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Brexit: Are You Prepared? The Implications of the UK's June Vote on EU Membership



Photographer: Chris Ratcliffe/Bloomberg

By [Dechert LLP](#) -
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The European Union (EU) is made up of 28 Member States committed, through a series of treaties, to ever closer economic and political union. It exercises considerable power within the Member States and on the international stage. Over

the years, this has caused a good deal of controversy. In the United Kingdom's 2015 general election, the Conservative party promised to renegotiate the terms of the UK's membership in the EU and hold a referendum in which the UK public would be asked to vote on whether they wished to remain in the union or leave. The Conservatives were re-elected on 7 May 2015.

In the event of a 'remain' vote

On 19 February 2016, Prime Minister David Cameron announced that he had reached an agreement with the other 27 leaders of the EU for a revised relationship between the EU and the UK, which would come into effect only if UK voters choose to remain in the EU. That referendum will be held on 23 June 2016.

Among other things, Cameron's agreement includes:

- a promise to make EU laws simpler and reduce the regulatory burden on EU businesses;
- a re-shaping of the UK's relationship with the Eurozone, including securing UK control over supervision of its financial institutions and markets;
- declarations that the objective of an "ever closer union" does not apply to the UK;
- a right for any non-Eurozone state to require a review of problematic Eurozone laws; and
- an agreement to address the politically difficult question of free movement of workers and access to national benefits.

In the event of a 'leave' vote

There is no precedent for a member state leaving the EU, so how this will unfold is far from certain. Under the process outlined in Article 50 of the Treaty on European Union (the Lisbon Treaty), following a decision by the UK to withdraw, there will be a negotiation between the UK and the EU Council (i.e., the other 27 Member States) to reach agreement on the terms of that withdrawal.

^ The Council will negotiate on the basis of a proposal put forward by the European Commission. The Lisbon Treaty sets a deadline of two years for negotiation, but this can be extended with the consensus of all 28 countries. The agreement will be concluded when it is approved by the UK, plus a qualified majority of the Council. (This requires at least 72 percent of the Member States, representing at least 65 percent of the EU population, to vote in favor.) It also requires the consent of the European Parliament. If no agreement is reached, the UK exit becomes effective two years after the UK's notification to the EU that it wishes to leave.

Timing issues

The two-year timetable means that there is unlikely to be any significant change in the short term, and whilst there will be a strong incentive to provide stability and certainty for the markets as quickly as possible, the fears that plagued Greece's "Grexit" crisis of 2012—redenomination of the local euro into drachma, currency controls to avoid a run on the banks and flight of capital, banks stopping payment, and counterparty defaults—should not be relevant to the UK's situation.

However, while the exit deal is being negotiated, there is likely to be considerable business and investor uncertainty, and it would be advisable for firms to plan their strategies in advance. It will not affect all sectors or all businesses equally, but most will be affected to some degree. Businesses will want to move quickly to put into practice their post-Brexit plans, and as negotiations between the UK and EU progress, they will want to engage with key decision-makers at the earliest opportunity and stand ready to adjust their planning in response to any relevant developments.

Planning ahead: Key questions to consider

There are many uncertainties surrounding the UK's referendum on whether to remain in the European Union. However, one thing is certain: If the vote is for the UK to leave the EU, the impacts will be felt broadly, both in the UK and in the remaining union.

As the referendum approaches, all companies that operate in or do business with the UK should be asking themselves some questions:

- Have we identified the key potential changes relevant to our business? Will those changes be an opportunity for us or a risk (or both)?
- Will those changes equally affect our competitors?
- Are there any steps we could or should be taking in advance (or immediately after a vote) to mitigate adverse impacts?
- If the result is for the UK to leave the EU, will we be able to reassure our investors that we have considered and taken measures to best prepare for any anticipated risks? How will the legal and economic uncertainty of the negotiation period impact us?
- If the vote is for the UK to leave the EU, what should the UK's and EU's priorities be in the negotiation of UK/EU future relations for our sector? Are there particular EU laws that we will want the UK to retain or replace?
- Do we rely on any EU free trade agreements with third countries, and how would we be affected if the UK ceased to benefit from them?

