

What you need to consider when doing business in Europe

When expanding into and operating across Europe, export-ready companies need to navigate an entirely different legal landscape and address a number of key issues that impact the success of the business overseas.

Doing business in Europe in 2022

Europe offers a solid and attractive marketplace for business opportunities, with long-term political stability, strategic location, competitive tax system, highly skilled workforce and international community. The ongoing wave of internationalisation calls for reaching beyond your local borders, encouraging companies of all sizes to conquer new locations – stretching right across the spectrum upwards from owner-operator, micro businesses through to the SME segment up to larger corporates and enterprises. If you are tempted by expansion and/or consider starting a business with focus on Europe, with this our expert four-part Develop IN Europe (D.I.N.E.) article series we will endeavour to help you: 1. Understand; 2. Prepare; 3. Sell; and 4. Improve.

Part 1

With a starting view from Paris, by many considered to be the 'centre of Europe, this article covers many of the key legal issues companies encounter when doing business in the Euro-zone. In the wake of Brexit, we also address some of the principal ways this will impact companies trading in the EU market.

1. Commercial agreements

Bear in mind that some commercial agreements (such as agency, exclusive distributorships or brokerage agreements) are regulated at an EU-level and that some member state legislation contains protective rules for such distributors.

As EU and international antitrust laws can be different, you should also consider whether your European agreement is compliant as the criteria to assess a breach in competition law may differ from the local (home country) approach to antitrust issues.

Also, now that the UK sits outside the EU, you may want to review any existing contractual discrepancies to understand how your export business may be affected. For example, is the territorial scope of the agreement defined as 'the EU', and if so, should this include or exclude the UK post-Brexit? Which party would take the risk of customs duties, conformity checks or delays at the border lingering post-Brexit? And in particular, might either party have the contractual ability to terminate or renegotiate any recent supply agreement as a result of Brexit or a Brexit-related event?



2. Disputes: Choice of law and venue

Choice of law is an important aspect of the agreement you are negotiating; the same contractual clause could be interpreted differently in different jurisdictions. English law, for example, tends to give a more literal interpretation of the exact words used, while certain other jurisdictions give more weight to contractual common sense. Other concepts that vary across jurisdictions include the extent to which parties will be subject to duties of good faith, and whether certain contractual remedies will be deemed to be 'penalties' and thus unenforceable.

Depending on the jurisdiction, additional clauses will be imposed on the contract by statute, for example in relation to consumer protection or personal injury.

You may therefore want to apply a specific jurisdiction's law depending on various factors such as location of the other parties, the supply of services/delivery of goods, or laws that are more favourable to your business.

Except in specific areas like employment relationships or consumer contracts, parties are generally free to choose which EU law will apply to their agreement.

The same goes for choice of venue, but in a positive development, EU member states have recently implemented their own English-speaking international courts designed to deal with litigation

involving third party countries (among others Belgium, France, Netherlands and Germany).

As an example, the Netherlands Commercial Court in Amsterdam (NCC) has been set up and you can read more about it in the link below.*

For cross-border contracts, you may also want to consider whether international arbitration might be preferable to litigation as a forum for dispute resolution. A major strength of international arbitration is the ease of enforcement, with +150 countries having signed up to the New York Convention on the enforcement of arbitral awards.

3. Regulatory transformations

Understanding the regulatory environment applicable to your business is an important consideration. Some of the higher profile regulations you may have heard of include the incoming new Copyright Directive*, the 6th Anti-Money Laundering Directive*, or the one everyone has heard of, the General Data Protection Regulation*. There's also the new EU-wide foreign investment controls regulation* which has come into force in 2020 that will impact international companies investing in EU-based businesses.

