28 January 2021

Brexit checklist
A very essential to-do-list for companies amid Brexit changes

Table of contents: 1. Introduction – 2. End of free movement of workers and new immigration system in the UK – 3. End of free movement of goods – 4. New cross-border trade rules. Major impacts on contracts, corporate and M&A transactions – 5. Major impacts on financial services – 6. Major impacts on IP, information technology and data protection – 7. Major impact on tax matters. Main Italian tax consequences – 8. New regulation on aviation – 9. Litigation. The issue of conflict of law regulation

1. Introduction

On December 24, 2020, after intensive down-to-the-wire negotiations, the European Commission and the UK Government reached an agreement on the terms of future trade and cooperation between the European Union (**EU**) and United Kingdom (**UK**) in view of Brexit being effective by January 1, 2021.[1]

The agreement reached, called Trade and Cooperation Agreement (**TCA**), outlines the future economic relationships between the EU and UK. A significant component of the TCA regards the free trade, ensuring that no tariffs or quotas are put in place for the cross-border trade of rule-compliant goods. The TCA also sets out a framework for cooperation on energy, transport, social security and standard-setting on various matters, including to climate change, labor rights and tax transparency.

In the light of the above, from January 1, 2021, the UK left the EU Single Market and Customs Union, and EU policies and international agreements entered into at an EU level ceased to apply in UK. The free movement of persons, goods, services and capital between the UK and EU ended. Therefore, the EU and the UK form now two separate markets and two distinct regulatory and legal frameworks, creating barriers to trade goods and services and to cross-border mobility and exchanges.

Amid Brexit changes, this checklist provides some highlights on legal issues together with an essential to-do-list for companies.

2. End of free movement of workers and new immigration system in the UK

The free movement of people from the EU to the UK and vice versa ended on December 31, 2020. This means that immigration rules changed for both EU nationals in the UK and British nationals in the EU.

a. EU nationals in the UK

The UK's new points-based immigration system is now applicable to all foreign nationals, including EU citizens, representing a significant change for UK employers. This will not apply to EU nationals already living in the UK before December 31, 2020, if they registered (or will register) for settled or pre-settled status by June 30, 2021.

[1] In light of exceptional circumstances, the EU Commission proposed to apply the TCA on a provisional basis, for a limited period until 28 February 2021. The TCA must now be ratified by the EU Parliament and the Council of the EU.

Under the new rules, EU nationals will be able to travel in the UK for holidays or short trips without visa. However, those who seek to work in the UK will need to apply for visa under the points-based immigration system. This will apply differently depending on the type of worker:

- highly skilled workers will be able to enter the UK without a job offer if they are endorsed by a relevant and competent body;
- skilled workers will require a job offer from an approved UK employer in order to be granted the appropriate visa. The job offer will also need to confirm that their role is at the required skill level and meets the applicable minimum salary.

In addition, employers will need to apply for a sponsor license in order to be granted with an "*approved*" status. Such license will remain valid for 4 years and can be used to sponsor any non-UK employee who meets the criteria for individual sponsorship.

The new system might have a significant impact on companies' projects. In particular, single-management-structured multi-national businesses with a presence in the UK and the EU will need to plan carefully to avoid significant delays in moving managers and executives in the UK.

TO-DO'S

Preparing sponsor license application
Planning your workforce and internal policies
Making sure eligible EU employees applied for pre-settled or settled status

b. British nationals in the EU

The TCA sets out, inter alia, the EU (and UK) commitments regarding the following categories: business visitors for establishment purposes, intra-corporate transferees, contractual service suppliers, independent professionals and short-term business visitors.

Just like the EU nationals in the UK, British nationals will be able to travel in the EU for short-term movements without a visa or with minimal administrative burden.

With reference to long-term movements, each EU Member State will apply its internal regulation for immigration.

Therefore, in relation to British nationals arriving in Italy after December 31, 2020, who have not registered as legally residing in Italy within that date, Italy's regulation for third country nationals will apply (mainly, the so-called "*Testo Unico Immigrazione*", Legislative Decree no. 286/1998).

Generally speaking, the Italian immigration law system is based on "quotas", *i.e.*, the hiring of a non-EU national is subject, among others, to the availability of a limited number of quotas periodically issued by the Italian Government.

An Italian employer intending to hire a non-EU employee residing abroad shall file the request of the "*nulla-osta*" (work authorization); once the "*nulla-osta*" is granted, it will be forwarded by the immigration office to the competent Italian consulate of the place of residence of the concerned employee which shall release the working visa.

