

Brexit - A First Glance

Note for non-UK Contacts



The results of the UK Referendum on the seemingly simple question “Should the United Kingdom remain a member of the European Union or leave the European Union?” are now in and across the United Kingdom (Scotland, England, Wales and Northern Ireland plus Gibraltar) the implications are being considered.

A total of 51.9% of those voting decided that we should leave, so the United Kingdom is inexorably on the path of disentanglement from the European Union and all that that entails.

The position, however, moving forward is less simple than the binary question: no one has yet thought what our new relationship with our European neighbours will be. Indeed, that relationship is one which is not solely within our control. Whatever, the new UK government (and Prime Minister David Cameron has intimated that he will stand down as Prime Minister to allow a new leader to advance those discussions) might like, the nature of our relationship will be determined as much by the other Member States as by our politicians.

Other countries, no doubt with an eye on domestic issues, will undoubtedly have their own domestic concerns – lobby groups in France, the Netherlands, Germany and Poland have already indicated that if the UK can have a referendum and withdraw, they would quite like to do the same; irrespective of any desire to leave, they believe that there is an opportunity to gain some national advantage by removing the rules and regulations they do not like whilst enhancing such benefits as they perceive they would like to retain. In short, national aspirations and imperatives are being placed above the European ideal.

Within the United Kingdom, we have additional domestic concerns; after the failure of the Scottish Independence Referendum in 2014, the SNP have already announced that, following the Brexit vote, a second Scottish Independence Referendum is on the table; in Northern Ireland (which also voted “Remain”) some politicians are arguing for independence or a closer link to the Irish Republic. Many EU countries, with domestic independence movements, will be eyeing the UK cautiously lest they give support and hope to their domestic secessionists.

The model for our relationship with the EU is uncertain; each has its advantages and each its drawbacks.

The “Norway” model under the EEA Agreement, on which Norway since 1994 has relied for free trade with the EU countries means that Norway is for all practical purposes obliged to fully adapt to EU law, except in certain fields (agriculture, fisheries, customs etc., exceptions which are designed to accommodate the Norwegian farmers and fishermen’s refusal to

adapt to EU policies in these fields). As Norway has no vote in the EU when EU law is made, this is not always a good position to be in.

The WTO / Free Trade model in which the UK would negotiate bilateral treaties with every one of our trading partners might be seen as a preferred model, but given the inherent difficulties in organising such a thing, many would be partners are unlikely to prioritise a deal with a market of 60m, when a market of 440m is just across the Channel. It would be naive to suppose that a small market could obtain better trading terms than its larger neighbour.

The much daunted opportunities from the Commonwealth may be equally difficult to achieve; it is not a true trading block and for many, there are greater opportunities elsewhere. Many of the comments around immigration that have featured in the Brexit debate would be seen as negative by our would-be Commonwealth trading partners.

The important thing to note is that the Brexit vote changes nothing. You don't need to panic (yet). There may be a crisis – the Stock Exchange seems to think so – but in most areas of business it will be business as usual in the short term.

- All the EU Directives which have been incorporated into UK law, will remain part of UK law until Westminster (or Holyrood) decide otherwise;
- EU Regulations are part of UK law by virtue of our Treaty obligations. Arguably even after withdrawal, they would be so by virtue of the European Communities Act 1972 unless Parliament decided otherwise;
- The UK may decide not to implement new EU rules it doesn't like over the withdrawal period;
- The UK hasn't started the withdrawal process; Under Article 50, Notice has to be given to the European Council; negotiations have to take place on the withdrawal agreement and the new relationship; that notice is unlikely before the autumn.
- The withdrawal date would be the date set out in the withdrawal agreement or if earlier 2 years from the date of the notice – although this date can be extended by agreement.
- The Remain campaign thought that the negotiations could take 10 years; the Leave that it could be done in 4. Evidence given to the House of Lords European Union Select Committee indicated that on the basis of negotiations for other trade deals between the EU and non-EU countries concluding the withdrawal agreement could take between four and nine years. Either way the issue is pressing but not immediate.
- Even if the UK could negotiate a withdrawal in 4 years, evidence as above suggests that it would be longer to put a new framework into place (if at all).
- The withdrawal agreement would, after agreement, need to be ratified by all 27 Member States, each with its own processes; lawyers will be aware that an agreement between 27 parties is rarely simple or speedy to conclude.
- We are in uncharted territory here; the only previous withdrawal was Greenland in 1985 (after 53% voted to leave) – and that process took almost 3 years.

- Have all your agreements involving the UK reviewed to ensure that you are addressing any issues which could occur.
- Consider whether you need to make changes in your arrangements with suppliers, customers, employers or others.
- Any change is likely to take place in a gradual and piecemeal fashion with different areas affected at different rates and times depending on the priorities of government policy. Speak to your contact at MacRoberts or any partner (www.macroberts.com/contact/) for further details and sector specific information.
- Ensure that you are up to date on the emerging legal and regulatory landscape. MacRoberts will be producing regular client briefings which you can have sent to you (www.macroberts.com/sign-up/) and which are downloadable from our website www.macroberts.com/insights.
- Our First Client Briefing is available for download now at www.macroberts.com/how-will-your-business-be-affected/
- Don't Panic!

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