



March 2016

## Brexit: the legal implications

With the UK's referendum on membership of the EU due to take place on 23 June 2016, this briefing considers the implications of a vote to leave from a legal perspective.

*This note is only intended as a high level overview of the legal issues and is not intended to imply support for either side in the EU referendum debate.*

### THE PROCESS FOR LEAVING THE EU

The UK government has stated that in the event of a vote to leave it would invoke the procedure under Article 50 of the Treaty on European Union, which permits any EU Member State to withdraw from the EU. Article 50 would also oblige the EU to negotiate and conclude a new agreement with the UK, setting out the arrangements for withdrawal (a "**withdrawal treaty**" or "**WT**").

It is possible, however, that the UK could attempt to achieve a negotiated exit rather than invoke the Article 50 procedure. Indeed, this is the route advocated by some supporters of Brexit on the grounds that it would allow more flexibility - although it would also require agreement from the remaining countries of the EU ("**rEU**"). The framework for the UK's future relationship with the EU would be a matter for negotiation.

Under Article 50, the EU Treaties will cease to apply to the UK on the expiry of a period of **2 years** from the date the UK formally notifies the EU of its decision to leave, or the date on which a WT is concluded, if earlier. During this 2-year period, the UK's full EU membership status would continue, save that the UK's representatives on the

European Council (the PM) and on the Council of Ministers would be excluded from any negotiations on the UK's WT.

### Vested rights

In theory, once the UK leaves the EU, UK citizens working in Europe would lose their automatic right to do so, British farmers would lose their EU subsidies under the Common Agricultural Policy and so on.

The Withdrawal Treaty negotiated with the EU should deal with issues such as these, but in the absence of such an agreement, the UK could seek to rely on the argument that British citizens and businesses in the EU nevertheless continue to enjoy "vested rights" under international law. Whatever the outcome, given the length of time it would take to negotiate the UK's exit from the EU, it seems likely that there would be a prolonged period of uncertainty for individuals and businesses in their dealings with Europe.

### 2 years: enough time to agree Brexit?

If at the end of the 2-year period, the WT has not been concluded, and/or the UK needs extra time to implement new domestic legislation to replace EU law, Article 50(3) allows for an extension - although only with the unanimous agreement of the European Council. Obviously, if an alternative exit mechanism has been agreed, then there could be more flexibility on a timetable.

As to whether 2 years is enough time, much would depend on what model the UK has in mind for its post-Brexit relationship with the EU (see below). When Greenland left the EU, exit negotiations took almost 3 years – but a UK exit would raise far more difficult and complex issues.

The UK government, which favours remaining in the EU, has said that the full process of negotiating our exit from the EU, our future relationship with the EU and replacement trade deals with non-EU territories could take a decade or more. For example, the EU-Canada trade deal alone took over 5 years to negotiate and is still not in force.

## THE IMPACT ON UK LAW

Although views differ on the exact percentage, a significant proportion of UK law is based on EU legislation or case law. It would be wholly impractical to provide that all such laws would cease to have effect upon Brexit, since this would leave a massive legal and regulatory vacuum.

It is therefore probable that much of EU law would need to be retained, at least on an interim basis; indeed one of the pro-Brexit campaigns, "Vote Leave," proposes incorporating all relevant EU law into UK law, pending a detailed review to decide which laws to keep and which to repeal or amend.

In view of the above, the immediate repeal of the European Communities Act 1972, which provides the basis for the application of EU law in the UK, appears unlikely – although ultimately, it will need to be amended or repealed so as to reflect the UK's post-Brexit relationship with the EU (once this has been agreed).

## Brexit: a deregulatory dividend?

Depending which model was adopted for its post-Brexit relationship with the EU, the UK could have greater freedom to pursue deregulation and reduce costs for business. However, this "Brexit dividend" may prove challenging to deliver in practice:

- In significant areas, the UK may conclude that it is preferable to retain existing standards –

particularly in relation to markets such as financial services, where a "race to the bottom" could have an undesirable impact on market stability/reputation. Moreover, business trading with rEU will still have to comply with relevant EU standards and regulations, even if a more "light touch" approach is adopted in the UK.

