

Linklaters

Brexit: assessing the impact



How do we analyse the impact of Brexit on our business?

Naturally the impact of the UK leaving the EU will be different for every company and will depend on the sector and type of your business, and where your headquarters, operations, supply chain and customers are based. Assessing the potential impact involves detailed analysis on an activity by activity basis (for both core business streams and support operations, such as data centres). Negotiations on the withdrawal arrangements under Article 50 of the Treaty on European Union could take two or more years – and achieving a new settlement could potentially take much longer.

It is not clear to what extent the UK would continue to be part of the single market. A bespoke agreement under which some current arrangements might be preserved is possible, but for risk assessment purposes the most prudent course may be to assume a “clean break” without even transitional provisions to cushion the effects of change. In this scenario, the UK might leave the EU in 2018 without having established any special relationship with the EU. It would then be completely outside the EU’s single market and also may not benefit from free trade agreements with third countries, until such agreements can be negotiated.

Examples of specific issues to consider include:

- > How dependent is the business on the ability to move employees from the UK to other parts of the EU and vice versa?
- > How much of the business involves movement of goods between the UK and the rest of the EU and vice versa?
What kinds of goods?
- > Assuming WTO tariffs have to be applied to the export and import of goods between the UK and the rest of the EU, what will the impact be on exit?
- > Where are the key hubs in our supply chain? Will the supply chain reliability/efficiency be affected by the imposition of tariffs or delayed by custom checks?
- > Do we supply parts for products being manufactured in other member states? If so, will the UK leaving the EU impact upon the ease and cost of distributing our goods to the end producer?
- > How much of the business involves provision of services from the UK to other parts of the EU and vice versa?
- > Do services we provide depend on the existence of a passport and is the UK the home state for passporting purposes?
- > Do we need to relocate staff and operations to somewhere else in the EU to continue providing services? Are we able to use an existing authorised entity to do so or will we need to apply for new authorisations?
- > How dependent is the business on the ability to move capital and make cross-border payments between the UK and the rest of the EU?
- > How dependent is the business on the ability to transfer data from the UK to other parts of the EU or vice versa? How easily can we reorganise our data centres to remain compliant with EU data sovereignty rules?
- > Is the business reliant upon any EU protection not replicated at UK level? eg EU trademark, design or patent protections. Can we replicate those protections through other means/registrations?
- > Will we lose potentially significant remedies and protections, such as the ability to appeal against discrimination in the allocation of public procurement contracts?

- > How dependent is the business on EU grants or subsidies?
- > Will the prospect of inward investment into the UK be reduced?
- > What EU sector regulation is the business currently subject to, and how does the position of businesses established in third countries compare with the position of EU established businesses under that regulation?
- > Will there be a change in the way our business/sector is regulated in the UK? Will there be a change in the way it is regulated elsewhere?
- > To what extent does the business raise finance or access the capital markets in the UK (in the case of non-UK businesses) or elsewhere in the EU (in the case of UK businesses)?
- > Do we have suppliers, customers or other contractual counterparties whose businesses would be severely affected?
- > Does the business have operations in a sensitive sector which could be impacted if discrimination on grounds such as national interest was possible as a result of the UK no longer being part of the EU/EEA?
- > Do we need to review our contracts to understand how they might be affected? Is there a risk of disputes over definitions – for example, will a reference to “the European Union” in a contract that was intended to include the UK no longer be construed as applying to the UK after it leaves the EU?
- > Will force majeure provisions or termination rights be triggered?
- > If we have establishments in, or trade with, any third countries under the terms of EU free trade agreements, would we still be able to do so? What barriers would we face if the UK was no longer covered by those agreements?
- > 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 might the business benefit from the UK leaving the EU or from the consequential actions of other businesses or changes to the competitive environment?
- > Do we have anything to gain by the possibility of regulatory change in the UK or would it be necessary to continue to comply with EU laws and standards in order for us to continue to access EU markets?
- > What will be the impact of possible increased divergence in law and regulation between the EU and the UK?
- > Will the likely future direction of EU policy and regulation be altered by the loss of British influence?
- > How much time and resources will we have to devote to understanding and managing the legal and commercial consequences of the UK leaving the EU?

If you would like to discuss any areas of concern during your Brexit planning, please get in touch with your usual Linklaters contact or any of the contacts listed [here](#).

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