[* NETHERLANDS COMMERCIAL COURT WEB LINK](#)

[* EU DIGITAL STRATEGY WEB LINK](#)

[* EU ANTI MONEY LAUNDERING WEB LINK](#)

[* EU TRADE WEB LINK](#)

[* EU GENERAL DATA PROTECTION WEB LINK](#)

Several sectors are heavily regulated in the EU and the rules in place often differ from local regulations, especially in the fields of healthcare, financial services, chemicals, food, product safety, and consumer information and protection. Ensure that you understand the regulatory environment of new markets that you are entering and monitor your sector's applicable regulations periodically in order to implement any necessary change in due time.

4. Employment

As a general rule, employment law in the EU tends to be less employer-friendly in the EU than what you might be used to, with termination-at-will clauses not usually allowed and collective bargaining agreements common in some countries. While monitoring your business in the EU, ensure that your employment agreements are compliant with the local legislation as every EU member state has its own set of rules regarding various aspects such as benefits, employment taxes, termination, and part-time working.

With Brexit now in place, we always recommend that you review any current arrangements involving UK employees (work permits and mobility) in the EU will not be impacted and implement the necessary contractual changes or restructuring within your company.

5. Immigration

Business immigration is a key topic in the EU as various companies are welcoming employees from other EU or third-party countries. You should consider what the options are for your local workers you would like to send in the EU and define the strategy and kind of support you want to provide to your staff and their families.

Make sure you are aware of recent and upcoming legislative changes. For example, Belgium has adopted the EU Single Permit Directive* containing a new set of rules rendering the administrative process for work permits less burdensome.

[* EU SINGLE PERMIT WEB LINK](#)





6. GDPR compliance

Complying with the GDPR requirements is key for all businesses operating in the EU (or even those with EU customers). There are also particular obligations on those transferring personal data out of the EU and each national data protection authority is monitoring companies closely.

Ensure your business is taking steps to comply with the regulation and consider auditing your data protection policies, together with your data processing agreements and appoint a data protection officer in order to ensure compliance with the GDPR. Breach of the GDPR provisions is likely to

lead to considerable fines; for example, the French data protection regulator, the CNIL, fined Google as Google's data consent policies were found not to be easily accessible or transparent to its users, which runs afoul of the GDPR provisions.

7. IP registrations

Ensure that you register your IP in overseas jurisdictions and review your IP portfolio to ensure it is up-to-date with registrations and expiration dates.

While trademarks, designs and patents are protected through registration at the local and EU level, bear in mind that the duration of each right is different

and that their use or licensing may be restricted by specific member state legislation (i.e. employee creations).

Focus should be given to the UK specific technical notices on IP as a result of Brexit.

Also, review any current license agreements; while they generally cover the EU as a single licensing territory, the use of your IP may not be relevant in each member state, and you may want to reconsider a more local approach in order to facilitate their monitoring and mitigate challenges from third parties.

An important component of any business' IP strategy will be the protection of trade secrets. The EU Trade Secret Directive* was intended to harmonise trade secret protection across the EU.

8. Financial services and passporting

As an international financial services company doing business across the EU, the 'passporting' system facilitates utilising a regulatory license from one EU country across the entire EU. Once you have obtained your financial services licenses with one of the national regulators, no further licence is required to offer the same services in other EU countries, eliminating the burden and costs of additional regulatory approvals in other EU countries.

[*EU TRADE SECRET DIRECTIVE WEB LINK](#)

In addition to passporting of licenses, there are a number of 'initials' – regulations such as PSD2, MiFiD II, AIFMD, AML, etc. which impose specific compliance obligations to companies within this sector.

Keep pace with the changes

This brief overview illustrates just some of the key legal issues to consider when doing business across the EU. Thus, the importance of first Understanding the market(s) and EU playing field is paramount. Regulations are constantly changing and it all goes hand-in-hand with Brexit impacts on the broader strategy foreign companies should implement to succeed in the EU. We recommend reviewing these issues on a regular basis and seeking local counsel when further input is needed

Now that you and your company better Understand the foundations for doing business successfully in Europe, Part 2 of this article series will focus on some of the central aspects you need to consider in connection with your Preparation for market entry into Europe.

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