

Brexit

Procedure for a British exit from the EU and its potential consequences



24 May 2016

The question asked on 23 June

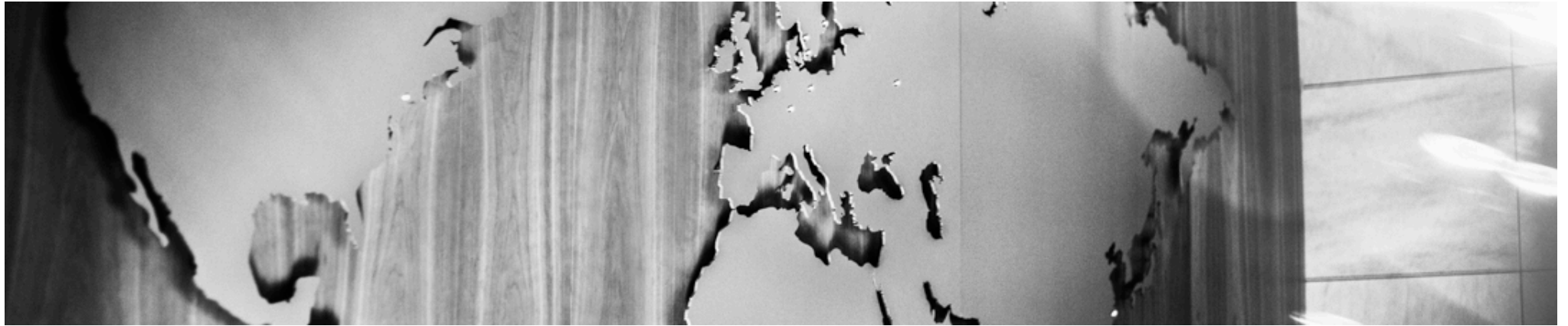
Should the United Kingdom remain a member of the European Union or leave the European Union?

- Remain a member of the European Union*
- Leave the European Union*

Agenda



- Brexit – the Basics in Law
- Doing Business with the UK
– Potential Consequences
- Potential Impact on the Financial Sector



Brexit – the Basics in Law

Brexit – Political and legal dimensions

The first Member State to leave the European integration project

- A challenge to the overall purpose and credibility of the EU
- Further impact on the membership of the EU?
- Impact on the “domestic” policies of the EU and the UK
- Impact on the foreign policies of the EU and the UK

The withdrawal of one signatory party to a set of multilateral treaties

- Cessation of all mutual rights and obligations in the EU treaties between the UK, the EU institutions and other Member States
- Implications for the UK’s and the EU’s treaties with third countries

Timeline for a Brexit



- Referendum is held on 23 June
- In theory, a vote to exit does not trigger any legal obligation to act
- But, the UK Government has stated that it has a “democratic duty” to notify the EU “straight away”

Timeline for a Brexit



- After notification – a two-year suspension period
 - Period is intended for EU-UK negotiations on a withdrawal agreement
 - Period may be extended through agreement between UK and the EU as a whole, but any Member State may veto
 - During this period, the UK continues to be bound by EU law
 - If no agreement, the UK leaves the EU anyhow at the end of the suspension period
- No exit before June 2018, but possibly later

Areas of legal uncertainty



- What status will new EU legislation have during the suspension period?
- What arrangements will the UK make for the continued application of EU law after Brexit?
 - Domestic laws based on directives
 - Regulations
- EU agreements with third countries
 - Exclusive EU competence agreements
 - Mixed agreements

Post-Brexit governance scenarios

1. Norwegian model

- EFTA/EEA membership
- All EU legislation except foreign policy, external trade, taxation, agriculture and fisheries
- No say in legislative process

2. Swiss model

- EFTA membership and many and far-reaching bilateral agreements
- Partial access to internal market
- Reflects a large part of EU law, and frequent adjustments of agreements necessary

3. Turkish model

- Customs union but without other single market benefits
- Services not covered
- No influence on trade policy or market rules

4. Canadian model

- Comprehensive FTA agreement outside the EU customs union
- Less access to single market
- Greater power to make its own rules

5. WTO only

- No FTA agreement, relying on MFN
- UK exports to the EU will be subject to the EU's WTO tariffs



Doing Business with the UK – Potential Consequences

Which companies may be directly affected by a Brexit?



- Any type of presence in the UK (HQ, subsidiary, plants, etc)
- Selling to customers in the UK
- Sourcing from the UK
- British employees
- Financing from banks in London
- English law or English jurisdiction clauses in contracts

