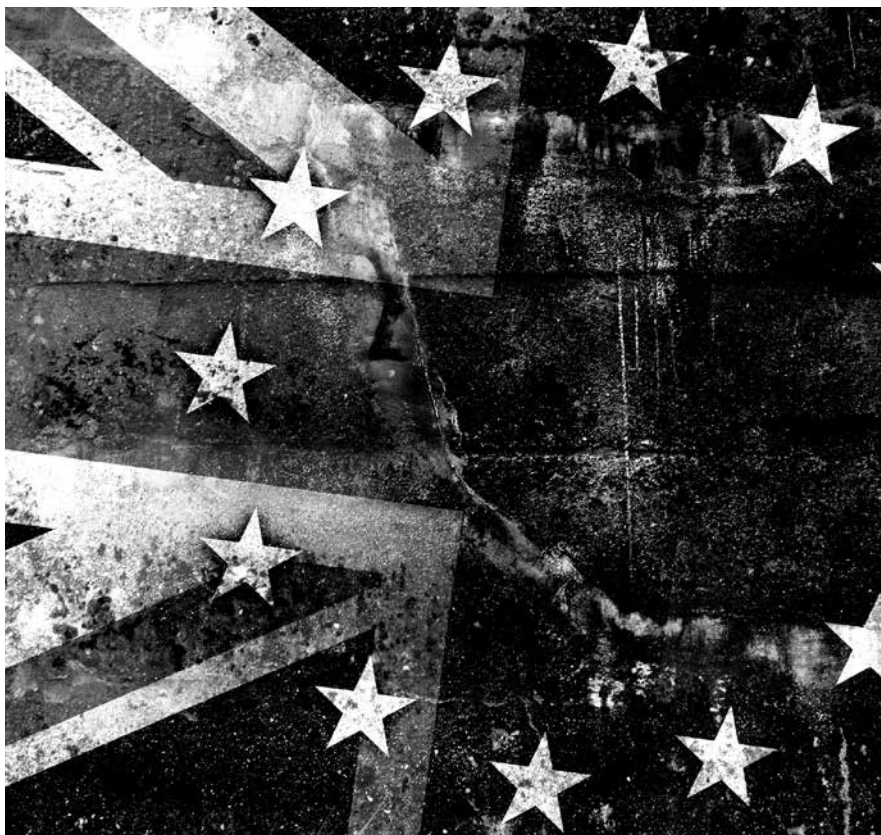


# Brexit: The UK takes a leap of faith – what now?






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# The UK takes a leap of faith – what now?

After many months of forceful campaigning from both the Remain and Leave camps, the UK has voted to leave the EU. This briefing looks at what is likely to happen over the next few weeks, months and years, and gives practical guidance as to the steps you may need to take to address the risks associated with Brexit.

**Under the formal exit process, there is unlikely to be any change to the legal framework of either the UK or the remainder of the EU immediately after the Referendum. The UK will continue to be a member of the EU for some time yet. This will allow you and your business to continue to plan and, where necessary, adapt.**

As a reminder, we have included on [page 4](#) an overview of the mechanics of Brexit and the frameworks which might be used for a future relationship between the UK and the EU. It seems likely that the uncertainties arising from Brexit (many of which are also summarised below) will continue to have a negative effect on the economy in the UK, the EU and the rest of world. Now that a decision has been made, we need to wait and see how the markets react, both initially and as the negotiations progress. The speed with which exit negotiations between the UK and the EU can be concluded, and how successful those negotiations are perceived to be for the parties involved, will determine how quickly markets normalise.

# Key issues and next steps for you and your business

In our previous briefings (which can be accessed [here](#)) we considered some of the potential issues arising from Brexit, aimed at helping you to identify areas of your business which might be affected by the UK leaving the EU. Whilst long-term contingency planning is difficult given the lack of clarity around the UK's future relationship with the EU, we have set out below some of the legal risks that may arise, ranking them in order of priority taking into account the likely timing and the scale of risk involved.

## HIGH IMPACT/RISK

### Single Market access

An understanding of the extent to which your business is reliant on access to the Single Market is key. Financial services organisations relying on an EU passport to provide services within the EU, or from the EU into the UK, will need to consider how they can continue to conduct their business. Similarly, organisations that rely on the cross-border trade of goods and services will need to consider the likely impact of customs tariffs, not only on sales into the EU but also with customers in countries which have trade deals with the EU.