- Some reforms may encounter significant domestic political opposition, especially given the current UK government's slim majority.
- Replacing EU law with domestic law is likely to take up considerable time and resources, as it will involve reviewing many thousands of existing UK and EU laws. It would effectively be a reversal of the process undertaken by other Member States when joining the EU of transposing the EU "acquis" into their own national law - a task which took the newest Member State, Croatia, over 5 years to complete. The process of "de-Europeanising" UK law could take significantly longer.

## THE ALTERNATIVES TO EU MEMBERSHIP

### "Half membership"

Some pro-Brexit campaigners argue that the UK should use a vote to leave to negotiate some form of special status within the EU, which confers the benefits of membership, access to the single market (**freedom of goods, services, persons, and capital**) and a seat at the negotiating table, along with an opt-out on rules which are considered to be incompatible with UK interests.

Such special status would require fundamental Treaty change agreed to by all Member States (many of which would need to hold referenda to ratify the outcome). The intensive negotiations undertaken by the Prime Minister for a much more limited new EU deal (see agreement [here](#)) suggest that this option may encounter significant opposition. Since such a deal would also involve remaining in the EU, not leaving, a second UK referendum may be required in order to secure a democratic mandate to proceed.

## A customised relationship

This is a cherry-picking option, enabling the UK to choose which EU policies it will adopt, but without full membership rights and obligations. For example, the UK might request access to the internal market in all areas except for the free movement of people and seek to be free of the Common Agricultural Policy and the Common Fisheries Policy. This cherry-picking approach may be resisted by EU institutions, but if it succeeded, rEU would likely require the UK to adhere to relevant EU legislation, without the right to vote on it, and to make a significant financial contribution (as is currently the case for Norway and Switzerland).

## EEA membership – the Norway option

The UK could try to join the EEA, which currently allows Liechtenstein, Iceland and Norway to participate in the internal market without the obligation to participate in EU policies on agriculture, foreign policy etc. To do so, it would also have to re-join the European Free Trade Association ("EFTA") (see below). The EEA/EFTA framework already exists so would avoid the need to negotiate a customised relationship (as above).

However, existing EEA members could veto the UK application, as Norway did when Slovakia attempted to join. If the UK was unable to join EFTA, it could potentially still seek a deal with the rEU on identical or very similar terms to the EEA Agreement. In return for the internal market freedoms, non-EU EEA countries are obliged to apply a significant proportion of EU legislation (without the power to vote on it) and make a significant financial contribution to the EU.

The EEA option therefore implies some loss of sovereignty and would not solve the UK's freedom of movement concerns, but would maintain access to the single market and reduce the UK's exposure to EU budget contributions somewhat. The EEA is not part of the customs union, so the UK would have to re-establish customs controls at borders (including with the Republic of Ireland). The UK would also lose the benefit of EU trade deals with other countries, such as the US, on which the UK relies extensively.

## EFTA membership

The UK was part of EFTA until it joined the EU in 1973. Switzerland remains a member of EFTA, and not the EEA, but as noted below, it has negotiated a series of bilateral agreements with the EU outside the EFTA framework because there is very little substance to the Free Trade Agreement ("FTA") between EFTA and the EU. The EU-EFTA FTA covers only trade for some fish and agricultural products and does not cover services at all (the greater part of the UK's exports to the EU).

*"In return for single market freedoms, EEA countries, such as Norway, must apply a significant proportion of EU legislation."*

## The Swiss option

Switzerland is a member of EFTA, but not the EEA, and has negotiated about 100 bilateral agreements with the EU, although none of these concern financial or other services. In areas covered by bilateral agreements, Switzerland has had to incorporate EU law and make a financial contribution to the EU (around 55% of the per capita UK contribution). However, the EU is unhappy with the Swiss model, partly as a result of recent Swiss restrictions on freedom of movement, and is trying to negotiate a new stricter agreement as a quid pro quo for Swiss access to the single market. So the current Swiss model may not be available to the UK.