The quotas system gives rise to a significant degree of uncertainty as to: (i) the actual obtainment of the work permits (depending on the actual availability of the quotas), and (ii) the relevant timing for the completion of the process. However, the *Testo Unico Immigrazione* sets out a number of exceptions aimed at facilitating the entry/stay in Italy of certain categories of foreign employees (*e.g.* Blue Card for highly skilled employees, intra-corporate transfer). Furthermore, under certain conditions, it may be possible for an Italian employer to enter into a memorandum of understanding (so-called "*protocollo di intesa*") with the Italian Ministry of the Interior. Such memorandum would replace the "nulla-osta" and speed up the procedures for obtaining work permits.

TO-DO'S

Check whether the British employee falls under the exceptions of the Testo Unico Immigrazione
Consider to enter a Protocollo di intesa with the Ministry of the Interior
Start the work permit's proceedings at least three months in advance

Finally, it is worth mentioning that, under the TCA, both for EU and UK nationals, arrangements have been made to facilitate short-term business trips and temporary secondments of highly-skilled employees.

3. End of free movement of goods

Brexit has put an end to the free movement of goods between UK and EU. This entails, among other things, the following consequences:

- UK goods no longer benefit from free movement of goods in EU, and this will lead to more red tape for businesses and the need to introduce adjustments in EU-UK supply chains;
- customs formalities and checks on UK goods entering the EU, with more border delays;
- customs duties, VAT and excise duties (*e.g.* on alcoholic beverages, tobacco products, etc.), where applicable, due upon importation (including for online purchases);
- UK producers wishing to cater to both EU and UK markets must meet both sets of standards and regulations and abide to all applicable compliance rules;
- checks by EU bodies (no equivalence of conformity assessment); and
- UK food exports must have valid health certificates and sanitary border checks will be carried out systematically.

Notwithstanding the above, the TCA sets out several provisions relating to exchange of goods, which entail, *inter alia*, the following benefits:

- zero tariffs or quotas on goods traded, ensuring lower prices for consumers – provided agreed rules of origin are met. More in detail, for a product to qualify for a zero tariff (if it is not already zero rated), it must meet the appropriate rules of origin that determine how much of its content must be derived from EU or UK processing or materials;
- traders can self-certify the origin of goods sold and enjoy "full cumulation" (*i.e.* processing activities also count for origin purposes, not only the materials used), making it easier to comply with requirements and obtain zero-tariff access;
- mutual recognition of trusted traders programmes (*i.e.* "Authorised Economic Operators") ensuring smoother customs formalities and flow of goods;
- common reference definition of international standards and possibility to self-declare conformity of low-risk products making it easier for producers to cater to both markets; and
- specific facilitation arrangements for wine, organics, automotive, pharmaceuticals and chemicals.

Therefore, even though the TCA prevents unnecessary technical barriers to trade, products imported into the EU have to comply with each of the EU Member State regulations and products exported to the UK have to comply with UK legislation. In this respect, marketability of products depends on who makes the product available on the EU Single Market for the first time (*i.e.* manufacturer or importer) assuming certain legal obligations. The same applies to imports into the UK market.

It should be noted that, under the TCA, customs procedures will be simplified as both parties have agreed to recognise each other's programmes for trusted traders (*i.e.* "Authorised Economic Operators"). However, all

customs controls required under EU law – and under UK law, which largely mirrors the EU position – will apply to all goods traded between the EU and the UK. These require, in particular, the submission of security and safety declarations, and import and export declarations. These in turn require that traders have Economic Operator Registration and Identification (**EORI**) number, the Commodity Codes of their products and their customs valuation.

TO-DO'S

Apply for an EORI number
Consider to appoint a customs intermediary to carry out customs declarations and other formalities
Check whether and how marketability of your products is affected by Brexit

4. New cross-border trade rules. Major impacts on contracts, corporate and M&A transactions

On cross-border trade, the EU and the UK have agreed to a level of openness going beyond the provisions of the WTO General Agreement on Trade in Services, but reflecting the fact that the UK will no longer benefit from the freedom to supply services across the EU.

Very briefly, the TCA includes provisions on cross-border trade in services and investment that will secure continued market access across a broad range of sectors, including professional and business services, financial services and transport services, and will support new and continued foreign direct investments. These include provisions related to:

- market access, to ensure service suppliers and investors do not face limitations such as economic needs tests, restrictions on corporate form and foreign equity caps;
- national treatment, to provide for non-discriminatory treatment between UK and EU service suppliers and investors;
- local presence, to ensure that cross-border trade is not inhibited by establishment requirements;
- prohibition of performance requirements, to ensure investments are not subject to conditions such as domestic content requirements or export restrictions;
- senior management and boards of directors, to prevent nationality restrictions on senior personnel; and
- most favoured nation, to ensure that the TCA keeps pace with the parties' future free trade agreements.

For all sectors covered, the provisions on cross-border trade in services and investment liberalisation apply unless otherwise stated. Exceptions are set out in annexes to the TCA.

a. Modifications on existing contracts

Contracts in force should be assessed in order to identify possible legal issues deriving from Brexit and, as a last resort, the necessity to be renegotiated.