What opportunities and risks lie ahead?

Assessing the opportunities and risks that Brexit could create is of paramount importance. These are among the issues that all companies should consider and communicate in the boardroom, in audit/risk committees, and, if necessary, with investors.

Financial Services: London is the preeminent financial center in the EU and crucial to the UK's economy. Most of the member benefits and frustrations of being in the Union are primarily reflected in the city. Post-Brexit, UK firms may be freed from the "single European rulebook" and the supervision of the supervisory authorities (ESMA, EIOPA and EBA, with the latter currently based in London), and the UK may look to change some requirements it has never liked, such as the bonus cap. But firms are also likely to lose beneficial features such as passporting rights.

Imports and Exports: Currently, the EU customs union and free movement principles ensure that most goods can be traded and moved between EU member states without tariffs, customs duties or customs declarations and largely free of process, irrespective of the origin of the goods. The UK also enjoys the benefits of the various Free Trade Agreements the EU has negotiated with third countries and

stands to gain from the EU/US TTIP currently under negotiation. Following Brexit, it is highly likely that the UK would lose these benefits and have to renegotiate independently.

Intellectual Property: UK law is unlikely to change significantly. However, certain Europe-wide protections such as European trade marks and design rights may no longer be available, and the future status of existing Europe-wide protections may become uncertain.

Data Protection: The UK's current data protection law is unlikely to change. However, the post-Brexit status of the upcoming EU Data Protection Regulation in the UK would need clarifying, and the ability to transfer personal data from and to EU member states may depend on whether the European Commission deems the UK protection of personal data post-Brexit to be adequate.

Employment Law: Although much EU legislation is likely to be retained, there may be temptation to repeal some unloved measures in the UK, such as the Working Time Regulations and Transfer of Undertaking (Protection of Employment) Regulations.

Environmental Law: The extent of any possible change in UK environmental laws is unclear. There may be temptation to change some specific requirements, but much of the content derives from international agreements to which the UK would remain a party.

Competition Law: Although UK law largely mirrors EU law, elements such as state aid and procurement rules may be diluted post-Brexit. A key practical development is that both the Competition and Markets Authority (in the UK) and DG COMP (in the EU) might become involved in certain investigations, with neither able to cede involvement to the other.

Other Sectors: In the name of uniformity, consumer protection and public health, the EU has been an active lawmaker for various industries including pharmaceuticals, telecommunications, and energy. With Brexit, companies would have to consider the implications of losing the benefit of having the same requirements as the rest of the EU.

^ **Legal Framework:** In the event of Brexit, firms may want to consider the laws that apply to their contracts and other arrangements (currently governed by the Rome I and Rome II provisions, respectively) and the rules on jurisdiction and enforcement of judgments as currently set out in the Brussels Regulation.

[How can Dechert assist?](#)

Dechert can help clients:

- Identify their exposure to the potential changes in the legal framework in which they operate (including, but not limited to, those aspects previously listed).
- Identify and evaluate the risks and opportunities that Brexit may bring.
- Identify potential mitigation steps, either before or after the referendum result.
- Develop clients' strategies for engagement with investors, customers and the UK government or EU negotiators.
- Report to their boards on the risks and opportunities and any recommended mitigation steps.

Dechert collaborates closely with leading firms of accountants for clients who are looking for an evaluation not only of the legal implications for them and their sector, but also the economic implications. This combined approach can often assist clients in understanding the relative importance of risks identified. We would be pleased to arrange such a collaborative approach for clients, and to recommend accountancy firms with whom we have successfully collaborated.

Uniquely positioned to guide you

With years of experience working for and alongside both the European Commission and the UK government, the lawyers in Dechert's International Trade and EU Law practice bring a uniquely valuable perspective to the legal and commercial analysis they offer. Our team members have significant experience working on legal and policy issues for the Commission, negotiating on behalf of Member States in the Council, and serving in various roles within the UK Government, including the Prime Minister's Office, the Foreign Office and the Treasury. Our lawyers' background and



knowledge of the EU, and the UK's engagement with it, bring an essential and in-depth practical insight into the legal and policy implications that Brexit may have across a wide range of industry sectors.

Contact any member of our team for a consultation



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