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# The Great Brexit Debate

# Will they, won't they, and what happens next...? The Great Brexit debate

## Introduction

The UK is now counting down to the 23 June 2016 referendum on whether to stay in or leave the European Union. Dentons summarises the background to this momentous choice, and takes a deeper look at some of the legal issues involved in some key areas that would be impacted by a vote to leave the EU.

## Background

On 17 December 2015, the European Union Referendum Act 2015 (the Referendum Act), came into force, providing for a referendum—to be held before the end of 2017—on the question:

"Should the United Kingdom remain a member of the European Union or leave the European Union?". The Referendum Act explicitly requires the government to publish information to help voters make an informed choice in the referendum. This information must include:

- details of the terms of any revised agreement with the EU, together with the government's opinion on what has been agreed; and
- information about the rights and obligations accompanying EU membership, with examples of how non-EU countries manage a relationship with the EU.

The UK government entered into negotiations with the other EU Member States to address concerns over its existing EU membership. It sought a package of reforms in the four key areas of economic governance; competitiveness; sovereignty; and immigration. Its demands were set out in a letter of 10 November 2015 from the British Prime Minister to the President of the European Council ("A New Settlement for the United Kingdom in a Reformed European Union").

At the European Council meeting in Brussels on 18–19 February, the terms of a "new settlement" for Britain were finally agreed by all Member States. On 19 February, the Prime Minister issued a statement outlining the reforms that had been agreed. On 20 February, the agreement was put to the full UK Cabinet; the referendum date was set for 23 June; and the campaigning—on both sides of the debate—began.

In accordance with the provisions of the Referendum Act, the government published the terms of the new EU settlement on 22 February.

In the report—entitled "The Best of Both Worlds: The United Kingdom's Special Status in a Reformed European Union"—the government also made a clear recommendation that Britain remains in a reformed European Union.

## Legal procedure for withdrawal

On 29 February, the Cabinet Office published "The Process for Withdrawing from the European Union", a document setting out the process that would follow a vote to leave the European Union, and the subsequent negotiations. It is helpful to consider the two elements of any withdrawal process, which can be summarised as:

**EU process:** Article 50 of the Treaty of the European Union[1] states: "Any Member State may decide to withdraw in accordance with its own constitutional requirements." Briefly, the process is triggered by a notification from a Member State to the European Council of its intention to leave. Following a withdrawal notification, there is a two-year time period for negotiations to be carried out in accordance with guidelines issued by the European Council.

**UK process:** There is no formal procedure under UK law for a withdrawal from the EU, so specific legislation would be required to make the necessary amendments to existing UK law. The starting point is likely to be the repeal of relevant provisions of the European Communities Act 1972, which makes obligations under EU Treaties binding in the UK and gives the UK government the power to make payments in line with its EU obligations. A large number of savings provisions and transitional arrangements are likely to be required, to preserve those parts of EU law—or the domestic legislation made under it—that are needed to avoid a legal vacuum in some areas.

On 2 March, the Cabinet Office released a further policy paper as part of the government's information obligations under the Referendum Act. "Alternatives to Membership: Possible Models for the United Kingdom Outside the European Union" looks at potential models for the UK's relationship with the EU, were it to vote to leave. Further information about the rights and obligations of the UK's membership of the EU will be published later.

The "Alternatives to Membership" paper discusses the options for the UK to have an ongoing relationship with the EU, in the event of a vote to leave. It provides examples of countries that are not members of the EU but have other arrangements with it: specifically Norway, Switzerland, Canada and Turkey. It also looks at a possible relation-ship based only on World Trade Organization membership. It sets out the main features and implications of each of the key existing models for the relationship, and assesses their suitability for the UK.

The paper concludes with the unequivocal repetition of the government's belief that no existing models outside the EU can provide the UK with the same advantages and influence that it has from its current status inside the EU.

## Wider issues raised by the campaign

In the run up to the referendum, there is the potential for the reform debate to discuss some of the fundamental problems with the UK's relationship with Europe and to provide a roadmap for "better"—meaning less—EU regulation in future, in the event of a vote to stay in Europe. Whether this opportunity will be actually grasped is unclear.