### Employees

The principle of free movement, enshrined in the EU treaties, was a central pillar of the Brexit debate. It is likely that the UK will seek to impose some restriction on immigration as a result. This may result in the introduction of some form of visa system, as is currently in place for non-EU citizens. You should consider what impact that may have on your workforce. Do you have non-UK EU citizens working in your business in the UK? Equally, do you have UK citizens working in your business within remaining EU Member States?

### Market movements

As has been noted in the run-up to the Referendum, there may be fluctuations in the value of Sterling and/or the Euro and significant movements in some indices or asset prices. Where un-hedged, this may mean that the cost of imports or raw materials priced in other currencies increases. It may also mean increased margin calls, particularly where collateral posted is denominated in Sterling (for example, UK gilts), with the potential for consequent defaults and close-outs.

### EU grants and subsidies

You should consider the extent to which your business is reliant upon EU grants and subsidies. It is unlikely that such grants or subsidies will continue to be available.

### Future transaction pipeline/investment

You should consider what Brexit may mean for your future deal pipeline. As noted above, it may affect your ability to continue to access the Single Market. This may affect your business strategy and where and how you make your strategic investments. This will need to be monitored over the foreseeable future and you may need to adapt your strategies to deal with the developments.

### Tax

You should consider the tax impacts that flow from the issues identified above. Depending on your business model and corporate structure, these may include increased customs duties, the tax treatment of foreign exchange gains and losses, tax equalisation arrangements for employees and a change to the existing VAT position. Where Brexit causes changes to the group holding structure and/or business relocations, these will also have significant tax implications.

## MEDIUM IMPACT/RISK

### Financial covenants

It seems unlikely that Brexit will trigger material adverse change clauses or result in breaches of general financial covenants. However, issues may arise if the economic position worsens significantly. For example, you or your counterparty may suffer a ratings downgrade giving rise to margin calls or events of default. You should ensure that you model the risk to your business and continue to monitor the situation over the coming months and years.

### Intellectual Property

The IP Rights protected by European Union Trade Marks (formerly Community Trade Marks) or Community Design Rights (registered and unregistered) are likely to be most affected, as these will in due course no longer apply to the UK. However, we anticipate that the UK will put in place transitional arrangements protecting such rights in the UK, probably by converting them to become UK registered trademarks and designs; there is already an unregistered design right in the UK. It also seems unlikely that the UK will benefit from the Unitary Patent regulation or the Unified Patent Court, meaning that Unitary Patents will not apply in the UK and the UK will lose its right to host a branch of the court. The UK will remain a member of the European Patent Convention and inventions will be protected under UK national patent law, as they are today. You should audit your intellectual property registers to understand the extent to which they could be affected.

### Data protection

The Data Protection Directive protects personal data throughout the EU and in so doing allows for the free movement of such data throughout the EU. Once the UK has left the EU, this ability to move data from the EU to the UK will not apply. In the absence of agreement between the EU and the UK to permit data transfers, UK businesses will need to find an alternative method of transferring personal data between the UK and operations within the EU. This may include the use of 'model clauses', for example.

## LOW IMPACT/RISK

### Law and regulation

In general we do not expect the law in the UK to change radically. Some areas of law will undoubtedly be targeted for amendment (such as immigration rules) but we expect many areas to remain the same as they are now. We expect that a choice of English law, and the right of English courts to hear disputes, will continue to be respected by the UK and EU courts, although there may be implications for the enforcement of judgments and, more likely, for cross-border proceedings.

### Procurement and state aid

It seems unlikely that there will be any material change to the procurement rules, considering that these rules currently operate under a national regime. However, it is possible that the UK and/or the EU could introduce rules which make it harder for businesses outside the UK and/or EU to compete for tenders.

It is harder to predict the impact of Brexit on the provision of state aid, which until now has been granted through state resources on a selective basis to any organisations that could potentially distort competition and trade in the EU. The UK will need to consider whether it chooses to opt back into the EU regime on state aid. Considering that historically there has been some political frustration from UK ministers about these restrictions, it may be that the UK chooses not to reinstate these provisions. This may offer new opportunities for businesses to request government support for certain industries, where it was previously unable to do so, such as the steel industry. However if the EU and the UK do negotiate a Norwegian style "EEA" model then the EU may prevent businesses which are the recipients of State Aid from selling their products in the Single Market.

### Product regulation and product safety

It seems unlikely that EU law safeguarding the interests of consumers will be the subject of material change. In fact, the UK has been an advocate of much of this type of legislation. In any event, UK exporters will likely apply whichever is the higher standard as between UK law and EU law.