First two years after a vote to leave



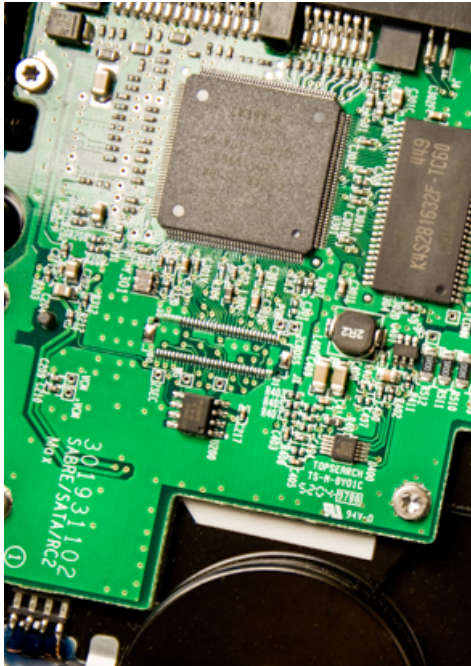
- Regulatory environment remains unchanged
- Risk of market volatility that may affect operations (exchange rates, financing etc)
- Monitor closely EU/UK negotiations and the expressed intentions of UK government
- Screen all new business arrangements from a Brexit perspective
- Conduct a focused risk assessment for existing operations

Choice of law, jurisdiction clauses and arbitration clauses



- Over time, a Brexit would lead to differences in the areas currently covered by EU law
 - the choice of English law could lead to unforeseen consequences
- The law on torts and contracts will remain largely unaffected
- Depending on outcome of UK-EU negotiations, the enforceability of UK court judgments in other EU states may be affected, particularly in Sweden
- Arbitral awards unaffected by a Brexit

Trade in goods and services with the UK



- Depends on the outcome of the exit negotiations
 - *Best case scenario*: zero-tariff trade in goods and services and full access to the single market
 - *Worst case scenario*: WTO tariff treatment and regulatory obstacles to trade
- Reintroduction of customs procedures is likely
- Trade between the UK and third countries will be affected until new FTAs are in place
- Existing EU trade defence measures will no longer cover the UK
- Possibility for trade defence measures directed at the UK and vice versa

Free movement of employees



- Brexit could lead to labour mobility restrictions
- EU nationals working in the UK and UK nationals working in the EU may lose their right to work
- Recognition of certain professional qualifications may be affected

Competition Law



- Laws on cartels and abuse of dominance likely to remain almost identical in short to mid-term
- Merger control regime may change to some extent
- Parallel systems for merger control
- Parallel systems for cartel and abuse of dominance investigations
 - Risk for double fines
 - Increases the necessity for separate leniency applications
- Follow-on litigation may be diverted away from the UK

State aid



- The UK may no longer be bound by EU state aid rules
- More freedom to grant direct financial support, beneficial loans or guarantees
- Larger scope for directed tax benefits
- May give UK companies competitive advantages in relation to other EU companies
- UK projects relying on EU funding will possibly lose their funding, and will not be renewed or extended

Public procurement



- Whether EU and UK companies will be able to tender without discrimination after a Brexit will depend largely on the negotiations between the EU and the UK
- Both the UK and the EU would have the possibility to unilaterally or reactively render it more difficult for the other side



Potential Impact on the Financial Sector

Implications for the financial sector



- With London as the major financial centre in Europe, the financial sector may be particularly affected by a Brexit
- Banks, credit institutions, insurance companies, securities companies, funds, fund managers, exchanges, clearing houses, etc.
- Subject to significant regulatory supervision
- Globally established frameworks, implemented at EU-level through directives, regulations, etc.

EU/EEA facilitates cross-border operations



- Specific passporting provisions for credit institutions, securities companies, insurance companies and fund managers
- Can conduct cross-border operations after a notification to its home supervisor
- Can establish a branch in the EU after a notification to its home supervisor and providing certain limited information
- Primarily home country supervision, limited host country supervision

Cross-border operations restricted for non EU/EEA entities



- Credit institutions, securities companies and insurance companies domiciled outside the EU/EEA will need to obtain SFSA approval before conducting operations in Sweden and must operate through a branch (or similar)
- Fund managers domiciled outside the EU/EEA cannot manage EU/EEA-based investment funds and must have SFSA approval to market funds
- Exchanges and clearing houses have cross-border provisions that are not EU/EEA related and would not be affected in that respect

Other potential aspects for the financial sector?

- The function as custodian for EU/EEA-based investment funds requires EEA domicile
- Insurance companies domiciled outside the EU/EEA may only market insurances in Sweden through a licensed intermediary and must deposit securities as collateral for exposure
- No recognition of prospectuses prepared outside the EU/EEA
- Clearing houses domiciled outside the EU must obtain approval from ESMA to provide clearing services to EU clearing members
- Entities outside the EU/EEA do not form part of the consolidated situation for capital adequacy purposes
- BRRD bail-in recognition language will be required for English law contracts

Team members

André Andersson

Global Relationship Partner

Phone: +46 8 595 064 09

Mobile: +46 709 777 409

Email: andre.andersson@msa.se

Thomas Pettersson

Partner, Banking & Finance

Phone: +46 8 595 064 65

Mobile: +46 709 777 465

Email: thomas.pettersson@msa.se

Tommy Pettersson

Partner, EU & Competition

Phone: +46 8 595 061 03

Mobile: +46 709 777 103

Email: tommy.pettersson@msa.se

Andreas Johansson

Senior Associate, EU & Competition

Phone: +32 2 737 71 79

Mobile: +32 4 798 207 22

Email: andreas.johanasson@msa.se