However, it is the case that the UK's problematic relationship with Europe has multiple causes:

- The UK currently doesn't get (enough of) its own way because it devotes too little resource to EU negotiations. Most of the time, these negotiations are fairly low down ministers' lists of priorities—negotiations are largely conducted by officials and they don't involve ministers having to face tough questions in parliament.
- It is true that the Commission has an in-built bias towards legislation as the answer to any problem. This is because legislation is often the easiest way for officials—and the Commission as a whole—to show that they are "doing something".

1 Consolidated version of the Treaty on European Union—TITLE VI: FINAL PROVISIONS—Article 50

- A significant part of the "burden" of EU legislation arises from uncertainty over the meaning of key provisions. In part, this may be inevitable in a system that requires compromise; where some conscious "fudging", to achieve agreement between Member States or between Council and Parliament, allows the different parties to the legislative process to be able to interpret a provision in a way that suits their different priorities. At other times, however, this uncertainty may be just the result of laws being drafted in committee, by non-lawyers. Either way, the Court of Justice of the EU may then be called on to identify the "true" meaning hidden in the tangled verbiage—a responsibility that, contrary to popular belief, the Court does not relish or undertake lightly.

## A Brexit vote

With so much in flux at the moment, providing anything more than rather academic guidance on the impact of a UK vote to leave the EU is challenging.[2] This uncertainty has already led to significant economic impact on markets, business and investor confidence[3], and will most certainly continue to do so after a vote, whichever way it goes.

In reality, should the UK vote to leave, little will actually change at a legal level immediately after the decision. It is likely to take months, if not years, to conclude the process, which includes:

- Negotiating the terms of departure with the rest of the EU
- Enacting domestic legislation to implement the Brexit
- However, businesses are advised to review their positions now in light of a potential UK exit from the EU. Brexit would have significant impact on a wide range of relationships, commercial agreements and contracts, as well as the regulatory environment that may apply post-Brexit. Some of these potential impacts are looked at in more detail below.

In the run up to the referendum, parties entering into contractual relations also need to consider whether such agreements should in any way be conditional on the result, or should include mechanisms to deal with any issues that might arise in the event of a Brexit vote.

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2 However, for some intellectually rigorous speculation on the difficulties of negotiating Brexit, see the evidence of two of the UK's most distinguished EU lawyers to the House of Lords EU Select Committee (8 March 2016)

3 Sterling fell by its biggest single session loss since October 2009 after London Mayor Boris Johnson declared that he would be supporting the "Out" campaign; while Moody's warned that Brexit would threaten the UK's strong credit score, potentially pushing up the cost of government borrowing (see "Pound hits seven-year low on Brexit fears", Financial Times, 22 February 2016; "Moody's warns Brexit would risk UK's credit rating", Guardian, 22 February 2016)

# The impact of Brexit: Regulatory Overview

It is clear that Brexit would have significant implications for the current UK legal and regulatory framework. The issues of EU regulation, red tape and a perceived ceding of sovereignty from Britain to Europe are central themes in the Brexit debate. Brexit campaigners often raise examples of "mad" EU regulation—such as how far bananas can bend and the power of vacuum cleaners—that Britain needs to move away from. However, EU regulation is not limited to obscure areas like this. It touches almost every aspect of business life and operations in the UK.

As with a great many issues concerning Brexit, it is difficult to predict what changes would actually flow from exiting the EU, but it is possible to state that Brexit would have three immediate impacts on regulation in the UK:

1. Any European regulations that are directly binding on the UK and on British citizens and companies would no longer apply. This means the UK government would need to decide whether to implement UK legislation to continue those regulatory regimes, amend any aspects of those regimes that have been transposed into UK law or dispense with them altogether. Examples of this would be the European Market Infrastructure Regulation, the Market Abuse Regulation—which will be directly applicable across the EU from 3 July—or the forthcoming Data Protection Regulations (see below).

2. Any European directives would also no longer be binding on the UK. However, as these have in most instances been transposed into UK law through UK legislation, unwinding this aspect of the EU regulatory regime would require the UK to repeal those enabling UK regulations. For example, the third Money Laundering Directive has been implemented in the UK through the Money Laundering Regulations 2007 and various industry regulations and guidance. Much of the financial services "single market" has also been established by domestic laws that implement EU measures. For any of these regimes to change substantively, the UK government would need to repeal or amend these regulations.