### Environmental law

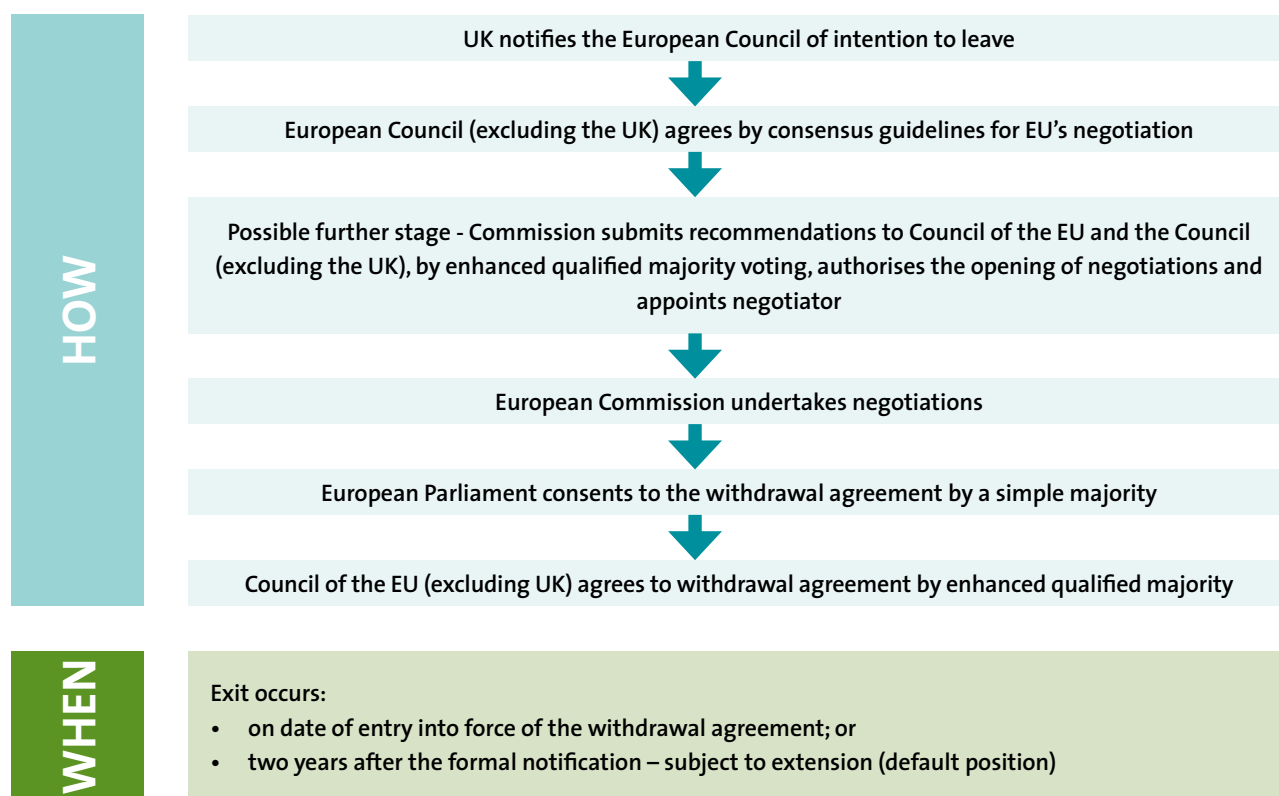
Notwithstanding that much environmental law is based on EU law, it is unlikely that the UK will seek to change that law in any material way. Many aspects are based on international treaties to which the UK is a party in its own right.

# What's next?

## A reminder of the exit process



### EXIT PROVISIONS UNDER ARTICLE 50 OF THE TREATY ON EUROPEAN UNION







As noted above, the first step in the process is that the UK Government must serve notice on the European Council that the UK wishes to leave the EU. This will trigger a period of up to two years, during which the UK and the remaining 27 Member States will negotiate the steps for the UK's withdrawal from the EU. The two year period can be extended, but only with the unanimous consent of the 27 remaining Member States. We do not know when the UK Government will send this notice and, accordingly, when that period will commence. We expect that at least some informal negotiation will be carried out prior to notice being served (and, if press speculation is to be believed, may already have taken place). During this period, the UK will remain a member of the EU (albeit without participation rights in key decision-making forums), and will remain subject to EU laws.