## EU customs union – the Turkish model

Turkey and the EU are bound by an association agreement that includes a customs union, which eliminates internal tariffs and requires participating countries to agree common external tariffs. The UK would have to follow tariffs made by the EU, and would have limited access to the single market unless the agreement covered services (which the Turkish model does not) nor access to FTAs negotiated by the EU with other territories.

## Rely on WTO rules

The most radical form of "de-coupling" from the EU would be for the UK to simply trade under World Trade Organisation ("WTO") rules which set limits on the maximum tariffs on the trade in goods. WTO rules would put the UK on the same level as other third countries such as Russia and China in terms of tariffs applicable. The UK would of course be free to agree more favourable trading agreements with other countries/trading blocs, including the EU.



However, attempting to negotiate additional FTAs with non-rEU countries in parallel to exit negotiations with the rEU would be a lengthy and challenging exercise for the UK Civil Service, which also lacks experienced trade negotiators (as trade deals are currently negotiated by the EU).

### UK-EU FTA – the Canadian option

Some supporters of Brexit have advocated a UK-EU trade deal based on Canada's deal with the EU. If this was used as a model, it might take less time to finalise than some trade deals, which typically take many years to negotiate. However the Canadian deal does not cover services, which account for the majority of the UK's trade with the EU. It would be likely to take some time to reach agreement with the EU on this aspect.

## How might Brexit negotiations play out?

If the referendum resulted in a very narrow vote in favour of Brexit, negotiators may not feel that they have a mandate to pursue some of the more radical

options outlined above. Against that, the less radical options make it more difficult to deliver on campaign promises to restore sovereignty/control to the UK, because they are likely to involve retaining a higher proportion of EU-derived law.

A UK request for a particularly favourable, "cherry-picking" deal may meet resistance from rEU countries on the grounds that it would be difficult to sell to their own electorates. They may also be concerned that such a deal could encourage other countries to leave, thus potentially undermining EU stability (at a time when it is under strain due to the euro and migration crises).

Some proponents of Brexit advocate a more gradual, "phased" de-coupling from the EU. For example, one suggestion is to pursue an EEA-style deal as an interim measure, but with the intention of moving towards an FTA model over the longer term. This appears to be a minority view at present amongst pro-Brexit campaigners. However, it could gain traction if, for example, a leave vote triggers an adverse market reaction based on concerns about the "shock" of a rapid transition to one of the more radical Brexit options.

## CONCLUSION

Pro-Brexit campaigners are correct to point out that on the day after a vote to leave, nothing would change in terms of the UK's legal position. However, at the time of writing (March 2016), it was still unclear what the UK's post-Brexit relationship with the EU would be.

In the short term, the main practical impact may be that businesses, together with their trading partners and investors, will tend towards postponing key strategic initiatives until the referendum is over – and in the event of a vote to leave, possibly until the shape of the UK's post-Brexit relationship with the EU has become clearer (although this could take some time).

Given the current level of uncertainty, it is probably difficult to make very detailed contingency plans at this stage. However, the table below highlights some of the legal issues which businesses may wish to start considering.

*NOTE: The following assumes that the UK pursues a Brexit option which gives it significant freedom from existing EU rules.*