3. Perhaps most importantly, following Brexit the UK would no longer be part of EU foreign policy and regulation decision-making. This means that, for instance, the UK would no longer have a role in shaping and implementing EU sanctions and would need to consider its own foreign policy and international financial sanctions positions. On the other hand, it would still, of course, remain a member of the United Nations; and the UK already has its own autonomous financial sanctions regime, alongside the EU regime.

However, all of this must be considered in the context of the free trade agreement Britain would need to negotiate with the EU following a Brexit vote. Access to the single market is likely to require voluntary compliance with most, if not all, of the EU's regulations and directives. In many areas—from money laundering to MiFID, from market abuse to data protection, and many others—access to EU markets may mean the regulatory position for UK citizens and businesses does not actually change a great deal, depending on what could be negotiated. In any case, it is not possible to ascertain the appetite of all affected parties for alternative models before the referendum.

The impact of Brexit on some specific areas of law, with examples of key industry sectors potentially affected, is considered below.

# 1. Banking and Financial Services

## Finance agreements

Although the UK is not within the eurozone, perhaps the most useful parallel in terms of finance agreements is that of the "Grexit" debate. In 2012, Greece's precarious economic position made the likelihood of a Grexit—i.e., Greece lurching out of the eurozone (and potentially the EU) overnight—a real possibility. Speculation over Grexit also resurfaced for a time in 2015. The prospect of Greece leaving the currency union and reverting to the drachma raised many legitimate questions about the potential legal effects on finance documents, such as: If a Greek borrower had taken a loan denominated in euro, what would be the currency of payment following any redenomination? Could currency redenomination trigger an event of default under a loan agreement? While the parallels are not exact—the UK is not within the eurozone and a Brexit would not be a distressed exit from the EU but a voluntary process—there would still be potential impacts in relation to finance agreements:

### a. Conflicts of laws

EU legislation currently sets out the rules that a court within the EU applies to decide what law governs contractual or non-contractual obligations, or which court has jurisdiction to hear a dispute between parties. EU legislation also sets out a framework for mutual recognition of judgments across the courts of the EU.

"A key concern across the City of London will be the potential loss of the ability for UK-based financial institutions to sell products and services into other EEA Member States"

In the case of a Brexit, there would be some uncertainty as to how the courts within the EU should treat the UK. For example, the courts of an EU Member State might refuse to accept the parties' choice of English jurisdiction following Brexit.

However, in practice, it is unlikely that Brexit would spell complete uncertainty for parties in dispute. First of all, it is in the interests of all parties to agree a sensible way forward—particularly for matters of jurisdiction and enforcement of judgments. Secondly, the Recast Brussels Regulation (the EU regulation that currently governs which courts of EU Member States have jurisdiction in disputes) is not the only option. Switzerland, Norway, Iceland and the EU are currently party to the 2007 Lugano Convention, which also deals with jurisdiction issues.

### b. Increased costs

Brexit is almost certain to herald the introduction of new laws or regulations. These could, in turn, result in a lender incurring increased costs, which it might want to recover using the increased costs provisions in its loan agreements.

### c. Definition of EU and references to EU legislation in contractual terms

It is not uncommon for agreements to contain a definition of "EU" as the members of the European Union from time to time. This would need to be addressed where the UK was obviously intended to be included in the definition. Any provisions in transaction and security documents referring to EU legislation would also need to be considered, depending on the UK's approach to EU-derived legislation.

## Loss of the financial services and products passports?

A key concern across the City of London will be the potential loss of the ability for UK-based financial institutions to sell products and services into other EEA Member States[4], and set up branches there without the need to seek local authorisation. A plethora of single market directives give these "passporting" rights to, among others: banks and building societies, insurers and reinsurers, insurance and mortgage intermediaries, alternative investment fund and UCITS managers, wholesale and retail investment firms (including market operators, broker/

4 The EEA was established by the EEA Agreement, which entered into force on 1 January 1994. It provides for the free movement of persons, goods, services and capital within the internal market of the EU, as well as three of the four Member States of the European Free Trade Association (EFTA): i.e., Iceland, Liechtenstein and Norway. All relevant EU legislation in the field of the single market is integrated into the EEA Agreement so that it applies throughout the whole of the EEA.

dealers, wealth and portfolio managers and advisers) and payment services providers. Many of the largest European financial institutions are headquartered in London, as are the major subsidiaries of US and other third-country institutions—and all of these make significant use of passporting rights.

