Linklaters

EU referendum overview
March 2016

With opinion polls suggesting a close result, businesses are paying increasing attention to the risks of the UK voting to leave the EU.

But many companies have not yet done detailed assessments or scenario planning on the possibility of the UK withdrawing from the EU. Doing so is made difficult by the lack of a blueprint for what would follow the UK's exit from the EU.

What is clear is that a vote to leave would trigger great political, legal and economic uncertainty for the UK and potentially the EU as well. The terms of withdrawal would have to be negotiated after the referendum and it is unclear how far current arrangements could be preserved, or what transitional provisions there would be.

Businesses may also be affected by change in the UK's trading relationships outside the EU since the UK would no longer be within the scope of the EU's free trade agreements with third countries such as South Korea.

2016

19 February
EU-UK reform package agreed.
UK Government is to prepare reports on the implications of EU membership and possible alternatives.

15 April
"Referendum Period" starts. Anyone spending >£10,000 on campaigning in this period must register.

26 May
"Purdah" period starts – restrictions on official information to public and spending of public funds on campaigns/materials.

23 June
The referendum question: "Should the UK remain a member of the EU or leave the EU?"

IN

OUT

What should companies do before the referendum?

A vote to leave the EU would be the beginning of a long process and many of the potential issues will not crystallise immediately following the referendum. Agreeing to withdrawal terms under Article 50 of the Treaty on the European Union could take two or more years – and finalising a new relationship could take much longer.

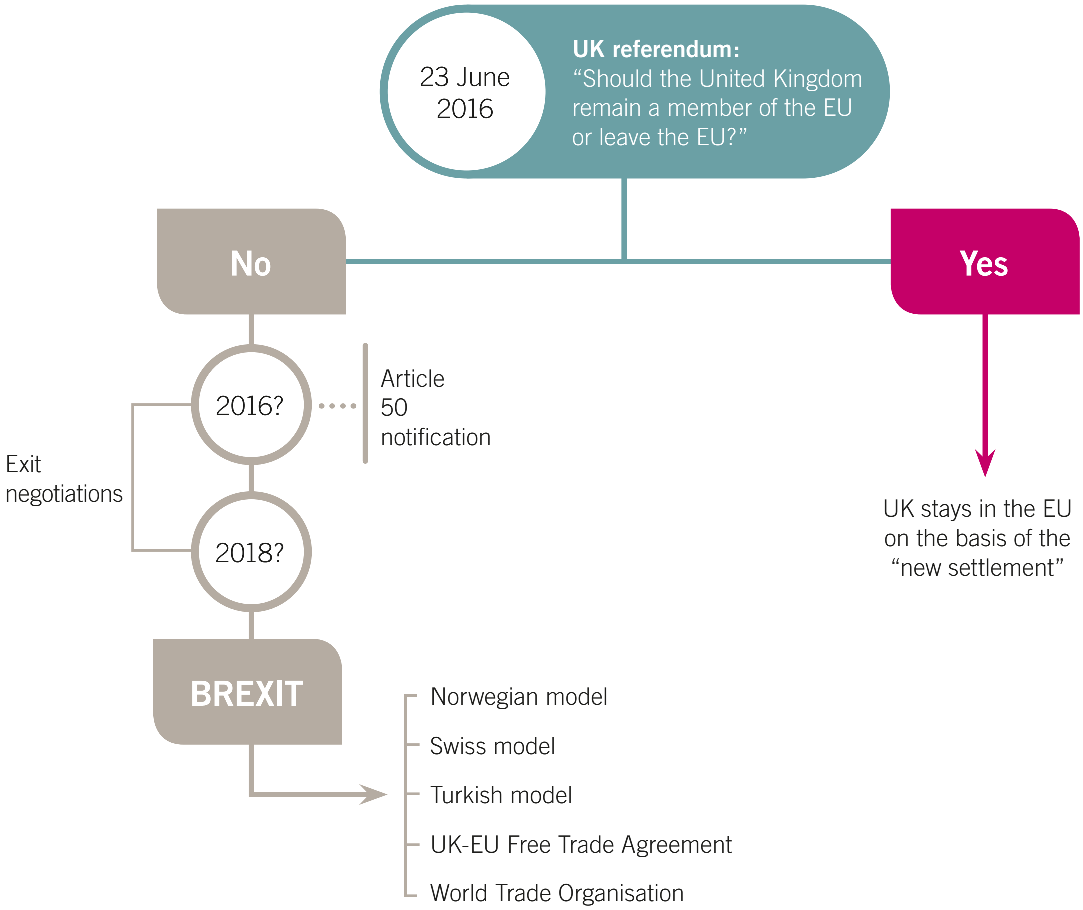
Issues for businesses to consider before the referendum include:

> Media pressure or the expectations of investors, regulators and other stakeholders may require companies to explain the materiality of the risks to their company's business in the run up to the referendum.

> Boards may feel that they have a responsibility to their company or to employees (especially those in the UK who have the right to vote), to engage in the campaign process – whether by speaking publicly about their evaluation of the impact of Brexit or by directly supporting one of the campaigns. Consumer facing businesses are likely to be wary of taking sides and companies (and individuals) considering supporting either side in the campaign need to beware of the rules regulating campaign expenditure and donations to political organisations.

> There could be increased currency and capital markets volatility before the referendum and immediately upon a vote to leave and companies may wish to take steps to hedge themselves.

> Business may have a role in helping to define goals for negotiations following a vote to leave and the time for setting these goals may be limited.



In – a "new settlement" for the UK

On 19 February 2016 EU leaders agreed a deal which will apply only if the UK decides to stay in the EU. The agreed package of measures covers four areas:

Competitiveness

Continue to promote the single market and trade while cutting unnecessary regulation

Economic governance

Protect interests of the non-Eurozone countries including recognition that they should not have to bail out Eurozone states

Sovereignty

Enhance role of national parliaments by allowing those representing 55% of EU population to halt legislation. Exempt UK from further political integration under "ever closer union"

Immigration/social security

Enable benefits to be restricted to reduce excessive immigration

Out – if the UK votes to leave, what happens next?

Vote to leave does not equal immediate departure; the UK government will have to serve a withdrawal notice to the European Council

- This will be followed by a negotiation of the withdrawal agreement with the other member states, where the UK will have to negotiate its future relationship with the EU
- The actual withdrawal will occur once a withdrawal agreement is reached or automatically after two years following the notice of withdrawal unless all member states agree otherwise
- Upon withdrawal, clarity will be needed as to which EU laws will continue to apply in the UK
- The process of disentangling UK legislation from the EU and filling the gaps in terms of both legislation and supervisory capability (eg, financial regulation, competition law) would be complex
- The UK government has no official contingency plan for a UK exit. The Bank of England is likely to have a contingency plan for the foreign exchange and capital markets
- Any new agreement on trade co-operation between the UK and the rest of the EU would require the agreement of each of the remaining 27 states. Ratification in accordance with their national rules may also be required. In Belgium, for example, this means approval by all seven of its parliamentary chambers

Being part of the EU means being part of the EU Single Market and benefitting from the four fundamental principles of the EU: freedom of movement of goods, services, people, and capital, as well as freedom of establishment. It is as yet unclear what the relationship between the UK and the EU would be post-exit. If the UK does not manage to negotiate access to the Single Market on the same terms as it has now, EU-UK cross-border services and trade may be inhibited.

	What will Brexit mean?	Who will be affected?
Free movement of people	The rights of EU citizens to live, work and study wherever they wish in the EU may no longer apply to UK citizens or to other EU citizens in the UK. This will be a concern for businesses who rely on multi-national recruitment as well as for individuals and their families who are affected.	Large multi-nationals with an international workforce, and also public services and smaller employers in the UK who depend on EU migrant workers. Any new UK immigration controls would be likely to particularly affect lower earners. The rights of UK citizens to live and work elsewhere in the EU may also be affected.
Free movement of services and of establishment	Possible restrictions on the ability of UK businesses to establish themselves, and on businesses and individuals providing services, in other EU member states.	Many financial services businesses operate across the EU on the basis of passported authorisations for banking, investment management or other financial services. Loss of such rights could mean relocating or reorganising businesses, the need to obtain new licences and increased compliance burdens.
Free movement of goods	New barriers could be imposed between the EU and the UK – for example, tariffs, import licences, product bans, additional technical requirements or other restrictions.	Any manufacturer or other business reliant on importing components or exporting finished products to or from the EU and the UK. Increased costs may result in increased prices and reduced competitiveness.

