Brexit Monitor
A European view
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Business sentiment is holding up, and a look at data post-Brexit

Thus far mainly sentiment indicators give us some insight in the aftermath of the UK referendum outcome. A broader public realises now that it may take considerable time for the UK to leave the EU, and although the uncertainty about when and how this will happen continues, it is also easier to revert to everyday activities as if nothing happened. This helps to soften the effects of the Brexit vote in at least the short term. In this week's issue of the PwC Europe Brexit Monitor, we analyse the latest sentiment indicators for August, and take a closer look at the Brexit impact on the free flow of data in the EU.

We have also seen resilience in sentiment indicators, after some surveys immediately following the referendum expressed shock and gloom. Specific data, such as better than expected retail sales and labour data released in the UK last week, support the notion that 'all may not be that bad after all'. This hard data allows us to make better interpretations of economic developments, but should preferably be assessed over a longer period of time. A risk to be aware of is that complacency may set-in, potentially leading to surprises in the future.

This week, Purchase Manager Index (PMI) estimates for August were published. The composite PMI (a combination of the PMI for manufacturing and services) for the Eurozone rose in August to 53.3 from 53.2 in July this year. The value for August constitutes a seven-month high for the common currency area, and was mainly the result of a higher services PMI, as that for manufacturing fell back to a three-month low. The Eurozone Manufacturing PMI for August came in at 51.8, weakened by inventory reductions and lower new orders, but still pointing to an expansion of economic activity, as it was higher than 50. The Eurozone Services PMI rose to 53.1 in August from 52.9 in the previous month.

The outcome of the August PMI estimates indicate that economic growth in the third quarter of this year may be in line with that of the first six month of 2016. Hidden beyond the headline figures, but important observations for the future, were the fast decline in stocks of finished goods, a drop in business expectations among service providers to the lowest level since December 2014, and weaker hiring trends in both manufacturing and services.[1] The latter two observations in particular carry some forward looking significance. On the same day as the PMI figures, the European Commission reported a decline in consumer confidence in the Eurozone and for August. As such, there are signals that give sufficient reason to remain vigilant about the direction of economic developments – and to follow subsequent data releases – so that patterns may be observed.

[1] Markit, Markit Flash Eurozone PMI, 23 August 2016.

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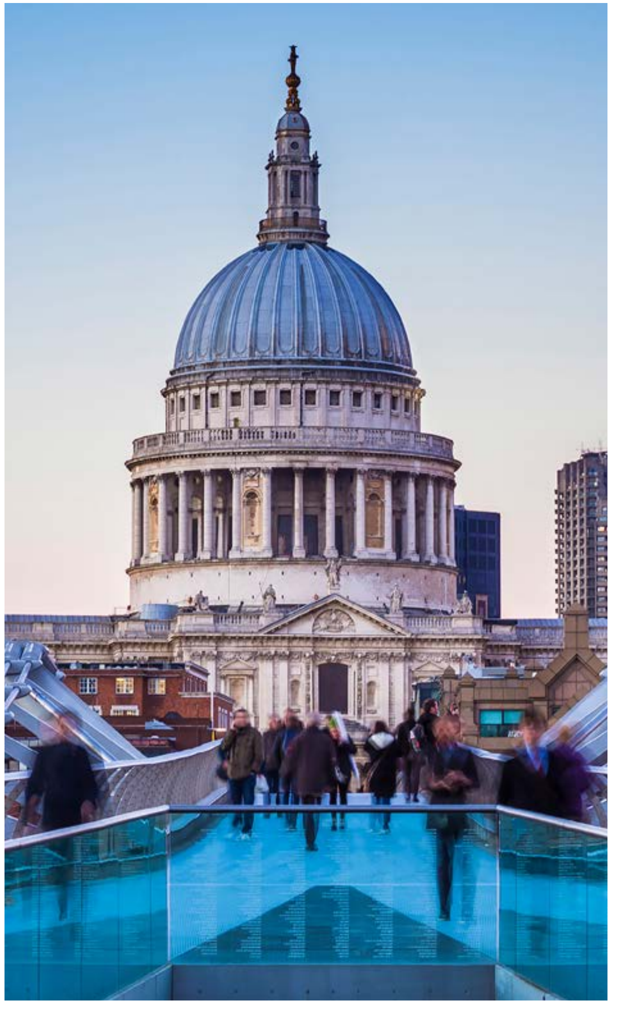
End of the holidays

As August edges towards its end, the political meeting agenda is getting busier. Numerous political meetings are scheduled in EU capitals as leaders prepare for a summit in Bratislava next month which will gather the 27 member states that will remain in the EU once the UK departs. The Summit will address the growing gap between citizens and the EU in the wake of the UK referendum, among other questions.