Following a Brexit, there would be no single passport. The "Alternatives to Membership" Cabinet Office paper discusses potential options, including: bilateral agreements; agreements with the EU for certain reciprocal arrangements on the Swiss model; or the possibility that the UK could, like Norway, be part of the EEA rather than the full EU, which would still enable it, in theory, to benefit from passporting.

With this uncertainty it seems likely that many businesses are already carrying out feasibility studies on potential alternative headquarter venues.

# 2. Competition Law

As the one area of law where the European Commission undertakes regular and direct enforcement action, competition law (i.e., behavioural competition law, merger control and State aid) might be expected to be the area in which Brexit's impact would be felt the most keenly. However, in all likelihood, Brexit would make very little difference to the competition law compliance requirements on businesses operating in the UK.

Most pro-Brexit advocates have suggested that the UK will enter into a "Norwegian" or "Swiss" arrangement with the EU, whereby sovereignty is partially surrendered in order to gain (or in the case of the UK, retain) access to the single market. However, any impact is only likely to be felt if the arrangement is at the looser, "Swiss", end of the scale: in the form of a duplication of red tape for international businesses, rather than its reduction.

## Competition law and merger control in the UK

The UK has its own national competition law affecting trade in any part of the UK, which prohibits anti-competitive agreements and abuses of dominance. These prohibitions are identical to the EU prohibitions that apply to trade between Member States. Domestic and EU law both ensure that the UK competition authority, the Competition and Markets Authority (CMA), draws the same conclusions on matters of law and fact as the European Commission. Eurosceptics should note that the UK voluntarily yoked itself to Commission precedent before it was compulsory to do so, in order to help ensure legal certainty on matters of competition law.

"The continuation of UK competition law and merger control—including the surrender of authority over pan-EU cases to the Commission—are likely to be conditions of any post-Brexit settlement with the EU"

The UK's merger control system affects "qualifying" mergers that are not subject to EU merger control. Above a certain size, the Commission takes over and provides a "one-stop shop" for merging parties who might otherwise have to file in multiple jurisdictions in the EU. The substantive test between the UK and EU (substantial lessening of competition versus significant impact on effective competition) is very similar, but the CMA is not compelled to follow the Commission in its decision-making.

## The Norwegian Model

As a Member State of the EEA, but not the EU, Norway's relationship with the single market is overseen by the European Free Trade Association Surveillance Authority. The effect of this, and the EEA agreement underpinning the relationship, is that the authority of the Commission over competition law in Norway is effectively the same as it is over competition law in the UK.

Where a merger qualifies for EU merger control (through EU turnover thresholds), the Commission takes jurisdiction over the adjudication for Norway as well as the EU Member States. Likewise, where a behavioural competition law case affects trade between an EU Member State and Norway, the Commission takes over the Norwegian aspects of the case. Where trade between EEA States only is affected, the EFTA Surveillance Authority (based in Brussels rather than in a non-EU Member State) takes over. Where the EU merger threshold is not met, but a separate EEA threshold is met, there is also a rarely-deployed mechanism for mergers to be overseen by the EFTA Surveillance Authority.

The EFTA Surveillance Authority also oversees State aid enforcement in Norway. State aid is an area of law peculiar to the EU and its trading partners, which prohibits unfair subsidies to businesses on the grounds that they distort trade between Member States. Most recently it has been in the news as the Commission's tool for pursuing (among others) Apple's tax affairs in Ireland. As far as Norway is concerned, the law is the same, it is just the enforcement authority that is different.

## The Swiss Model

Switzerland enjoys a looser relationship with the EU, but does not benefit from free movement of services, which are subject to tariff barriers. Switzerland is a member of EFTA, but not of the EEA, and is therefore not subject to the EFTA Surveillance Authority, which applies only to non-EU EEA Member States. Instead, Switzerland enforces its own, separate, version of competition law and merger control.