At this stage it is unclear what the priorities will be for the UK, and the remainder of the EU, and how willing the remaining Member States will be to negotiate with the UK – particularly in relation to the UK's continued access to the Single Market. There are significant political risks and issues at stake, and it remains to be seen how compatible the objectives of the two sides will be.

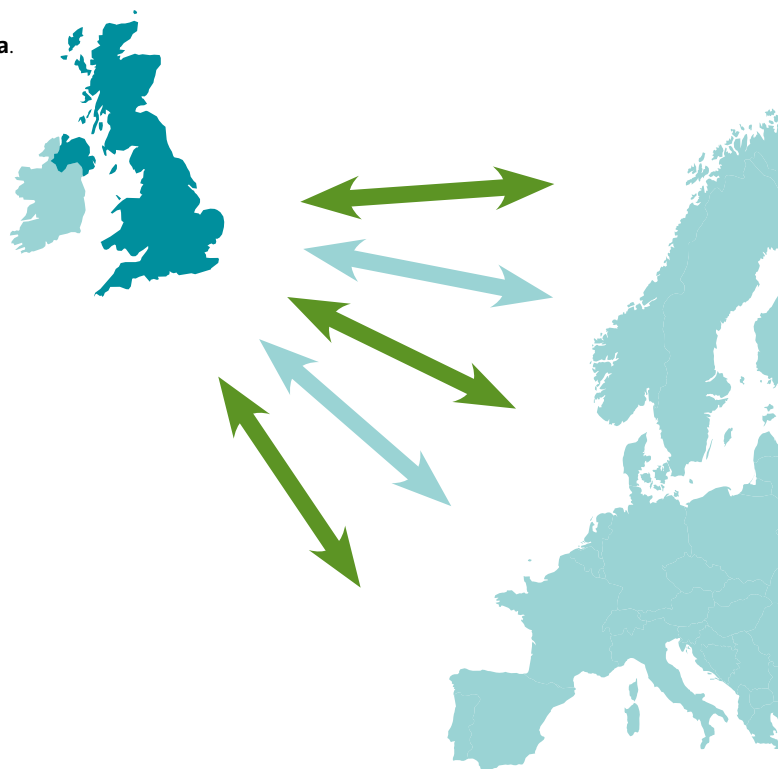
Once the withdrawal agreement has been finalised, or the two year period has expired (whichever is earlier), the UK will cease to be a member of the EU, and the exercise of unravelling UK and EU law may begin. The first step will be the repeal of the European Communities Act 1972, which effectively incorporates EU law into UK law. However, repealing this Act will leave the UK with many voids in its domestic legislation. What seems likely is that transitional legislation (effectively retaining much of the legislation derived from EU law) will be used to bridge those voids until they can be properly analysed and appropriate legislation can be enacted to meet the objectives of Brexit. Certain areas of law will likely be prioritised over others for such analysis and legislation, particularly those that meet the UK's objectives in relation to Brexit.

# Ongoing relationship with the EU – potential models

Brexit and the ensuing negotiations between the UK and the EU will result in a fundamental change in the UK's relationship with the remaining 27 Member States. The negotiations will need to cover a vast range of issues and will be extremely complex. They are likely to extend beyond the two year withdrawal period. Various models for the future UK/EU relationship have been discussed at length by commentators and politicians, the most commonly cited of which are analysed in our briefing [here](#) and can be summarised as follows:

- 1 negotiation of comprehensive bilateral **free trade agreement** with the EU, similar to the arrangement that Canada has with the EU;
- 2 the **World Trade Organisation** approach, relying on general international trading rules. This will be the fallback position if the UK's EU membership lapses without replacement arrangements having been agreed;
- 3 creation of a **customs union**, similar to that agreed between the EU and Turkey;
- 4 negotiation of a set of **bilateral accords** with the EU, similar to those agreed between the EU and Switzerland (although it is worth noting that the European Council has previously said that the Swiss arrangement has “reached its limits” and needs to be re-negotiated); and
- 5 continued membership of the **European Economic Area**.

It remains unclear what the preferred model is. Given the likely political imperatives, a free trade agreement may offer the best prospect of continued access to EU markets, but if negotiations are inconclusive or fractious, it may be that WTO rules are applied (at least whilst negotiations continue).





# Ashurst contacts

Ashurst has formed a Referendum Thought Leadership Group that has been considering the key issues for business arising out of the Referendum and Brexit.

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