In this regard, the end of transitional period might have relevant implications for existing contractual relationships as it may considerably change essential conditions for initial costs and expenses calculations such as, for example, customs formalities.

In each single case, therefore, it must be verified if contracts should be terminated or amended.

Moreover, the TCA provides for some innovative liberalizing digital trade provisions relating to contracts. In this regard, it should be noted that the TCA ensures that contracts can be executed digitally, with a small number of exceptions (such as contracts relating to gambling services or contracts that require witnessing in person).

TO-DO'S	
Review and, if necessary, amend existing contracts with respect to: *custom duties and VAT* *material adverse change clauses, force majeure and hardship* *reference to the territory of the EU, which will not include the UK (also regarding tax matters)* *merchantability of products* *arbitration and jurisdiction clauses*	*Pay attention to the following aspects in view of future contracts:* *Incoterms (also regarding custom duties and VAT impacts), accurately defined clauses specifying material adverse changes, force majeure or hardship* *arbitration clauses* *making English law choice of law since it will no longer include the EU law* *reference to the territory of the EU, which will not include the UK (also regarding tax matters)* *completion by digital instruments* *custom duties and VAT*

b. Corporate and M&A transactions

The freedom of establishment for UK entities in the EU will not apply. The same will apply in relation to EU legal forms in the UK.

Generally speaking, UK companies operating in the EU will be subject to the laws of different EU Member States. The same EU Member States follow two different approaches to determining a company's domicile:

- the "*incorporation regime*", which applies in the UK, provides that companies are regarded as subject to the company law of the jurisdiction in which they were incorporated, irrespective of where the company's business is conducted; and
- the "*seat regime*", which applies in many EU Member States, provides that companies are bound by the legal regime of the jurisdiction where they actually operate.

As a result, local laws may treat UK entities not as a companies with separate legal personality but as a partnership, and consequently its shareholders may have personal liability for relevant debts.

The applicable regime must be verified case by case. For instance, the Italian Republic adopts an "*incorporation regime*" with some "*seat regime*" rules, which apply when directors or place of business are based in Italy. More specifically, pursuant to section 2509 of the Italian Civil Code, companies incorporated abroad are subject to laws applicable to Italian stock joint companies ("*società per azioni*") relating to corporate filing requirements and directors' liabilities.

UK companies, therefore, become "third country companies" for the purposes of EU law, meaning that they can only establish themselves within the framework of the TCA and national regime of each member state.

In addition, UK companies or LLP with EEA corporate officers must provide the UK's Companies House with the following information relating to such officers within 3 months from January 1, 2021:

- name;
- registered office;
- legal form and governing law;
- register and registration number.

By contrast, no issues should arise for EEA companies operating in the UK. As an incorporation regime jurisdiction, the UK will continue to respect such companies' adherence to the regimes of their state of incorporation.

However, EEA Companies with branches in the UK will become subject to the same filing requirements as any other third country's companies. More in detail, EEA companies, with a UK branch, that are required to prepare, have audited and disclose accounts in their home country will be required to file documentation in the UK, which includes accounts, annual report and/or auditor's report.

Furthermore, any EEA company with an existing registration has 3 months from January 1, 2021 to provide the

UK's Companies House with the following information:

- information on the law under which the company is incorporated;
- the address of its principal place of business or registered office;
- the company's purpose;
- the amount of share capital issued; and
- the company's accounting period and period of disclosure (for companies that are required to disclose accounts under their parent law).

Public facing material, such as websites, business letterheads and order forms, used in carrying on the activities of the UK branch of an EEA company must now include:

- the location of the company's head office;
- the legal form of the company;
- a statement of its limited liability status, if the liability of its members is limited;
- if applicable, notice that the company is being wound up, or is subject to insolvency or any other analogous proceedings; and
- if the company chooses to refer to its share capital, it must do this by reference to paid up capital.

Another issue regards the Societas Europaea that will cease to be a valid form of UK-incorporated entity. Pre-existing Societas Europaea will have the option to convert to a UK public company subject to their having:

- been registered as Societas Europaea for at least 2 years; or
- had two sets of annual accounts approved.

Lastly, it should be noted that M&A transactions might be less affected since they are primarily governed by private contractual arrangements. English contract law is often chosen to govern both domestic and cross-border M&A transactions and is largely unaffected by EU regulation. However, parties should obviously ensure that any relevant provisions are drafted to reflect the new legal framework.

Although most corporate M&A transactions are governed primarily by contracts, there are two EU Directives, which have an impact in this area:

- Cross Border Mergers Directive: mergers involving UK entities will not benefit from the EU cross-border mergers regime, since this only applies to companies that are governed by the EU law. EEA companies' ability to use English schemes of arrangement for re-organisations may also be impacted, although the extent of this impact remains uncertain; and
- Takeovers Directive: this Directive no longer applies in the UK. However, the UK's legislation replicates certain provisions of such Directive.

