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EU Referendum

The Journey Begins

24 June 2016



A lush tropical forest with a waterfall and a rocky riverbed. The scene is filled with dense green foliage, including large palm fronds and hanging vines. A small waterfall cascades over dark rocks into a pool of water, which reflects the surrounding greenery. The foreground shows a rocky riverbed with some moss and small plants.

The Journey Begins

Unravelling the uncertainty.

The waiting is over. The UK has spoken.

The UK will leave the European Union.

The process of disentanglement starts now. Political, economic, legal.

The journey begins here. The destination is, as yet, unknown.

The Legal Headlines

Brexit does not happen immediately. The UK Government now needs to decide when it will serve notice and trigger the two-year exit negotiation period. On Brexit taking effect, all existing UK arrangements with the EU and through its EU membership the UK's trading arrangements with the rest of the world will lapse, unless replacements are agreed.

Negotiations and capacity constraints will mean that priorities and potential compromises need to be identified by the UK Government (and its counterparts), as well as decisions on which trading arrangements with new or existing markets to progress.

Engage early to ensure your business priorities are not the compromises.

One question to end them all...?

- The referendum question has finally been answered but, much like the mythical heads of Hydra, whilst one question has been slain, a myriad of other questions have arisen from the ballot box.
 - What will Brexit mean? When will we know? What should we do? Uncertainty reigns. But it need not conquer.
 - We have undertaken a wealth of legal analysis in preparation for this possibility. It will form a blueprint for analyzing, identifying and responding to the legal implications of Brexit.
 - Brexit will mean different things to different businesses – depending on the sector you operate in, the nature of your products, and the profile of your customers.
 - By understanding the range of potential outcomes and options, business can begin to unravel the uncertainty and take practical steps to secure opportunities whilst mitigating risk.
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What does the Leave vote mean?

- The UK is now committed, politically (though not legally) to exiting from its membership of the EU.
 - The UK will not have the automatic right to re-join the EU if it wished to after Brexit. The UK would need to apply as a new member and all Member States would need to approve.
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What happens right now?

- Brexit does not occur immediately, but the UK will lose political influence on the policy and regulatory agenda within the EU.
 - EU laws and regulations currently in place or implemented before Brexit takes effect will still be binding on and in the UK.
 - Although not permissible legally, the UK may decide to adopt a policy of non-compliance (including not implementing new laws) in relation to areas of EU law prior to Brexit taking effect, but it will remain subject to the remedies applicable to any non-compliance. As such non-compliance is unlikely to strengthen the UK's future relationship with the EU, such an approach seems unlikely whilst negotiations are progressing.
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When will the process of exiting the EU begin?

- The exit process officially begins when a notice is served by the UK triggering a period of two years in which to negotiate the withdrawal agreement – but the process is unprecedented and uncertain.
- The current term of the European Parliament and the European Commission ends in 2019. There might be pressure to complete the exit negotiations before then.
- The UK Government will need to decide when to serve the withdrawal notice which will trigger the commencement of the exit negotiations and the two-year notice period.
- The notice period does not start running until notice is served, so a delay in serving the notice extends the period during which the UK remains bound by its membership terms, including financial contributions.
- There is no time limit for when the withdrawal notice needs to be served - but there is no obligation on the rest of the EU (rEU) to apply any resources to negotiating the UK's exit until notice is served.
- During the two-year exit negotiation period, the UK will need to negotiate a withdrawal agreement and it will also seek to negotiate the terms of its future relationship with the EU under a new arrangement.

- As part of the exit process, the EU and its trading partners would need to adapt its free trade agreements to reflect the UK's withdrawal from those agreements. The UK would need to negotiate

the trading agreements which it benefits from as part of the EU, though under EU law it is not technically entitled to do so until Brexit occurs.

When will we know when Brexit will occur?