BREXIT: POTENTIAL LEGAL IMPLICATIONS	
CONTRACTS	<ul style="list-style-type: none"> <li>● <b>Contracts referring to the EU/EEA or EU legislation:</b> Brexit may necessitate the review/amendment of contracts referring to the EU/EEA as a territory or to EU legislation, particularly where it was assumed that the UK was included within the EU/EEA or that EU legislation applied.</li> <li>● <b>Risk of termination etc:</b> Potential for Brexit to act as a trigger for exercise of termination, force majeure, "material adverse change" or variation/"change control" rights.</li> <li>● <b>Jurisdiction and disputes clauses:</b> Brexit is likely to create uncertainty over the treatment of jurisdiction and disputes clauses, particularly for contracts with parties based in rEU (see Disputes below).</li> <li>● <b>Express Brexit provisions:</b> Options include (i) expressly including or excluding Brexit from termination/force majeure provisions (ii) giving the parties termination rights exercisable on Brexit and/or (iii) providing for an alternative mechanism applicable on Brexit. However, as the precise consequences of Brexit are unclear at this stage, such provisions may be difficult to draft other than in fairly general terms.</li> </ul>
COMMERCIAL/TRADING LAW	<ul style="list-style-type: none"> <li>● <b>Deregulation:</b> Brexit without EEA membership (or similar arrangements requiring adherence to EU single market legislation) would create the potential for the UK to pursue a more deregulatory agenda in a wide range of areas often considered burdensome for business, such as consumer protection, safety and standards, product liability and environmental law.</li> <li>● <b>2 sets of rules:</b> Such deregulatory measures would primarily benefit businesses focussed on the UK domestic market or on exporting to non-rEU countries; businesses trading with the rEU, however, would have to comply with two potentially divergent sets of rules (which could increase the regulatory burden on those businesses).</li> <li>● <b>International standards:</b> Where internationally agreed standards are relevant (as is often the case in relation to product regulation, for example), the UK government may decide that it is preferable to retain those standards. In any case, contractual obligations may mean that businesses cannot avoid compliance with such standards.</li> <li>● <b>Policy issues/political opposition:</b> Where deregulation would imply a lowering of standards/levels of protection, this may ultimately be considered undesirable in policy terms and is also likely to meet political opposition from e.g. consumer groups and others.</li> <li>● <b>Administrative challenges:</b> Significant reform to trading regulation would be challenging to deliver in terms of time and government resources, as detailed consultation would be required on numerous, highly complex areas of law, which cannot simply be abolished "wholesale" (such as EU-derived laws regulating chemicals, water, waste, air quality and other environmental issues).</li> </ul>
COMPETITION	<ul style="list-style-type: none"> <li>● <b>Merger control:</b> Certain transactions would no longer benefit from "one stop shop" merger control review under the EU Merger Regulation and would therefore potentially face additional scrutiny from the UK Competition and Markets Authority (CMA).</li> <li>● <b>Vertical agreements:</b> Brexit would potentially allow absolute territorial protection (currently prohibited under EU law) to be granted to distributors in the UK - although depending on the context, such agreements could still be subject to challenge under post-Brexit UK competition law.</li> <li>● <b>UK competition law (abuse of dominance, cartels etc):</b> Brexit would probably lead to more enforcement action by the CMA, as it would have sole jurisdiction in the UK (but would often be enforcing alongside the European Commission in relation to</li> </ul>

