

A Design for Brexit

The British Creative and Design Sector in a Post-EU Economy

Submission to the Culture, Media and Sport Select Committee by the Design Business Association and the All-Party Group for Design and Innovation – October 2016

Summary - Making Design Policy Reflect Reality

On Sunday 2nd October, the Prime Minister confirmed her intention to implement Article 50 of the Lisbon Treaty by March 2017, with a view to Britain leaving the European Union by spring 2019¹. Although this submission and the industry generally recognises that this timeframe is prone to various potential legal challenges regarding a Parliamentary vote on Article 50² and a possible extension of the negotiation process - it still assumes Britain will have formally left the European Union by the end of the decade.

The shape of this post-EU settlement is - understandably - in a state of ambiguity. Although there has been much discussion about options for 'soft' Brexit and 'hard' Brexit, this submission understands that these terms are themselves ambiguous. The Prime Minister has most recently called for an agreement that would both "cement Britain as a close partner of the EU once we have left", with the United Kingdom able to control its immigration but trade freely with the EU. She said she would seek a "mature co-operative relationship" with the EU.³

However - this submission considers this to be simply an 'ideal' starting point in negotiations, with a further view that single-market membership cannot take place without acceptance of the so-called 'Four Freedoms', with particular reference to the free movement of labour. This report sees the views expressed by the German Chancellor, Angela Merkel, as being representative of the general assumptions of other EU leaders, and the European Union's institutions.⁴ The outcome of next year's German federal elections and the French Presidential and Parliamentary elections are also not felt to dramatically alter the general tone of the European Union in the forthcoming negotiation period.

With this in mind – APDIG believes that it is vital for the Autumn Statement to set out a vision for how Britain's economy can develop outside the EU.

¹ Brexit: Theresa May to trigger Article 50 by end of March, BBC News, 2nd October, 2016:
<http://www.bbc.co.uk/news/uk-politics-37532364>

² What could happen if the article 50 legal challenge is successful?, The Guardian, 22nd October, 2016:
<https://www.theguardian.com/politics/2016/oct/22/what-could-happen-if-the-article-50-legal-challenge-is-successful>

³ Theresa May 'optimistic' she can get right Brexit deal for UK, BBC News, 21st October, 2016:
<http://www.bbc.co.uk/news/uk-politics-37726572>

⁴ Merkel to U.K.: EU Market Access Means Accepting Four Freedoms, Bloomberg, 5th October, 2016:
<http://www.bloomberg.com/news/articles/2016-10-05/merkel-to-u-k-eu-market-access-means-accepting-four-freedoms>

As previously stated – the design sector is a vital area for the UK economy, and – with the right strategy and support – it is poised to be one of the true drivers of growth in the years and decades ahead.

In this time, it is crucial that the government understands and recognises the tremendous value of the design sector to the wider economy and supports a raft of policies that will allow for it to contribute to an open, forward-thinking economic policy, both with existing partners in Europe and in the rest of the world.

This submission recognises the strength of public feeling regarding Brexit - noting a recent ComRes poll for The Independent which found that 49 percent of the British public think “the Government should prioritise getting favourable trade deals with EU countries when negotiating the UK’s exit from the EU,” whereas only 39 percent said the Government should “prioritise reducing immigration.”⁵

The design sector overwhelmingly concurs with this view. It is the principle of *Nil prosunt leges sine moribus* - that is to say, that laws are of no use if the moral feeling of the country does not follow the spirit and principle of the law. APDIG and the DBA therefore wish to promote an outcome for Brexit that is in line with the general feeling of the British electorate whilst making the strongest possible case for the future of the sector.

The ultimate recommendations of this submission are therefore to support a Brexit settlement that:

1. Respects the rights of EU students and employees currently living and working in the United Kingdom
2. Protects funding agreements and relationships between higher education institutions and other EU nations
3. Continues to make Britain an attractive destination for foreign direct investment and international collaboration in design
4. Secures a future for intellectual property rights that respects the current principles of the digital single market

The design sector is a true British success story. Despite the economic and societal shock of Brexit, it has the potential to be a real driver for growth in an open, innovative and dynamic economy. However, this can only be achieved with a Government that is prepared to engage with the sector and accepts the value of compromise with our European partners.