TO-DO'S

Check if your company:
should comply with the new filing requirements
may be subject to access conditions
may expose its shareholders to unlimited liability where they are incorporated in a "incorporation regime" jurisdiction and carry out their activities in a "seat regime" jurisdiction
may expose its senior managers/directors to face restrictions on ability to taking such office

5. Major impacts on financial services

The TCA includes no regulatory provisions for financial services. Therefore, from January 1, 2021, UK banks, investment firms, insurance undertakings, fund managers, electronic money institutions and payment institutions do not benefit from the EEA 'passport' to provide their services in the EU on a cross border basis or through the establishment of a local branch, and *vice versa*. Major banks and intermediaries were largely prepared for a 'hard' Brexit in financial services and had already relocated some of their activities and personnel to the EU.

The UK and the EU committed to enter into a memorandum of understanding by March 31, 2021, to provide some clarity on 'equivalence' rules, which could grant UK firms access to the EU market (in relation to some – but not all – financial services) as long as the respective regulatory frameworks do not diverge substantially.

If no agreement on an enhanced 'equivalence regime' was reached and eventually all operations facing EU customers were to be based in the EU, there would be a significant additional leakage of economic activity from the UK to the EU. UK regulated firms would be left with the following options to operate in the EU:

- moving operations and personnel to an existing fully authorised EU subsidiary or, in absence, establishing one; or
- where possible, and within specific – often very stringent – limits set out by the various local regulatory provisions, setting-up a third country branch or being authorised to operate cross-border as a third country regulated firm; or
- conduct limited business on the basis of the so-called 'reverse solicitation' – which still remains a grey regulatory area, generally unsuitable for large-scale businesses.[2]

One key issue, which has been highlighted since the Brexit referendum, concerns the clearing of euro-denominated derivatives, which largely takes place on London-based exchanges such as LCH. In order to prevent potential risks to financial stability, the European Commission adopted a temporary equivalence decision on September 21, 2020 regarding the UK regulatory framework applicable to Central Counterparties for an 18-month period from January 1, 2021. In light of this decision, the current clearing arrangements are extended until June 2022, in order to give time to EU based institutions to reduce their reliance on UK-based clearers.

Finally, it should be noted that trading in Euro denominated shares by EU banks must, as of January 4, 2021, take place in venues inside the EU bloc. This has caused a significant shift of Euro denominated shares trading from Cboe Europe, Aquis Exchange, London Stock Exchange's Turquoise and Goldman Sachs in London, to EU hubs opened in Amsterdam or Paris. This shift to EU venues may or may not become permanent depending on the outcome of any agreements on equivalence that may be reached between the EU and the UK.

In Italy, Article 22 of the Law Decree 183/2020 enacted on December 31, 2020, the so-called *Decreto Milleproroghe* ("**Article 22**"), sets out temporary provisions regulating the activity of UK banks, investment firms, insurance undertakings and electronic money institutions in the aftermath of Brexit. In particular:

- with reference to UK banks, investment firms and electronic money institutions, Article 22 introduces a grandfathering period (the "**Grandfathering Period**") during which such UK regulated firms operating in Italy through a branch or on a cross border basis, as the case may be, which have applied for a third country authorisation in Italy or for the establishment of an Italian intermediary before December 31, 2020, will be able to carry out the activities and services they were providing in Italy before such deadline. The Grandfathering Period will last until the authorisation is either granted or refused and, in any case, no later than June 30, 2021. During the Grandfathering Period the operation of such regulated entities is limited to the activities for which an authorisation has been sought and to the management of the outstanding contractual relationships. Therefore, neither new contractual relationships nor amendments to the outstanding relationships can be made. UK banks and investment firms operating on a cross border basis

2 On January 13, 2021, ESMA published a public statement (ESMA35-43-2509) aimed at discouraging UK firms from putting in place "some questionable practices around reverse solicitation". For example, some firms appear to be trying to circumvent MiFID II requirements by including general clauses in their Terms of Business or through the use of online pop-up "I agree" boxes whereby clients state that any transaction is executed on the exclusive initiative of the client.

(*i.e.* without a branch) cannot provide investment services to retail clients or to professional clients 'on request';

- with reference to OTC (over the counter) derivatives, Article 22 allows life-cycle events related activities, which could also include entering into new transactions, subject to certain limitations;
- with respect to UK insurance companies operating in Italy, Article 22 states that, from January 1, 2021, they shall be removed from the Italian register of insurance companies. Nevertheless, UK insurance companies are allowed to temporarily continue their activity, limited to the management of outstanding contracts, until their relevant expiry or termination, without entering into new agreements or renewing the existing ones.