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	<p>e.g. Europe-wide cartels). On Brexit, the UK could potentially choose to diverge from EU competition law, although it seems to us unlikely that this will be a priority area for reform.</p>
<b>FINANCIAL SERVICES</b>	<ul style="list-style-type: none"> <li>● <b>Scope for change/ repeal:</b> A significant proportion of UK financial services regulation is derived from EU legislation, some with direct effect which could fall away automatically (e.g. MAR), while the UK will potentially gain the ability to repeal or modify others. This will cover AIFMD, MiFID, CRD IV, the AML regime (and many others), possibly involving grandfathering arrangements pending implementation of new domestic rules in these areas.</li> <li>● <b>Passporting rights:</b> The potential loss of passporting rights for UK firms operating in rEU and rEU firms into the UK; this could prompt financial institutions to establish new regulated entities in rEU.</li> <li>● <b>UCITS funds:</b> Potential disruption to UCITS funds which must be domiciled in the EU, subject to transitional arrangements agreed between the UK and rEU.</li> <li>● <b>Flexibility:</b> Brexit would potentially allow greater flexibility in relation to EU measures such as the “bonus cap”, capital requirements under the CRD IV regime or fund management and marketing rules under the AIFMD.</li> </ul>
<b>COMPANY/SECURITIES LAW AND M&amp;A</b>	<ul style="list-style-type: none"> <li>● <b>Company law:</b> Companies Acts deeply embedded and likely to remain largely in place despite extensive derivation from 4<sup>th</sup> Company Law Directive.</li> <li>● <b>Capital markets:</b> UK capital markets regime (in particular the Prospectus Rules and the Disclosure and Transparency Rules) largely derived from EU Directives and susceptible to reform but unlikely to be replaced wholesale.</li> <li>● <b>Takeover Code:</b> Likely to remain in place since it mostly pre-dated the EU Takeovers Directive and is widely accepted.</li> <li>● <b>Passporting rights etc:</b> Potential loss of "regulated market" status and prospectus passporting rights, although continued compliance with European standards applicable to regulated markets will facilitate capital raising across Europe post Brexit.</li> <li>● <b>Merger clearance:</b> Obtaining merger clearance for certain transactions could become more onerous (see "Competition" above).</li> <li>● <b>Prospectuses etc:</b> Brexit risk factors may appear in capital markets documentation.</li> </ul>
<b>TAX</b>	<ul style="list-style-type: none"> <li>● <b>Policy:</b> UK would regain the freedom to determine its own tax policy in the areas subject to EU law, such as those highlighted below.</li> <li>● <b>VAT:</b> VAT is a European tax but implemented by domestic law. UK would be free to decide whether to repeal, amend or retain existing VAT legislation. If repealed, likely to be replaced by another form of sales tax as VAT represented 22% of annual tax revenue in 2014/15.</li> <li>● <b>Customs duty:</b> Customs duty (currently imposed directly by the EU Customs Duties Regulation) would fall away, requiring UK to introduce its own customs duties and enter into a customs agreement with rEU.</li> <li>● <b>Barriers to trade etc:</b> There are a number of EU direct tax directives implemented into domestic law which remove tax barriers to trade, e.g. dividend withholding tax between group companies under the Parent Subsidiary Directive, which would be subject to review. However, UK companies may lose withholding tax protections where not covered by double tax treaties.</li> <li>● <b>Other potential changes:</b> UK would have freedom to: <ul style="list-style-type: none"> <li>- simplify areas of the UK tax code e.g. controlled foreign company rules;</li> <li>- give tax breaks for specific industries without having to satisfy the requirements of the EU state aid rules (see below); and</li> <li>- charge capital duty on issue of shares and SDRT on transfers of shares into clearance services (currently prohibited by Capital Duties Directive).</li> </ul> </li> </ul>
<b>FINANCE/ RESTRUCTURING AND INSOLVENCY</b>	<ul style="list-style-type: none"> <li>● <b>Insolvency Regulation:</b> Increased risk of competing insolvency proceedings in rEU as a result of loss of rule requiring EU recognition of UK insolvency proceedings. Increased uncertainty for English insolvency practitioners seeking the assistance of</li> </ul>