Swiss behavioural competition law is similar to EU competition law, with prohibitions on anticompetitive agreements (with a carve-out for agreements that produce economic efficiencies) and abuses of dominance. There is also an equivalent recognition that services of general economic interest may qualify for a partial exception from the competition rules. Merger control in Switzerland is similar to that in many Member States of the EU. The substantive test for whether a merger should be blocked (creation or strengthening of a dominant position) is the same as the test used by the Commission before 2004. Effectively, the legal situation is identical, but with separate enforcement regimes. Information-sharing mechanisms between the Swiss Competition Commission (SCC) and the European Commission ensure that enforcement action in the EU is often duplicated in Switzerland.

The situation regarding State aid is more complicated. While there is no specific enforcement mechanism for preventing it, State aid is prohibited by the 1972 Free Trade Agreement between Switzerland and the EU. In addition, Swiss domestic law—the Law on Subsidies—prohibits what an EU lawyer would understand as State aid being granted to businesses. The SCC has opened informal proceedings in certain State aid cases, but never made a ruling.

## Conclusions

Since the Cold War, behavioural competition law and its cousin, merger control, have spread across the world and now exist in over 100 countries, including all members of the OECD. It is inconceivable that a post-Brexit UK, whatever form its arrangements with the EU took, would not have some form of competition law and merger control. The model of choice for international legislators designing behavioural competition law has been that of the EU (rather than the US), and the familiar structure of Articles 101 and 102 of the Treaty on the Functioning of the European Union can be found in behavioural competition law from Australia to Zambia. The European Commission is a highly respected competition authority and its views on behavioural competition law and merger control are taken into account by foreign competition authorities. While the CMA may no longer be compelled to draw the same conclusions as the Commission in a post-Brexit scenario, in most cases it is likely to be persuaded by them.

Moreover, the continuation of UK competition law and merger control (potentially including the surrender of authority over pan-EU cases to the Commission) are likely to be conditions of any post-Brexit settlement with the EU, as they are conditions to accession for new Member States. The picture regarding State aid is somewhat murkier, although the example from Switzerland suggests that there is likely to be some kind of general prohibition on State aid (although the mechanism for enforcement may be less direct) as a price to be paid for single market access.

# Sector focus: Construction

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From the construction industry perspective, a potential Brexit would have ramifications across a number of areas including:

- **Employment:** There would be multiple employment law issues. For example, the introduction of labour market restrictions would likely mean fewer available skilled workers, an increase in wages and project costs and delays to projects. In addition, UK staff might not be able to move so freely to work on projects in Europe. It would also be worth considering how other EU laws such as those on working time regulations, disability and discrimination would be affected.

- **Investment:** The uncertainty caused by Brexit will affect foreign and domestic investment in UK projects in the short term, at the very least.

- **Regulation and trade:** The body of regulations governing procurement of projects across the UK and Europe would be likely to change, which might affect not just how tender processes are handled but, potentially, also the chances of success for UK bidders in Europe and the scope for encouraging EU businesses to bid for work in the UK. Trading with European partners and trading terms and conditions would be affected, not just in terms of export and import tax but also in how they might be affected by international trade agreements negotiated after Brexit. There may be a very significant increase in costs of imported material—in particular steel—due to the weakening of the pound.

- **Contracts and dispute resolution:** Contracts already in place would need to be reviewed to ensure that Brexit did not fundamentally change the nature of the agreement, and renegotiation might be needed to ensure Brexit did not lead to contract frustration. Parties to contracts would have to reconsider terms dealing with dispute resolution, jurisdiction and choice of court, service of proceedings and enforcement of judgments. A substantial body of EU law that affects construction businesses is already enshrined in UK law, for example the CDM Regulations and the Building Regulations. While these laws would be unlikely to change in the shorter term, changes, for example to reduce perceived "red tape", would be inevitable.

# 3. Corporate Law

EU corporate law has created two distinct legal entities intended to facilitate closer business relationships across Member States: the European Economic Interest Grouping (EEIG) and the Societas Europaea (SE), a European public limited company, which can both be registered in any EU Member State. The status of EEIGs and SEs would require special consideration following Brexit, but as neither entity has proved hugely popular, any change would have a relatively limited impact.

