



# BREXIT, REGIONAL HARMONISATION AND B2C CONTRACTS IN THE UK

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## Transcript

Welcome to this video blog on Brexit, Regional Harmonization and B2C Contracts in the UK. My name is Professor James Devenney and I'm the module convenor for the International Commercial law module. By way of introduction and as noted in our module guide, an important source of international or transnational commercial law are regional harmonization initiatives. At various points in our module guide, we refer to regional harmonization initiatives pursued by the EU, particularly in relation to B2C contracts, business-to-consumer contracts. However, as is well known, on the 23rd of June, 2016, the UK voted to leave or Brexit the EU. Now, of course, Brexit raises many, many questions. In this video blog, I want to explore whether or not there will be a continuing legacy for EU regional harmonization initiatives in the UK in relation to B2C contracts, business-to-consumer contracts.

A key driver of EU regional harmonization initiatives was the concern by some, not everybody, but by some, that the differences in the laws of member states negatively impacted on the development of the EU's internal market. We see this, for example, clearly stated in the 2010 Green paper on policy options for progress towards a European Contract law for consumers and businesses.

In that 2010 green paper, the EU argued that differences in the laws of member states entailed additional transaction costs, created legal uncertainty for businesses, and led to a lack of consumer confidence in the internal market. Therefore, consumers and businesses, particularly small and medium-size businesses may have been reluctant to engage in cross-border transactions.

The EU's regional harmonization agenda also had links to concerns around competition distortion. The idea that differences in the laws of member states can distort competition within the internal market. You see that concern, for example, in recital free of the unfair commercial practices directive, which is reproduced on this slide.

At this point, I think we just need to pause and reflect on the question of whether or not harmonization always facilitates trading across borders. Might differences in laws sometimes encourage, sometimes facilitate trading across borders. I'm thinking in particular of different tax regimes in different countries. That can sometimes facilitate trading across borders.

The final point I want to make about EU regional harmonization initiatives is that they have not always achieved real harmonization. This might be because of the way in which member states have transposed directives. Or it might be because the way in which member states have interpreted or applied the relevant rules.

On the question of the continuing legacy of EU regional harmonization initiatives in the UK, particularly in the context of B2C contracts, we need to make a distinction between EU regional harmonization initiatives, which came before Brexit, and EU regional harmonization initiatives, which came after or will come after Brexit. In relation to EU regional harmonization initiatives, which came before Brexit, at a fairly early stage, the UK government indicated that for reasons of certainty, it would retain much of the relevant law on the UK statute book. That was ultimately reflected in, for example, the European Union withdrawal act of 2018 section 2.

What about the future? Well, at one stage, if we go back to July 2018, it seemed that although as a result of Brexit, the UK would not be required to follow EU harmonization initiatives, it would voluntarily align with some of the relevant initiatives by, for example, maintaining a common rulebook.

However, the idea of voluntary alignment was not politically acceptable to some. In more recent times, the UK government has moved away from ideas of voluntary alignment. This raises two issues. The first issue is, what challenges and or opportunities does future non-alignment bring. Here, I would think about the 2019 EU directive on certain aspects concerning contracts for a supply of digital content and digital services. That directive seeks to fully exploit the eCommerce market. Is it an advantage or a disadvantage to the UK not to be part of that agenda? The second issue raised by future non-alignment is the extent to which UK traders will still have to comply with EU law, anyway, if they want to direct their activities into the EU internal market. Does the non-alignment mean that UK traders will have to comply with two different sets of laws? Those laws in the UK, in the domestic market, but also those laws in the EU if they wish to trade in the EU.

Now, as is well known at the last moment in December 2020, the EU and UK did manage to agree a future trade and cooperation agreement, which provisionally entered into force on the 1st of January, 2021. The agreement covers a wide variety of issues, including trade and goods and services, aviation and road transport, digital trade, and energy. Whilst the agreement goes beyond traditional free trade agreements, the economic integration of the UK and EU is inevitably less than when the UK was a member state of the EU.

If we turn to B2C contracts, business-to-consumer contracts, which are the subject matter of this video blog, the agreement recognizes the party's autonomy in respect of consumer protection. The agreement also notes the opportunities presented by digital trade and the issue of unjustified barriers. The agreement also notes a desire for the agreement to contribute to consumer welfare through policies ensuring a high level of consumer protection and encouraging cooperation between the relevant authorities.

The agreement also contains some explicit consumer protection provisions, including provisions on marketing and labeling of products, cooperation on market surveillance and non-food product safety, and compliance on particular postal services. On promoting transparent and reasonable rates for international mobile roaming, on digital trade, on air travel and on safety of medicinal products. Interestingly, the agreement also contains a number of references to fair competition or something equivalent. That's very interesting given the link as we saw earlier between competition law and consumer law. Of particular interest is Article 355. Which states that the parties affirm their common understanding that their economic relationship can only deliver benefits in a mutually satisfactory way if the

commitment relating to a level playing field for open and fair competition stands the test of time.

What about the future? What are certainly areas where subject, of course, to the EU-UK trade incorporation agreement? The UK may look to forge a competitive advantage over the EU post-Brexit. In other areas, particularly in relation to core consumer law, the precise impact of Brexit is much more difficult to predict. Indeed, one factor which may mitigate against EU and UK consumer law differing significantly is the desire to avoid a hard border on the island of Ireland.

Having said that, on the 31st of January 2022, the UK Prime Minister announced an intention to introduce a Brexit Freedoms Bill. A bill which was stated as having the aim to make it easier to amend or remove outdated, retained EU law, legacy EU law kept on statute book after Brexit as a bridging measure. The Brexit Freedoms Bill it was said will make it easier to ensure that the UK's regulations are tailor-made to UK's own needs. We await the detail of the Brexit Freedoms Bill.