long-term perspective is unclear and will entirely depend on the negotiations and what kind of agreement the UK and the EU will reach for the next Framework Programme (FP9).

There are currently possibilities for non-EU participants to access funding but they are more limited and participation of international partners has decreased dramatically in Horizon 2020. In the worst case, it could prevent British universities and companies from accessing EU funding for innovation completely, as well as deprive both British and EU researchers and innovators of collaboration and exchange of ideas.

DIGITALEUROPE members want to continue collaboration in Research & Innovation with the widest possible network of excellent organisations all over the globe. The EU and UK need to encourage the free flow of ideas and continue to promote reciprocal access to third country programmes by ensuring transparent information and procedures.

Case study: Internet of Things (IoT)

A study[1] carried out for the European Commission in 2014 highlighted that the number of IoT connections within the EU28 is expected to increase to almost 6 billion by 2020, with IoT revenues estimated to 1,18 trillion EUR (incl. hardware, software, and services). The study identified he UK as nr1 on the list of Member States with the most IoT market size (78,68 billions EUR in 2014 and 269, 28 EUR estimated in 2020), closely followed by Germany and France. If the UK is parting from the EU digital regulatory framework, the EU might have difficulties to respond to the challenges in this area, notably on privacy protection and cybersecurity threats. National defense systems and critical infrastructure are also at risk[2].

1 See Stefania Aguzzi, David Bradshaw, Martin Canning, Mike Cansfield, Philip Carter, Gabriella Cattaneo, Sergio Gusmeroli, Giorgio Micheletti, Domenico Rotondi, Richard Stevens, *Definition of a Research and Innovation Policy Leveraging Cloud Computing and IoT Combination*, A study carried out for the European Commission, 2014, https://ec.europa.eu/digital-single-market/en/news/definition-research-and-innovation-policy-leveraging-cloud-computing-and-iot-combination;

2See Dan Hamilton, Center for Transatlantic Relations Johns Hopkins University, 'The Transatlantic Digital Economy 2017: How and Why it matters for the United States, Europe and the world'.

SUMMARY OF DESIRABLE ATTRIBUTES OF A POST-BREXIT SCENARIO

- There would be a clear agreement for a transitional agreement which maintains UK membership of the Single Market and the Customs Union for an interim period. Such a period would be approximately five years.

- There would be an agreement that eliminates or significantly reduces customs costs and procedures post-Brexit, using innovative and forward-looking mechanisms. This needs to be in place on the day that the UK leaves the EU.

- The EU would look favourably on an adequacy application for personal data transfers from the UK and ensure that there is swift progress to an adequacy agreement to be in place before the end of any transitional measures.

- The Internet ecosystem would remain connected by keeping infrastructure and cybersecurity norms as closely aligned as possible. There's simply no effective digital market without strong, reliable connectivity available at all times and a robust, stable cybersecurity framework.

- EU and UK businesses would have access to the right talent and workforce levels to deliver for their customers. Such a system would seek to limit the need for visa or other pre-approval mechanisms to ensure that there are no barriers to same day movement and rapid deployment by businesses across Europe.

- Systemic mechanisms would be in place that encourage and support equivalence between the EU and the UK on all regulatory issues that affect the sector, from personal data transfers to environmental regulations, from product safety to all technical standards. The corporate side of our membership will optimize investment decisions along solutions to be found to the above challenges. The impact on SMEs could be more radical: some would cross out the UK market should access prove too costly, thereby shrinking the size of overall addressable markets for EU business.

- An ambitious joint strategy with the UK, the unquestioned services champion, could help the EU to continue to lead global discussions on digital trade and e-commerce.

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ABOUT DIGITALEUROPE

DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies. DIGITALEUROPE ensures industry participation in the development and implementation of EU policies.

DIGITALEUROPE's members include in total 25,000 ICT Companies in Europe represented by 61 corporate members and 37 national trade associations from across Europe. Our website provides further information on our recent news and activities: http://www.digitaleurope.org

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National Trade Associations

Austria: IOÖ
Belarus: INFOPARK
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Finland: TIF
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Germany: BITKOM, ZVEI
Greece: SEPE
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Ireland: TECHNOLOGY IRELAND
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