The UK Government had introduced a similar temporary permission regime, which allows certain EU regulated firms (including, *inter alia,* investment firms, payment institutions, electronic money institutions and funds) to operate for a period of maximum three years[3] while seeking authorisation from the relevant UK authority. Firms had to notify the Financial Conduct Authority by December 2020 of their intention to utilise this temporary permission regime.

EEA firms that previously passported into the UK and did not apply in time for the temporary permission regime may continue to service any existing UK contracts and wind down their activities under the so-called financial services contracts regime, which permits a run-off period of fifteen years for insurance contracts and five years for other contracts. Under this regime, EEA firms are required to limit their activities to those necessary for the performance of pre-existing contracts and cannot undertake any new business in the UK.

TO-DO'S

Check if your firm:
is required to move operations and personnel to an existing fully authorised EU subsidiary or, in absence, establish a fully authorised subsidiary within the EU
is required to set up a third country branch or may be authorised to operate on a cross-border basis as third country regulated firm
may conduct business on the basis of reverse solicitation
with specific reference to financial services performed in Italy, may continue to carry out its activities pursuant to Article 22 during the Grandfathering Period

6. Major impacts on IP, information technology and data protection

The end of the transition period led to several significant implications for holders of IP rights across trade marks, designs, copyrights, and domain names. These implications arise primarily from the Withdrawal Agreement reached between the UK government and the EU in late 2019, and the subsequent Brexit implementing legislation, rather than from the TCA, which merely provided for general standards of IP protection, leaving the Withdrawal Agreement in place.

a. Trade marks

From January 1, 2021, UK businesses can still apply for and hold EU trade marks (**EUTMs**); however, EUTMs are only valid in EU Member States and are no longer protected in the UK.

The UK IPO (Intellectual Property Office) put in place an alternative protection system, called "comparable UK trade marks", for those who previously had EUTM protection in the UK, which consists of creating automatically comparable UK trade mark for each registered EUTM – with no need to file an application or pay an application fee.

3 The current draft of the Financial Services Bill includes an amendment that would extend the temporary recognition period to five years for EEA UCITS.

Each of these UK rights:

- is recorded on the UK trade mark register and is fully independent from the original EUTM;
- has the same legal status as if you had applied for and registered it under UK laws;
- keeps the original EUTM filing date and the original priority or UK seniority dates.

Similar comparable trade marks are created for international trade mark registrations designating the EU.

EUTMs applications that are pending on January 1, 2021 can be re-filed in the UK within 9 months, maintaining the filing date, priority date, or seniority date; however, in this case, application fees have to be paid, and the application will be subject to UK examination and publication requirements.

TO-DO'S

It is possible to 'opt out' of the automatically-granted comparable UK trade marks by submitting a Request for removal from the register to the UK IPO

The holders of EUTM applications still pending at the end of 2020 should ensure that they apply for a comparable UK trade mark by the end of September 2021

b. Designs

Similarly, on January 1, 2021 the UK IPO created a comparable re-registered design for every Registered Community design (**RCD**) – with no need to file an application or pay an application fee.

Each of these UK rights:

- is recorded on the UK designs register and is fully independent from the original RCD;
- has the same legal status as if you had applied for and registered it under UK laws;
- keeps the original RCD filing date and the original priority date.

Similar re-registered International Designs are being provided in respect of international design registrations designating the EU that have already been registered and published by the EUIPO.

RCDs applications that are pending on January 1, 2021 can be re-filed in the UK within 9 months, maintaining the filing date, priority date, or seniority date; however, in this case, application fees have to be paid, and the application will be subject to UK examination and publication requirements.

TO-DO'S

It is possible to 'opt out' of the automatically-granted UK re-registered designs by submitting a Request for removal from the register to the UK IPO

Holders of pending RCD applications have until the end of September 2021 to apply for a corresponding UK re-registered design

Holders of Unregistered Community Designs (UCD) automatically have continuing protection in the UK through a Continuing Unregistered Design for the remainder of the three-year term of protection. The UK has also created a new Supplementary Unregistered Design right.

TO-DO'S

Those who rely upon unregistered design rights (EU and/or UK) must consider very carefully when and where to first disclose designs: initial disclosure in the 'wrong' place may destroy novelty and prevent protection in other territories

c. Patents

In general, the UK will continue to be a member of the European patent system, which is governed by the European Patent Convention, a non-EU treaty among contracting states; thus, existing European patents covering the UK are unaffected.

d. Copyrights

In general, UK copyright works will still be protected in the EU and the UK as the UK will continue to be a party to the international copyright treaties. Likewise, EU copyright works will continue to be protected in the UK. Current copyright arrangements unique to EU Member States will cease at end of the transition period; these include cross-border portability of online content services, copyright clearance for satellite broadcasts, reciprocal protection for database rights, and the orphan works exception.

e. Domain names

From January 1, 2021, businesses established in the UK can no longer apply for .eu domains; their existing .eu domain names will be subject to withdrawal and revocation.

f. Exhaustion of IP rights

The Intellectual Property (Exhaustion of Rights) (EU Exit) Regulations 2019 provides that from January 1, 2021 the IP rights in goods placed on the EEA market by, or with the consent of, the right holder after the transition period will continue to be considered exhausted in the UK; there is no such reciprocity for goods put on the market in the UK: goods placed on the UK market by, or with the consent of, the right holder after the transition period may no longer be considered exhausted in the EEA.