- Technically, Brexit will occur on agreement on exit terms or (if later) on expiry of the two year notice period when the UK's entitlements and obligations under the Treaties will automatically lapse, unless all 27 Member States have agreed an extension. This will also end the UK's membership of all the EU free trade agreements including the EEA.
- Practically, when Brexit actually occurs is likely to depend on how the exit negotiations proceed. From this point, the process would have some elements

of a trade negotiation but with an overlay of the bureaucracy required to fulfil the EU and the UK's constitutional obligations.

- If agreement is reached then an implementation phase may be agreed giving notice of the deal before Brexit takes effect.
- If negotiations with the EU cease to progress then Brexit will occur automatically, without further notice, at the end of the two year negotiation or any agreed extension.

How can you unravel the uncertainty to protect your interests going forward?

- The legal uncertainty of Brexit largely derives from a lack of clarity over what replacement arrangements will be agreed between the UK and the EU – as well as between the UK and each other country with whom the EU has a free trade agreement, including the EEA/EFTA countries. By understanding the nature of the negotiations to be undertaken, the negotiating position of each party and the range of outcomes, you can begin to unravel some of that uncertainty.
- Each side will need to work out its key priorities, its commercial negotiating leverage and what it is willing to compromise on if it wishes to agree a replacement deal. Business will need to engage with the process to ensure its priorities are on the negotiating table. In the absence of agreement prior to Brexit occurring, the trading arrangements between the UK and the rEU would be governed by the World Trade Organisation (WTO) rules.
- The EU Council is scheduled to meet on 28 June. It has been reported that the EU Parliament will hold an extraordinary plenary session after the referendum result is announced in advance of the EU Council meeting.
- The EU Member States will also need to formulate their strategy and approach for balancing the time required for their negotiations with the UK, against their competing priorities. These include responding to any political instability within the EU which may be triggered by Brexit, their responsibilities for on-going issues of migration, and delivering fiscal stability, growth and employment. These factors may delay the negotiation.
- Any new deal to cover all the future trading arrangements between the UK and the EU would need to be approved by all 27 Member States, requiring the competing interests and political agendas of all remaining Member States to be reconciled. The trading or other interests of the EU, therefore, need to be disaggregated in order to assess the likelihood of a deal being done.

What happens if no agreement is reached between the EU and the UK before Brexit occurs?

- If no other deal on trading arrangements has been agreed with the EU and third countries with which the UK benefits from preferential access through its EU membership during the notice period, or any extension, then the UK will apply WTO most favoured nation tariffs.
- Pending completion of the UK's trade arrangements, UK goods would attract higher WTO tariffs in third countries than goods from EU Member States. This applies equally to EU goods being imported to the UK which would also be subject to WTO tariffs.
- The WTO rules on services have a narrow scope. This would impact the UK's ability to export services to the EU. For example, the loss of "passporting" rights would mean financial institutions using a London hub to export financial services to rEU would need to consider restructuring or relocating operations to within rEU to continue to service rEU markets – and vice versa for financial institutions based in rEU to export to the UK.

Will Brexit release UK businesses from EU regulations?

- EU law has become integrated with UK law so, irrespective of any policy changes the Government may wish to make, the UK will need to audit its existing legislation and introduce amendments, supplements and replacements to ensure that its laws continue to function as intended on Brexit. This will be a significant undertaking. As a practical matter, the initial focus is likely to be on maintaining the effective operation of existing regulation, rather than amending or reducing it.
- Any decision of the UK to remove the application of a specific EU regulation will depend on a number of factors, from policy to practicality. The UK will need to ensure that it continues to have adequate regulation on key policy areas going forward, e.g. health and safety at work, food and product safety, consumer protection, workers' rights, managing risk within financial services. The extent of potential divergence from current EU rules will depend on whether the Government considers this politically acceptable or that it would enhance its policy objectives.
- Going forward, as EU laws evolve, the extent of divergence from UK law will become an increasingly hot topic. Businesses that trade with the EU are likely to want one set of standards to comply with and therefore wish UK/EU standards to remain aligned. In particular, the financial services sector is likely to be seeking to demonstrate "equivalence" in order to exercise any rights it may have under a "third country" regime. However, automatically adopting new EU rules (without influencing them) would seem at odds with the political rationale for Brexit, which may drive a focus on increasing divergence.
- New laws and regulations will need to comply with the UK's constitutional arrangements and will face parliamentary scrutiny and process. With all laws being made by the UK Parliament on all aspects of regulation, this will place increasing demands on parliamentary time and resources, e.g. for drafting legislation.
- The interests of business in the legislative process will vary by sector depending on its reliance on current EU rights and regulation, for example, the ability to share data across a UK/EU border or to recruit staff from other EU countries. Business should engage to ensure that its interests are reflected in any new policy agenda.