A first informal gathering was held this week between the leaders of Italy, Germany and France on the Italian island of Ventetone, a symbolic meeting place for discussing the future of Europe – Europe's first federalist Altiero Spinelli was imprisoned on the island during the Second World War. While informal, the meeting carries some symbolic importance as the three largest founding members indicated agreement about the importance of discussing the EU's future in the wake of the UK vote to leave the bloc. Much in the same vein as Dutch Prime Minister Mark Rutte, who declared a few weeks ago that there can be no business as usual post-Brexit, the three leaders have called for a new impulse for the EU, and the Italian Premier has called the UK referendum vote a wake-up call for Europe.

So far there is agreement, that for things to stay the same, some things must change. However, the big challenge in the months and years ahead will be to agree on the direction and pace of this change. For now it seems that security cooperation may prove to be the low hanging fruit and lowest common denominator European leaders are looking for. No new initiatives where unveiled at Ventetone, but there was mention of increased security cooperation not the least against the backdrop of recent terrorist attacks in Europe. Compared to a few years back in the midst of the economic crisis, it is striking how few economic topics made it onto the agenda, potentially avoiding an area where there is bound to be disagreement on the speed and nature of future EU and Eurozone integration. The only economic topic was one of a less controversial nature as the three leaders indicated that they would support an extension of the €315 billion European Fund for Strategic Investments as part of the so called 'Juncker Plan' or the EU Commission's Investment Plan for Europe.



The Brexit impact on the free flow of data

Free flow
of data

At the moment it's unclear what the long-term consequences of the UK's vote to leave the EU will be. There is also little clarity around what impact Brexit will have for data privacy in the near future. Companies based in the rest of the EU, and who are transferring personal data to the UK, would do well in thinking about how the UK's departure from the EU will affect them.

The interim period

Until the UK formally leaves the EU, and during the negotiating period which is expected to last at least two years, data protection rules will remain the same. The UK will retain its rights and obligations as an EU member and data transfer from the rest of the EU to the UK will be unaffected. For now, the UK's Data Protection Act 1998 is based upon European Data Protection Directive (95/46/EC). The new European General Data Protection Regulation (GDPR) will come into force from 25 May 2018. As the UK's exit from the EU will not be formalised by then, the UK will have to comply with the GDPR from 2018 until it leaves the EU.

After the UK leaves the EU

Regardless of the future relationship between the UK and the EU, UK organisations that offer goods or services into the EU, or carry out monitoring of EU citizens, will continue to fall within the remit of the GDPR. Furthermore, if a UK entity has a group company or staff within the EU, the GDPR will apply there.

If the UK remains a member of the European Economic Area (EEA), the GDPR would have a direct effect in the UK and the UK would be able to participate in free movement of personal data as if it were an EU member state.

Should the UK no longer be part of the European Economic Area (EEA), the GDPR would not have direct effect in the UK, making storing and/or processing private information in or transferring it to the UK more complicated than it is now. In order to remedy this situation and enable the free movement of data between EU member states and the UK, the UK would need to implement a GDPR equivalent framework and acquire an 'adequacy jurisdiction' status (as held at present by countries as diverse as Switzerland, New Zealand and Uruguay).

The UK's Data Protection Authority, ICO, believes that the present UK laws will need to be changed in order to conform to the EU's new framework. Following these legislative changes, the UK would need to apply for 'adequacy jurisdiction' status with the European Commission. Only if the safeguards in the new UK data protection laws are seen as 'adequate' by the European Commission, would personal data be allowed to be transferred without additional measures. It is important to note that such adequacy decisions could take several years to be made. Until the UK would obtain adequacy jurisdiction status, companies would need to use additional measures, such as Standard Contractual Clauses or Binding Corporate Rules, in order to transfer personal data to the UK.

Free flow
of data

It seems very likely that adopting the text of the GDPR will be the simplest option for the UK to avoid any challenges to the adequacy of UK law and to secure its role in international trade.

Needless to say, a (temporary) lack of alignment with the data protection landscape in the rest of the EU could act as a barrier to trade through the administrative burden imposed on organisations.

Takeaway

UK and EU companies should start preparing for the GDPR: the provisions of the GDPR will come into force during the interim period and will most likely continue to be in force after the UK leaves the EU (either through EEA membership or through equivalent UK law provisions).

In the case that the provisions of the GDPR would not become effective immediately after the UK exits the EU (for example if an adequacy decision is not obtained in time), companies would need to put in place additional measures, such as Standard Contractual Clauses or Binding Corporate Rules, in order to transfer personal data between the EU and UK.

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