However, after January 1, 2021, the UK will have an opportunity to decide what its permanent exhaustion regime should be. The government plans to publish a formal consultation in early 2021.

TO-DO'S

Parellel exporters of IP-protected goods from the UK to the EEA might need the right holder's consent. They may need to review their business arrangements, business model or supply chain based on the outcome of the discussion with the IP rights holder

Businesses that own IP rights (for example, a trade mark) may wish to seek legal advice if their IP-protected goods are parallel exported from the UK to the EEA. They will need to consider if they want to allow parallel exports of their IP-protected goods from the UK to the EEA after January 1, 2021

g. Data protection

The GDPR no longer applies directly in the UK. However, in relation to international transfer of data, the TCA sets out that, for the duration of the specified period, transmission of personal data from the EU to the UK shall not be considered as transfer to a third country under EU law, provided that the data protection legislation of the UK on December 31, 2020, applies and provided that the UK does not exercise certain powers without the agreement of the EU.

The "specified period" begins on the date of entry into force of the TCA and ends on the earlier between:

- the date on which adequacy decisions in relation to the UK are adopted by the EU Commission under article 45 of Regulation (EU) 2016/679 (**GDPR**), or

- the date four months after the specified period begins, which period shall be extended by two further months unless one of the parties objects.

As a general remark, it seems that, on the basis of the TCA, a data transfer to the UK will only be permissible on additional conditions in accordance to article 44 of the GDPR. In this respect, a transfer of personal data to a third country may take place where the EU Commission has decided that the relevant third country ensures an adequate level of protection pursuant to article 45 of the GDPR. In the absence of such decision, a data transfer to a third country may take place if appropriate safeguards have been provided for the protection of personal data pursuant to article 46 of the GDPR.

In addition, the UK data protection law (DPA 2018), which is modelled on the GDPR, would also be observed if applicable. The UK, in fact, passed its own version of the GDPR into law, known as the UK GDPR. In this regard, according to article 27 of the UK GDPR, all companies without an establishment in the UK, which offer goods or services on the ground or observe the behavior of persons, must appoint a representative. In this respect, also the mere offering of a website aimed at UK citizens may trigger the obligation to install a representative.

TO-DO'S

Data protection concepts have to be revised to take account of the fact that transfers to the UK after Brexit might constitute third-country transfers

If necessary, appoint a UK representative

7. Major impacts on tax matters. Main Italian tax consequences

The most significant tax consequences in the field of corporate taxation will relate to the following main areas:

- access to the favourable tax regime set forth by the EU tax Directives, eliminating double taxation on income paid by and between associated companies resident in EU Member States and on corporate reorganisations, namely:

i. the Council Directive 2003/49/EC of June 3, 2003, on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (so called Interest Royalties Directive). The relevant exemption from withholding tax on interest and royalties paid to UK associated companies shall not apply, since the recipient will be resident in a non-EU Member State;

ii. the Council Directive 2011/96/EU of November 30, 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (so called Parent Subsidiary Directive). The relevant exemption from withholding tax on dividends paid to UK parent companies shall not apply since the recipient will be resident in a non-EU Member State; and

iii. the Council Directive 2009/133/EC of October 19, 2009 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States (so called Merger Directive). The tax neutrality regime provided of cross-border, intra-UE, extraordinary transactions shall not apply, to the extent the EU residence condition will not be met in relation to one or more of the companies and assets involved;

- access to the Italian withholding tax exemption on dividends paid to EU undertakings for collective investments in tradable securities (**UCITs**) and non-UCIT compliant undertaking for collective investments (**UCIs**), which are managed by an AIFMD-compliant manager subject to supervision, and established in a EU Member State (or in an EEA Country allowing for an adequate exchange of information to Italian tax authorities). The relevant exemption from withholding tax will not apply since the recipient will not be established in a EU Member State;

- access to the Italian withholding tax exemption on interest paid out of long-term financings made to Italian companies by certain EU financial intermediaries (including banks, insurance companies and supervised

institutional investors) acting in compliance with the Italian regulatory provisions concerning lending activities vis-à-vis the public. The relevant exemption from withholding tax might not apply to EU banks and institutional investors, since the recipient is not established in a EU Member State, and/or to the extent the institutional investor is not authorised to carry out lending activities in Italy vis-à-vis the public;