The Value of Design to the British Economy

To place this submission in context, it is necessary to give a brief overview of the tremendous value that design brings to the British economy.

⁵ British people want a soft Brexit putting the economy ahead of cutting immigration, The Independent, 15th October, 2016: <http://www.independent.co.uk/news/uk/politics/british-people-want-a-soft-brexite-putting-the-economy-ahead-of-cutting-immigration-poll-a7363336.html>

The sector's high year-on-year growth confirms that the creative industries punch above their weight compared with the British economy as a whole. The most recent statistics available confirm that:

- The value of services exported by the UK Creative Industries in 2014 was £19.8 billion, an increase of 10.9 percent from 2013⁶
- Exports of services from the Creative Industries accounted for 9 percent of total exports of services from the UK in 2014⁷
- Between 2014 and 2015, the number of people employed in the sector rose by 3.2 percent, and between 2011 and 2015 by 19.5 percent⁸

In 2015, a report by the Design Council⁹ found that:

- In 2013 the design economy generated £71.7 billion in gross value added (GVA) - equivalent to 7.2 percent of total GVA
- In the period between 2009-2013, the design economy GVA increased by 27.9 percent, compared to 18.1 percent across the UK economy as a whole
- Approximately 580,000 people are directly employed in the UK's design industries, while a further 1 million designers work across the economy in non-design industries

This makes the design economy equivalent to the ninth biggest employer in the UK

Taking this into account - the UK now has the second-largest design sector in the world and the largest design industry in Europe.

The design and creative sectors are a crucial part of the British economy. Post-Brexit, they may continue to be a real driver of economic growth and innovation - but this can only be achieved by Government policy that engages with the concerns of the sector and by working to ensure that existing strengths are maintained.

Securing a Positive Future for Design Education and Employment

The UK is one of the most attractive nations in the world for design education and employment. Across universities, SMEs, research groups and multinationals - Britain is rightly seen as being one of the most attractive destinations for EU and non-EU nationals.

We agree with the points made throughout the sector, including the design and architecture journal Dezeen, that the UK must continue to be able to attract and retain talent from across the world in

⁶ Creative Industries: Key Findings, GOV.uk, 20th July, 2016:
<https://www.gov.uk/government/statistics/creative-industries-2016-focus-on>

⁷ *Ibid*

⁸ *Ibid*

⁹ The Design Economy, Design Council, October 2015:
<http://www.designcouncil.org.uk/sites/default/files/asset/document/The%20Design%20Economy%20executive%20summary.pdf>

order to maintain its high reputation for excellence in the design sector¹⁰ and that this can only be achieved by working with universities, employees and membership associations.

Continuing to attract these high-value individuals is crucial to the future health of the design sector.

Securing the future of the design economy can only be achieved by continuing to provide a positive image for people wishing to study in the UK. Although HM Treasury were rebuffed by Downing Street when the oft-mooted proposals to exclude international students from the net migration figures were made in mid-October 2016, it is clear that this proposal has wide-ranging public support and should be considered in the aftermath of Brexit. A study reported in *The Times* in October 2016 found that only 1 percent of international students break the terms of their visa by refusing to leave after their course ends.¹¹

Additionally, a recent ComRes poll for Universities UK¹² found extensive public support for international students:

- 75 percent of those who responded said they would like to see the same number, or more, international students in the UK
- 71 percent say they would support a policy to help boost growth by increasing overseas students, with only 7% saying they would strongly oppose such a policy
- 91 percent think that international students should be able to stay and work in the UK for a period of time after they have completed their study
- Just 25 percent of leave and 23 percent of remain voters said that they think of international students as immigrants

Design does not simply apply to the 'traditional' creative arts degree programmes (although they certainly are of real importance.) It is an invaluable part of almost every sector, ranging from engineering, to computer science, to architecture.