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	<p>courts in rEU.</p> <ul style="list-style-type: none"> <li>● <b>Mutual recognition:</b> Potential loss of automatic EU recognition of UK judgments. This could make the English law scheme of arrangement procedure a less attractive restructuring option for overseas companies in rEU.</li> <li>● <b>Financial Collateral Directive:</b> UK Regulations implementing the Financial Collateral Directive would remain valid but the recognition of English law financial collateral arrangements elsewhere in the EU would be uncertain.</li> <li>● <b>Currency risk:</b> Risk of intense currency fluctuations, making it more difficult for parties to meet unhedged payment obligations denominated in other currencies (and in an extreme scenario, resulting in capital controls).</li> </ul>
<p><b>EMPLOYMENT LAW/EMPLOYEE INCENTIVES</b></p>	<ul style="list-style-type: none"> <li>● <b>What will be kept:</b> Many employment rights which derive from EU legislation have been enacted in domestic legislation so will likely remain, such as discrimination and family-friendly employment rights.</li> <li>● <b>Works councils etc:</b> Scope for reform in some areas considered unduly burdensome on business, such as works councils and collective consultation obligations (subject to agreement with Trade Unions which may be politically difficult).</li> <li>● <b>Working time etc:</b> Opportunity to reform regimes perceived to lack certainty and create unnecessary burdens and costs for business, such as working time, holiday pay and equal treatment for agency workers.</li> <li>● <b>Immigration:</b> Depends on the model adopted post-Brexit but “full” Brexit would involve freedom of movement restrictions – EU nationals would potentially be subject to the same visa restrictions as non-EU nationals.</li> <li>● <b>Employee share offers:</b> Potential impact on employee share offers if current exemptions under Prospectus Rules cease to apply (subject to grandfathering).</li> </ul>
<p><b>PENSIONS</b></p>	<ul style="list-style-type: none"> <li>● <b>Economic effects:</b> The most immediate implications for pension schemes (and sponsoring employers of defined benefit schemes) are in relation to the economic effects of a Brexit (or even a possible Brexit) on their asset and liability values.</li> <li>● <b>Employer covenant:</b> The strength of the employer covenant could also be affected: this informs decisions about funding and investment in defined benefit schemes.</li> <li>● <b>Scope for change:</b> A good deal of UK pensions law derives from Europe, including legislation on equality, scheme funding, the Pension Protection Fund and other member protections. The treaty and directive requirements have been transposed into national legislation, so they would not cease to apply on Brexit. Repeals are unlikely but there could be some amendments to ease pressures on employers. Many existing EU laws would still continue to be applied, and if the UK remains an EEA member some new ones too.</li> <li>● <b>New pensions directive:</b> A draft new pensions directive might impose more stringent scheme funding requirements, though the latest draft omitted such provisions. The UK government opposes any new requirements but might be required to implement the directive before a Brexit is completed. The same directive would facilitate cross-border pension provision; a Brexit would make it more difficult.</li> <li>● <b>Tax treatment:</b> The tax treatment of pension contributions, investment returns and benefits would not be affected. If there is a Brexit, HMRC may find it easier to allow employers to reclaim VAT paid on their scheme’s investment management fees.</li> </ul>
<p><b>DISPUTES</b></p>	<ul style="list-style-type: none"> <li>● <b>Governing law:</b> The UK courts may either leave the Rome I and II rules on conflict of laws in place, or revert to the pre-Rome I and II regime over time. A choice of English governing law will be respected by courts in rEU as they will continue to apply Rome I and II.</li> <li>● <b>Jurisdiction:</b> It is uncertain how rEU courts would approach contracts conferring jurisdiction on English courts, where a counterparty is rEU resident.</li> <li>● <b>Parallel proceedings etc:</b> No bar on parallel proceedings, but English courts regain ability to obtain anti-suit injunctions in relation to rEU proceedings.</li> <li>● <b>Service and enforcement:</b> Service of English proceedings and enforcement of</li> </ul>