What are the commercial and economic implications?

UK-EU trade: Given the high levels of trade between the UK and the EU, it is unclear how a UK exit from the EU will impact trade between the UK and the EU. This will depend on what the UK would be able to negotiate post-exit.

UK trade with non-EU countries: the EU's trade agreements with third countries such as South Korea would no longer benefit UK businesses, affecting trade and investment in those countries. Terms governing the UK's political, economic and legal interactions with third countries will need to be negotiated.

Economic growth and employment: A potential UK exit from the EU is likely to trigger significant macroeconomic uncertainty at least until it is clear what the UK's future relationship with the EU will be. The impact on jobs is uncertain but likely to be negative at least in the short run after an exit vote as companies are likely to hold off investment until there is economic and political clarity. Those EU countries that have closest trading ties with the UK, such as Ireland and the Netherlands may be particularly affected.

Currencies: Sterling is already under pressure because of Brexit concerns. If the UK votes to exit the EU, this may exert further pressure on both the pound and the euro.

Geopolitics: there may be further fragmentation in the EU following a UK exit as it may invigorate anti-EU movements in other countries. It is also possible a further referendum would be held on Scottish independence from the UK.

> "A vote to leave... would begin a period of uncertainty, of unknown length, and an unpredictable outcome."
>
> **HM Government**, 29 February 2016

UK – December 2015

	Exports (% of total)	**Imports** (% of total)
EU member countries	£10.4bn (38%)	£17.0bn (55%)
Non-EU countries ("third countries")	£17.1bn (62%)	£14.0bn (45%)

Source: HM Revenue & Customs

How would UK laws be affected?

Regulatory and compliance burdens are likely to increase for many businesses if the UK withdraws:

> If it left the EU, the UK would no longer be bound to implement EU laws. However, opportunities for deregulation in the UK may be limited by the need to maintain equivalent rules so that businesses still have the right to trade or provide services

> To avoid a regulatory vacuum, many EU regulations that currently have direct effect in the UK will have to be transposed into English or Scottish law. This is likely to mean a period of transition in which businesses and their advisers will face uncertainty as to what will replace the old rules and whether the new ones are substantially different or not

> A large number of laws based on EU directives may also need to be reviewed to ensure they can still operate properly if the UK is outside the EU

> Divergence between the UK and EU law in areas that were previously harmonised may result in increased compliance burdens for businesses that operate on a cross-border basis

Some further questions for businesses to consider:

> Will inward investment into the UK be reduced?

> How much would changes in the economic performance or prospects of the UK or of other member states (either individually or the EU as a whole) affect our prospects?

> How will our workforce be affected?

> Will our costs of capital increase?

> How will the markets in which we operate and our contractual counterparties be affected?

> How will existing contracts be affected and would standard terms need to change?

> Would the likely future direction of EU policy and regulation be altered by the loss of British influence?

> How much time and resource would we have to devote to understanding and managing the legal and commercial consequences of the UK leaving the EU?

Trade-offs – the alternative models for the UK outside the EU

The UK Government's analysis, required by the EU Referendum Act, of the alternative models represented by Norway, Switzerland, Canada and Turkey, or reliance on World Trade Organisation membership, was published on 2 March 2016. This points to the trade-offs that might be required:

> To retain access to the single market – the UK would need to accept free movement of people, and accept EU rules, without having a vote on those rules. Co-operation on areas such as crime would not be guaranteed. Budget contributions would still be required.

> Free trade agreements – these would not necessarily involve the same level of obligations to comply with EU standards but would mean UK companies would have reduced access to the single market for services and higher costs. There would be no guarantee that the UK could replicate the EU's current free trade arrangements with 53 markets outside the EU.

> Loss of influence – on any of the alternatives, the Government foresees loss of influence for the UK in the world.

Further information

If you would like further information, please do not hesitate to contact us or get in touch with your usual Linklaters contact.

March 2016

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