- possibility to opt for the substitute tax regime on medium-long-term financings (allowing to minimise, upon specific option by the relevant parties to the financing agreement, the overall indirect tax burden on financings and related securities). The substitute tax might not apply to UK banks and financial intermediaries which are not fully authorised to make lending in Italy under applicable regulatory provisions;
- application of the special tax regime of investment funds to Italian UCIs managed by managers subject to supervision, and taxation of the relevant unitholders. The exemption might not apply, to the extent the asset manager is not subject to proper regulatory supervision;
- application of a final 26% withholding tax on proceeds derived by Italian-resident individuals from investment funds established in a EU Member State (or white-listed EEA Member State). Said proceeds shall be included in the overall taxable income of the individual, subject to progressive personal income tax (which top-bracket rate is 43%) plus local surcharges;
- Italian tax consolidation regime for companies under common control of a EU resident companies might not be available if the controlling company is a UK resident.

Special provisions referring to the listing and/or negotiation of shares, bonds, notes and other financial instruments on an EU multilateral trading facility, as well as the payment mechanics of exit tax for transfers made in favour of UK companies, might also be affected.

Tax provisions relying on tax transparency and cooperation duties among States should not be affected by Brexit for the time being. Institutional investors resident or established in the UK would therefore continue to benefit from withholding tax exemptions on certain bond issuances, as well as on certain structured finance transactions (including Italian securitisations), to the extent the UK will continue to be included in the so called "white list" of States allowing an adequate exchange of information with Italy.

TO-DO'S

Check if your entity:
is still able to claim tax reliefs and/or joining special tax regimes both in Italy and the UK depending on previously enacted EU legislation or on its establishment in a EU Member State, or on it being established and/or subject to regulatory supervision in a EU Member State, or it being managed by a supervised AIFM resident in a EU Member State
is, or should be, contractually protected against possible withholding taxes on income paid out by Italian resident entities

Carefully review existing contracts and pay particular attention in future contracts to references to the territory of the EU, which will not include the UK, VAT and custom duties, as well as to certain regulatory provisions which compliance is required to benefit of certain Italian tax reliefs

With respect to the main consequences of Brexit in the field of customs duties and VAT, please note the following:

- the EU and the UK does not abolish customs borders, so clearance of goods at borders remains;
- no customs duties will apply on goods of EU or UK origin provided that appropriate rules of origin set out in TCA Annexes are met;
- importing goods under duty relief requires corresponding proof of origin set out in the TCA (*i.e.* form of statement, regulation for the submission of declaration, etc.);

- the EU and the UK may adopt their customs duties rates for goods imported from "third countries" or for goods "originated" in a third country;
- for the purposes of VAT UK will remain a third country from an EU perspective, so EU will treat import/export of goods with the UK in the same way as import/export with third countries and vice versa from an UK point of view*;*
- for the purposes of VAT UK will remain a third country from an EU perspective, so the EU will treat services rendered to UK business and consumers in the same way as with third countries and vice versa from an UK point of view*;*
- EU VAT refund Directive will be precluded for UK businesses, unless specific mutual agreements are reached;
- UK businesses may be required to register in several EU Countries by appointing a fiscal representative since the direct VAT registration provided for EU businesses will be no longer applicable unless specific mutual agreements are reached.

TO-DO'S	
Check if your entity: *meets the precondition to benefit of the preferential origin set out in TCA* *meets the condition to apply for the VAT deduction in the place where goods are cleared* *needs to register for VAT purposes in UK or in EU Countries* *needs to change the Incoterms delivery terms to avoid customs duties or VAT implications*	*Carefully review existing contracts and pay particular attention in future contracts to references to the territory of the EU, which will not include the UK*

8. New regulation on aviation

The TCA introduces a Specialized Committee on Air Transport which has responsibility for certain matters specified in the Aviation Chapter (as follows):

- aviation safety. The TCA provides for mutual recognition of certificates of airworthiness, certificates of competency and licences issued or validated by EU or UK's competent authorities, provided that they were issued or validated pursuant to and in conformity with the relevant international standards established under the Chicago Convention;
- aviation security. The EU and UK agree to provide each other upon request with all necessary assistance to address any threats to the security of civil aviation, and to endeavour to cooperate on aviation security matters to highest extent (including exchanging information on threats and risks, sharing of best practices and cooperation on the technical development and recognition of aviation security standards);
- traffic rights and routes. The EU will grant rights for UK air carriers to operate on routes from UK via intermediate points to points in the EU and the same from EU. Bilateral arrangements are permitted to grant each other's respective carriers freedom rights but no unilateral impositions of limits are permitted. Finally, the TCA explicitly states that it does confer rights for UK carriers to operate services on routes, which are within individual EU Member States or multiple EU Member States, or for EU carriers to operate services on routes that are within the UK;
- code sharing and blocked space arrangements. Specific conditions are set out for codeshare blocked space arrangements relating to services where both the points of origin and destination are in the other party's territory (also in third countries);