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	<p>judgments in rEU are both likely to be less straightforward; judgments of CJEU would no longer be binding in UK.</p>
<b>INTELLECTUAL PROPERTY</b>	<ul style="list-style-type: none"> <li>● <b>EU-wide IP rights:</b> all pan-EU intellectual property ("IP") rights would potentially cease to apply in the UK (such as the Community Trade Mark or "CTM"); this would leave only the UK national rights or reciprocal rights granted by UK law pursuant to international treaty obligations, and could require business to re-apply for protection of their IP. In practice, it is likely that the UK would legislate to preserve these rights as far as possible under any post-Brexit relationship.</li> <li>● <b>EU-wide enforcement:</b> All pan-EU court orders issued by a UK court against IP infringers may cease to apply in the EU, and the UK courts may regard pan-EU orders issued by rEU courts as no longer applying in the UK; similarly rEU enforcement and remedies may become more difficult.</li> </ul>
<b>DATA PROTECTION, IT AND E-COMMERCE</b>	<ul style="list-style-type: none"> <li>● <b>IT contracts and e-commerce:</b> The considerations listed in the contract and commercial law sections above would apply. Other potential areas of change include the application of TUPE to IT outsourcings and the ability to move data between different European operations.</li> <li>● <b>Data protection:</b> UK would be free to diverge from EU data protection law but may conclude that it is preferable not to do so. In particular, if the UK does not remain part of the EEA, it is unclear whether it would be regarded as a 'safe' destination for data transferred out of the EEA; this would be subject to an 'adequacy decision' of the European Commission, which would in turn require the UK to retain a framework of law close to the EU regime.</li> <li>● <b>Reform of EU data protection law:</b> The General Data Protection Regulation ("GDPR"), which will significantly change EU law, is likely to come into effect during 2018; the June referendum and any Brexit negotiations will take place during the 2 year transition period of the GDPR, so businesses will face a difficult choice about whether to delay significant compliance projects.</li> </ul>
<b>REAL ESTATE</b>	<ul style="list-style-type: none"> <li>● <b>Effect of uncertainty:</b> Referendum uncertainty likely to impact operational decisions, such as office moves/major acquisitions or disposals pre-June 23 and potentially for some time after that date in the event of a vote to leave the EU.</li> <li>● <b>"Safe" haven effect:</b> In the event of market instability as a result of Brexit, UK real estate market could benefit from overseas investment looking for a "safe" haven.</li> <li>● <b>London real estate:</b> London real estate likely to remain an attractive quality asset if Brexit goes ahead. Investors may well be attracted to low risk prime real estate in post-Brexit period of adjustment.</li> <li>● <b>Medium term impact:</b> In the medium term, negative economic effects of Brexit may result in reduced rents and letting activity e.g. potentially as a result of large financial institutions and multinationals deciding to relocate some of their operations to rEU.</li> </ul>
<b>STATE AID AND PUBLIC PROCUREMENT</b>	<ul style="list-style-type: none"> <li>● <b>State aid:</b> The UK would have greater freedom to provide subsidies or other forms of state aid to UK businesses - but the ability of the UK government and businesses to complain about state aid in rEU Member States would be diminished.</li> <li>● <b>Public procurement:</b> The UK would be likely to retain some rules on tendering of contracts between the public sector and business but would be free to adopt a more flexible approach and could choose to discriminate in favour of UK suppliers. However, UK businesses would stand to lose the rights they currently enjoy when tendering for public contracts in EU Member States (e.g. to complain about discrimination, unequal treatment etc).</li> </ul>



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## Further reading

The following is a list of some of the materials which we found useful when researching this briefing. It is not intended to be an exhaustive survey and the views expressed do not represent those of Travers Smith LLP, which has no responsibility for the content of these materials or the third party websites linked to.

### PRO-REMAIN

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- [The process for withdrawing from the European Union](#) (HM Government, 2016)
- [Alternatives to membership: possible models for the UK outside the EU](#) (HM Government, 2016)
- [If the UK votes to leave: the 7 alternatives to EU membership](#) by Jean-Claude Piris (CER, 2016)
- [What would 'out' look like?](#) by Pat McFadden and Andy Tarrant (Policy Network, 2015)
- [The UK and EU: Benefits, Misconceptions and Alternatives](#) (Lawyers – In for Britain, 2016)
- [Brexit: what would happen if the UK voted to leave?](#) by Nick Kent and others (British Influence, 2015)

### PRO-BREXIT

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- [A Blueprint for Britain: Openness not Isolation](#) by Iain Mansfield (IEA, 2014)
- [Brexit: Directions for Britain outside the EU](#) by various authors (IEA, 2015)
- [With Friends Like These: Why Britain should leave the EU - and how](#) by David Conway (Civitas, 2015)
- [Lessons from Switzerland](#) by Jonathan Lindsell (Civitas, 2015)
- [The Norwegian Way](#) by Jonathan Lindsell (Civitas, 2015)
- [Flexcit: the market solution to leaving the EU](#) by Richard North (The Leave Alliance, 2016)

### NEITHER

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- [EU referendum: UK proposals, legal impact of exit and alternatives to membership](#) (House of Commons library, 2016)
- [What if..? The consequences, challenges and opportunities facing Britain outside the EU](#) (Open Europe, 2015)
- [EU Wargames: The challenges facing UK negotiators inside and outside the EU](#) (Open Europe, 2015)
- [Treasury Select Committee inquiry into economic and financial costs and benefits of EU membership](#) (Parliament website, 2016)

## FOR FURTHER INFORMATION

For further information on the legal implications of Brexit, please speak to your usual contact at the firm or any of the lawyers listed below.

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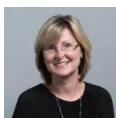
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