Given the tremendous importance of the higher education sector in promoting a solid grounding in design - it is crucial that the Government recognises the importance of securing the best possible outcome for the higher and further education. Britain's universities are the fulcrum of the wider economy, channelling graduates into key areas of the economy and collaborating on research projects across Britain, the European Union, and beyond. It is vital that the contribution of EU students in this respect is recognised.

As noted by the Design Council and UNISTAT, the United Kingdom is a world-leader in design education, with the potential to excel yet further. According to UNISTAT, for the latest year with

¹⁰ Brexit Design Manifesto, Dezeen, <http://downloads.dezeen.com/brexit-design-manifesto-dezeen.pdf>

¹¹ Ministers hide report on migrant numbers, *The Times*, 13th October, 2016:

<http://www.thetimes.co.uk/edition/news/ministers-hide-report-on-migrant-numbers-dv8dbj7cz>

¹² New poll – cutting international student numbers will not address public immigration concerns, Universities UK, 13th October, 2016: <http://www.universitiesuk.ac.uk/news/Pages/New-poll-%E2%80%93-cutting-international-student-numbers-will-not-address-public-immigration-concerns.aspx>

available figures, there are currently 847 design courses available at British HE and FE institutions.¹³ Continued investment at all stages of design education is critical as well as awareness amongst new designers of the strategic contribution of design to business strategy.

APDIG and the DBA call for international students to be excluded from net migration figures.

Despite recent assurances from the Minister of State for Innovation and Science, Jo Johnson, many students and firms across the country remain concerned about the future of their course and research funding during this time.

EU-students should have any and all loans and grants guaranteed for the duration of their studies in UK universities subsequent to any future agreement between the United Kingdom and the European Union.

Finally, the DBA and APDIG express concern regarding the future of the carnet system post-Brexit.

Carnets are customs documents that are designed to simplify customs clearances when taking goods or motor vehicles into or out of the EU on a temporary basis. According to HMRC there are two kinds of carnet relevant to the design and creative sectors¹⁴, the ATA or “*Admission Temporaire*” and the CPD or “*Carnet de Passages en Douane*” with both fulfilling different purposes:

- An ATA allows for the temporary importation of commercial samples, professional equipment or goods going to either a trade fair or exhibition to countries which are part of the ATA Carnet system.¹⁵
- A CPD identifies a motor vehicle and allows travellers to temporarily import their vehicles and provides an international guarantee for payment of customs charges should the vehicle not be re-exported from the country visited.

Currently, neither carnet is required for the movement of UK goods or vehicles inside the EU. However, Brexit has left the future of the arrangements on this matter in a position of considerable ambiguity.

Free movement across the European Union does not simply apply to individuals, but also to their work and designs. The carnet system has allowed for Britain’s designers, artists and musicians to have access to new markets and audiences across the EU, free from excessive bureaucracy and long customs checks. Ending these arrangements could lead to designers and artists being unable to attend trade fairs, put on exhibitions or collaborate with their peers.

¹³ New government figures show UK has largest design sector in Europe Design Council, January 2015: <http://www.designcouncil.org.uk/news-opinion/new-government-figures-show-uk-has-largest-design-sector-europe>

¹⁴ ATA and CPD carnets for temporary imports and exports, HMRC, August 2012: <https://www.gov.uk/guidance/ata-and-cpd-carnets-export-procedures>

¹⁵ What Are Carnets?, London Chamber of Commerce, October 2016, <http://www.londonchamber.co.uk/docimages/14582.pdf>

Any new agreement with the European Union must preserve the free movement and waivers currently associated with the carnet system.

Securing a Future for Design Research and Protecting Intellectual Property Rights

With regard to the Digital Single Market – it is vital to note that the internet now comprises 10 percent of Britain’s GDP. In 2015, the Boston Consulting Group found that the UK had the largest digital economy in the G20, growing from £120 billion in 2010 to £180 billion in 2015.

This tremendous growth ended up with resulted with the digital sector account for 12.4 percent of GDP in the UK. This is in comparison with an average of only 5.8 percent of GDP within the G20 generally¹⁶.

International collaboration within the design and innovation sectors is also directly affected by the proposed withdrawal from the European Union.