- authorizations. EU and UK carriers are entitled to receive operating authorizations from UK and EU aviation authorities respectively if they meet a list of specified conditions, including conditions relating to their ownership and control, principal place of business, holding an air operator certificate, effective regulatory control by their competent authority and safety and security;
- commercial operation. The EU and UK grant each other certain rights in order to facilitate their respective carriers' commercial operations. These relate matters including establishment of offices and facilities by carriers, ground handling, transfer of funds, intermodal transport and dry and wet leasing; and
- consumer protection. The EU and UK are to cooperate to achieve a high level of consumer protection and to consult each other on any matters related to this subject.

9. Litigation. The issue of conflict of law regulation

The TCA does not set out specific provisions concerning conflicts of law, *i.e.* the choice of law clause and the jurisdiction clause, as well as the enforcement of foreign judgements.

a. Jurisdiction clause

After Brexit, Regulation (EC) No. 1215/2012 on jurisdiction and recognition and enforcement of judgements in civil and commercial matters, dated December 12, 2012 ("**Brussels II Regulation**") is no more applicable in UK.

From an Italian perspective, the choice of forum clause will now be subject to the provisions set out by the Italian Law No. 218 of May 31, 1995 ("**Law No. 218/1995**"). Pursuant to article 4.2 of the same Law No. 218/1995, the Italian jurisdiction may be conventionally waived in favor of a foreign court, provided that the exception is proved in writing and the case at hand concerns rights available to the parties.

Therefore, the parties of an international agreement still have the chance of submitting the case to a foreign court, and Italian courts would regard the express submission to an English courts as a valid submission.

If any proceedings are brought before Italian courts, those courts may anyway accept jurisdiction in certain cases, notwithstanding the choice of forum clause. In particular, Italian courts have exclusive jurisdiction in any proceedings which have as object certain corporate matters, including the validity of the constitution, nullity or dissolution of the company, or the appointment, powers and decisions of the governing bodies. Furthermore, it is possible that interim proceedings (*procedimenti cautelari*) may be brought and/or started before Italian courts, provided that the above interim proceedings have to be enforced in Italy.

b. Choice of law clause

Notwithstanding Brexit, Italian courts will still apply both Regulation (EC) no. 593/2008 on the law applicable to contractual obligations dated June 17, 2008 ("**Rome I Regulation**") and Regulation (EC) no 864/2007 on the law applicable to non-contractual obligations dated July 11, 2007 ("**Rome II Regulation**), because they have universal application and are effective also in connection with not Member States (see respectively, article 2 of Rome I Regulation and article 3 of Rome II Regulation).

Therefore, the parties of an international agreement still have the chance of choosing the law governing an agreement, as well as the non-contractual obligation arising out of a tort/delict, and Italian courts would regard this choice as valid and binding.

However, please note that an Italian court, in interpreting an agreement governed by a foreign law:

- may refuse to apply the foreign law if it deems that it is manifestly incompatible with the public policy of the Republic of Italy;
- will apply overriding mandatory provisions of Italian law irrespective of the law otherwise applicable; and
- may give effect to overriding mandatory provisions of the law of another country where the obligations have to be, or have been performed, if and insofar as those overriding mandatory provisions have to be applied regardless to the choice of law.

In cases of tort liability, where all the elements relevant to the situation at the time when the event giving rise

to the damage occurred are located in a country other than the country whose law has been chosen, the choice of the parties shall not prejudice the applicability of provisions of the law of the other country which cannot be derogated by agreement.

c. Enforcement in Italy of UK judgments

Even if after Brexit Brussels II Regulation is no more applicable, UK judgments still can be enforced in Italy pursuant to the Law No. 218/1995.

Therefore, a final and conclusive judgment obtained from an English court will be recognized and enforced in Italy without review or the re-examination of the merits of the case, provided that some procedural guarantees (due process of law) are met, and specifically if:

- the English courts have jurisdiction pursuant to Italian law;
- the introductory pleadings were duly served to the defendant pursuant to the English law and the defendant's right of the defense were not violated;
- the parties have appeared before the court or have been declared in default pursuant to the English law;
- the judgement is final and conclusive pursuant to the English law;
- the judgement is not irreconcilable to any other final and conclusive judgment rendered by an Italian judge between the same parties;
- there is no proceedings before an Italian judge for the same object and between the same parties, which had begun before the English proceedings was started; and
- the judgment does not have any effect contrary to Italian public policy.

TO-DO'S

Remember that while the situation pre-Brexit does not change with regard to the drafting of choice of forum and choice of law clauses, international enforcement of UK judgement can be somehow restricted or take longer.

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