What should you do?

- Implement your contingency planning – or if you have not conducted contingency planning then move swiftly to do so. Key elements to be considered include:
 - establish an internal team to analyze business impact
 - agree communications programme, internal and external
 - audit reliance on EU laws, scale of EU workforce and profile of EU customer base
 - assess implications for material contracts and supply chain/product terms
 - create a monitoring and response structure.
- Identify any transaction which is in the process of negotiation or implementation and which could be impacted by Brexit, its market impact or consequences. Urgently review whether it might be jeopardized or if any change of strategy is required.
- Businesses dependent on EU authorizations or rights to operate across an EU/UK border e.g. passporting rights for financial services, should act now to take or implement advice on structuring options, including on where to go and what needs to move there.
- The business and legal landscape could change significantly. It will be vital to understand fully the areas of sensitivity for your business by establishing a monitoring structure and being responsive.
- Business should engage at an early stage in analyzing which of its priorities it needs to be on the UK Government's renegotiation agenda (including priority countries for negotiating replacement free trade deals) and then take action to make that happen, through engaging with policy and advocacy lawyers, lobbyists or through trade associations.
- In negotiating the terms of a new deal with the EU and any other third countries, the UK Government will need to make compromises – engage early to ensure that it is not your sector or interests which are compromised.
- **Ask these five key questions to inform your strategy on policy engagement:**
 - Which current or planned EU laws do we rely on to conduct our business and how can we secure those rights going forward?
 - Are any of the planned EU policy initiatives likely to deliver opportunity or risk to our business – can we influence those from outside the EU by engaging with Brussels?
 - Which of the UK's laws facilitate or impede our business and what is the UK Government's policy position likely to be in relation to those?
 - Which of the markets we trade with currently have a free trade agreement in place which we should seek to have replaced?
 - Are there trading arrangements with other external markets which would create new opportunities which the UK should prioritize?

How can we help?

Analysis, Tools, Monitoring, Implementation

We have conducted an in-depth analysis of how Brexit could affect different industry sectors and worked with a range of clients to develop their contingency planning. We understand the range of issues and responses. We can guide you on how to optimize your business position.

As the legal landscape emerges from the referendum fog, we can alert you to relevant developments and advise on navigating the new opportunities and challenges it will deliver.

The UK is the epicentre of the decision on Brexit, but it will affect businesses in the EU and around the world. We have a global network of experienced lawyers who can advise on the legal implications.

We offer advice across the range of support which business will need going forward, through the contingency planning phase to implementation and delivery – from policy and advocacy input on helping shape the new legal landscape to the contract review and re-negotiations required to re-set your trading relationships to reflect the changing commercial context.

We can provide packages designed to meet your needs from using self-diagnostic tools to in-depth analysis of structural options.

Please get in touch at brexit@hoganlovells.com if you would like more details.

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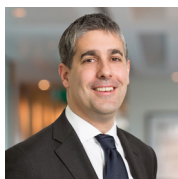
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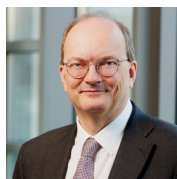
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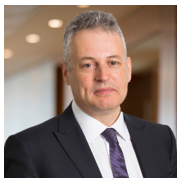
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