The new Government has an immediate priority in ensuring that designers will continue to receive internationally accepted protection for designs, patents and projects in a way that closely mirrors the present situation.

The legal firm Olswang has written on the options open to intellectual property rights in post-Brexit Britain¹⁷ and notes the impact that Brexit is lively to have with regard to the new General Data Protection Regulation, which is due to come in force throughout the EU in May 2018. Olswang – as we do – claim that in all but the most absolute of withdrawal scenarios, the United Kingdom will continue to be affected by this new data protection regulatory regime, which greatly increases data protection obligations for nation states and firms.

In the event of Britain entering into a bilateral agreement with the European Union, such as the so-called “Norway” model – the United Kingdom would transfer its current judicial role over regulatory affairs from the European Court of Justice to the Count of the European Free Trade Association (EFTA) Court, with scope to interpret data protection and intellectual property rights via this judicial body.

With many designers working across Europe, it is clear that the sector would wish for as much continuity as possible in the legal structure and systems following Britain’s exit from the European Union. The right of designers and artists to feel that their intellectual property rights are secure and that access to personal and business information continues to enjoy the same resilient safeguards that they enjoy today.

¹⁶ The Internet Now Contributes 10 Percent of GDP to the UK Economy, Surpassing the Manufacturing and Retail Sectors, Boston Consulting Group, 1st May 2016: <https://www.bcg.com/d/press/1may2015-internet-contributes-10-percent-gdp-uk-economy-12111>

¹⁷ Brexit: Implications for data protection law, Olswang, July 2016: <http://www.olswang.com/media/48497300/brexit-implication-for-data-protection-july-2016.pdf>

Leaving the European Union would also end various harmonisation policies that have served to place the creative industries on a level playing field across the organisation. The main areas of legislative framework in this area are the Interest and Royalties Directive and the Term of Protection Directive.

For the design and creative sector, these directives have been critical in preserving and protecting intellectual property rights and preventing the withholding of taxation. It is crucial that all post-Brexit negotiations of new treaties, and any incorporation of existing regulations into British law, work to preserve the principles of standardisation that have typified the sector over the years.

As a specific example of this – the APDIG and DBA also note a recent submission¹⁸ by Anti Copying In Design (ACID) to the Creative Industries Federation on Brexit.

As part of the European Union's Unregistered Design Right, designers are currently protected for the so-called "novel surface design". Broadly speaking, this applies to the physical appearance of an object as well as its core functionality and is a clause that is explicitly excluded from the domestic protections afforded under Britain's Unregistered Design Right.

ACID and other elements of the design community consider this to be a typical example of a regulation that must be considered in any post-Brexit legal framework. APDIG concurs with ACID that Brexit therefore provides an opportunity to improve existing legal protections for designers.

Data Protection and Intellectual Property rights should be preserved as much as possible on the current model following Britain's exit from the European Union, following the basic law and legal obligations currently under the purview of the European Court of Justice.

Further Information

Please contact Jack Tindale (jack.tindale@policyconnect.org.uk) or Sally Lukins (sally@dba.org.uk) if you have any queries.

About the Design Business Association

Founded in 1986, the Design Business Association (DBA) is the trade association for all those working in the field of design, supporting them and championing the transformative power of design.

Our membership consists of 500 design consultancies and design-led businesses throughout the UK, including many of the brightest and most respected names. We work to build universal confidence in design investment and promote the power of effective design. The bridge between design and business, the DBA is committed to promoting the use of design at a strategic level to solve business and societal problems.

¹⁸ Brexit Report, Creative Industries Federation, October 2016 (pp. 65-66):
<http://www.creativeindustriesfederation.com/assets/userfiles/files/Brexit%20Report%20web.pdf>



For more information please visit: www.dba.org.uk

About the APDIG

The All-Party Parliamentary Design and Innovation Group is a cross-party coalition of Parliamentarians and design sector organisations that work to develop new design policy ideas, critique existing government decision-making around design, communicate within Parliament the enormous potential value of design, and help the design community better engage with the policy process.

For more information please visit: www.policyconnect.org.uk/apdig