

Doing Business in the European Union

For any successful domestic US business, expansion into Europe is a logical next step, offering exciting new business opportunities and growth potential, but also raising complex legal, regulatory and cultural challenges.

Lawyers at Fieldfisher help US clients to maximize the business opportunities presented by the EU's 'barrier-less' single market by advising on a wide variety of crucial strategic issues, including:

- what impact will national EU tax regimes have on business revenues?
- which EU territories are the most investment-friendly?
- how business-friendly are the cultural, legal and regulatory regimes in each of the EU territories?
- how can the business best protect its brand and other valuable IP in Europe?
- what key differences between European and US labor laws does the business need to understand?
- how can the business transfer their best people to the EU?

With EU lawyers based in both the US and Europe we provide a fully integrated and seamless service for US clients, which includes the ability to provide timely advice during US working hours, and deploy the right lawyers for the right job on both sides of the Atlantic.

European Union 101

The European Union (or "EU") is a union of 28 different member countries (called "Member States"), that share common political, economic and social objectives.

The EU promotes the free movement of goods, services and workers and operates a 'harmonized' legal regime designed to ensure consistency between Member States' laws. However, significant differences remain between the national legal, regulatory and cultural regimes of individual Member States that prove challenging to businesses entering the EU market. In addition, some EMEA countries often considered "European" (like Switzerland and Russia) actually sit outside the EU and are subject to wholly independent national regimes.

Most enterprises expanding into the EU will need to establish a base in at least one of the 28 Member States. Choosing which Member State(s) requires careful consideration of many important factors, including those described below.

Corporate structure and launch strategy

At a very early stage, the business will need to decide which entity or structure will best fit its EU needs and expansion plans. This will depend on factors such as the revenue model, tax profile, ease of raising debt and equity finance, and the commercial strategy at both a Member State and a European level. In particular, businesses launching into the EU will want to consider whether launch is best achieved through creation of a new vehicle or acquisition of an already-established local business.

Raising finance and tax

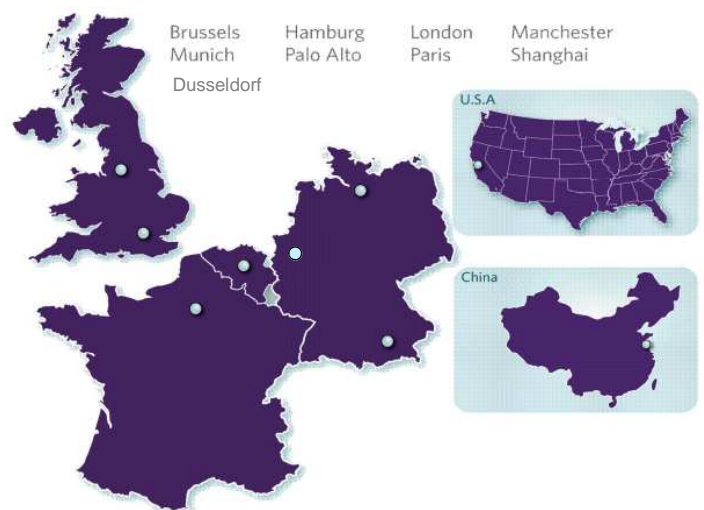
Each Member State can present different challenges when raising equity and debt finance, and the ease with which local finance can be raised will be a particularly important consideration. Likewise, the impact of local tax regimes will be very important as many establishment decisions are tax-driven. In addition to VAT and sales taxes, businesses need to understand how local tax regimes impact corporate profits, income and capital gains, securities or real estate, and equity incentives. The availability of local tax relief must also be explored.

Selecting a business-friendly territory

Certain types of EU regulation apply on a "country of origin" basis, meaning a business established in one Member State can take advantage of the local regulatory regime even when selling products and services into other EU territories. Selecting a Member State with a favorable regulatory regime is critical to successful expansion.

Engaging and managing talent

Employment at will does not exist in the EU. Instead, EU employment contracts are subject to a number of statutory protections for employees. Many derive from EU-wide laws affecting the employment relationship which are designed to harmonize employment rights across the EU. Critical employee considerations include impact of local tax regimes on employee stock options, Works' Council establishment, talent availability, and transferring employment rights for employees acquired in an M&A context (TUPE).



Immigration

Each Member State has different immigration legislation which is subject to frequent change and each case is assessed on its own merits. Therefore, it is critical that advice is sought prior to any set up or expansion to ensure that each company has their key staff or founders on the ground quickly to run their business.

Generally, only skilled migrants earning market rate will be able to obtain a visa to work in the EU.

Protecting and exploiting IP

Each Member State has its own IP regime, as well as being subject to EU law and international treaties. However, it is possible to get EU-wide protection for certain IP rights (like trade marks) based on a single application. Other key IP issues include acquisition of employee- and consultant-generated IP, licensing and distribution controls, and strategies to guard against counterfeiting.

Choosing the right distribution model

The use of agents and distributors is widespread in Europe but regulated both by EU and national laws. Agency arrangements can attract goodwill compensation upon termination while buy/sell distributor models attract antitrust restrictions on pricing controls.

Data privacy

Europe has the strictest data protection regime in the world. Complex rules govern every aspect of the data lifecycle, impacting when and how businesses can send marketing, use of website cookies, operation of SOX whistle-blowing lines and even choice of datacenter location. Setting up the wrong way, or in the wrong country, significantly increases regulatory exposure, impairing business growth and degrading data assets.

Contact localization

Any business transacting with European consumers needs to understand the different consumer law regimes in force across the Member States in which its customers are located. Many commonplace terms in US consumer contracts are void under EU laws, meaning consumer contracts require careful review and localization.

Anti-bribery compliance

Just as the US has the Foreign and Corrupt Practices Act ("FCPA"), so Europe also has strict rules on anti-bribery compliance both via local laws and OECD rules which, in some cases, differ from the FCPA.

Other essential considerations

A wide range of additional legal and regulatory regimes are relevant to businesses entering the EU market, including antitrust, environment and real estate laws, to name a few. Depending on the nature of the business, sector-specific rules may also apply, such as telecoms, financial services and life sciences regulation.

About Fieldfisher

Fieldfisher is a European law firm headquartered in London, United Kingdom, and with a US office in Palo Alto, California. This enables us to provide EU legal advice during US business hours.

We specialize in advising IP-rich, tech-driven businesses, particularly those operating in highly regulated sectors. Our main areas of focus are corporate, IP, technology and regulatory law, but we also have market-leading expertise in other fields including banking and finance, real estate, dispute resolution and personal injury. With eight offices across the UK, Belgium, France, Germany, China and California, we are well placed to support your European expansion needs.

"Fieldfisher is exceptionally well regarded for the strength of its practice throughout Europe, and its global offering was boosted by the opening of a Palo Alto office."

Chambers Global 2013

"Fieldfisher delivers 'fantastic services' and provides 'very adept and commercially tailored advice'."

Legal 500 EMEA 2013

"Fieldfisher's 'excellent business-minded' team has 'very good negotiation skills'."

Legal 500 EMEA 2013

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Representative Clients