Brexit would be unlikely to have a major impact on UK corporate law. EU company law directives have laid down EU-wide minimum harmonisation standards in a range of areas (including the validity of company obligations, the formation of public limited liability companies and their capital requirements, foreign branches, single member companies, mergers and divisions, takeovers, accounting and audit requirements), but the establishment and regulation of companies remains primarily a matter for domestic law.

The UK Companies Act 2006, and related statutory instruments, would remain the cornerstone of UK corporate legislation following Brexit. The extent to which divergence over time would be possible would, of course, depend on multiple factors, including the terms of any renegotiation. For example, EU corporate law requirements must be applied by EEA Member States.

## Impact on corporate M&A transactions

There are two main areas where EU law provides for the regulation of UK corporate M&A transactions.

The first relates to public company takeovers. The Directive on Takeover Bids, which provides for minimum harmonisation of public company takeovers across the EU, has been incorporated into UK domestic regulation through changes to the UK Takeover Code and to the Companies Act 2006. However, much of the detail in these rules preceded implementation of the Directive and remains UK-specific. As a result, a Brexit vote is not likely to make much material impact in this area.

In contrast, the regime for EU cross-border mergers established by the EU Cross-Border Mergers Directive is now incorporated into UK law, but had no predecessor UK equivalent. The Directive allows a private or public company in one Member State, including the UK, to merge with a company in another Member State, provided certain steps are followed and certain conditions are satisfied.

Like the EU Company Law Directives, the two directives discussed above also apply across the EEA. Again, the issue of what would happen post Brexit would, in part, depend on the terms of any renegotiation. However, in the case of public company takeovers, it would seem unlikely that there would, in any Brexit scenario, be many substantial changes (a reflection of the fact that this was the case when the UK implemented the Directive on Takeover Bids into its domestic rules).

Changes to other areas of law resulting from Brexit might also have an impact on UK corporate M&A transactions. The most obvious examples are competition law and employment law relating to business transfers (see the relevant sections above and below). In addition, as corporate M&A transactions generally take the form of negotiated contracts, drafting issues—in particular around governing law, jurisdiction and process—would, of course, also be relevant.

> "Brexit would be unlikely to have a major impact on UK corporate law"

# 4. Corporate Finance / Financial Markets


"If the UK were unable to agree an equivalent to the EU Prospectus legislation, a UK issuer would probably find it harder, and more expensive, to market its securities across Europe"

## Impact on capital raising

EU legislation currently enables an issuer to "passport" to other European Economic Area (EEA) Member States a prospectus offering equity or debt securities. If the prospectus complies with the relevant European legislation and has been approved by the competent authority of an EEA Member State, the issuer can use it to raise capital across the EEA without requiring further consents or approvals. If the UK were unable to agree with the EU any equivalent to the EU Prospectus legislation, a UK issuer would probably find it harder, and more expensive, to market its securities across Europe.

# 5. Employment Law

Brexit would leave the UK Parliament free to legislate across a wide range of employment issues currently covered by EU directives. However, it is a common misconception that statutory employment rights in the UK derive wholly or mainly from the EU. This is not the case.

The following rights derive either exclusively from UK legislation, or from UK legislation which pre-dated later EU directives requiring member states to legislate in respect of the same issues:

- Protection against unauthorised deductions from wages
- The right to a statutory redundancy payment
- The right to equal pay
- Protection against unfair dismissal
- Protection against detriment or dismissal because of trade union membership
- Immunity from legal action in respect of legal strike action
- Protection against discrimination at work because of sex, race, nationality, ethnic origin or disability
- The right to a national minimum wage

UK employment rights that derive exclusively from EU directives include:

- Protection of employment on the transfer of an undertaking (the "TUPE" Regulations)
- The requirement to consult collectively in respect of proposals for 20 or more redundancies within 90 days
- Limits on working time
- The right to statutory minimum paid leave

Both sets of rights are frequently blamed for a range of economic ills, but they are all well entrenched in the UK legal and business landscape. Politically, it would be a brave government that sought to abolish any of them overnight. A more likely scenario, assuming a Conservative administration at the time of Brexit, would be a slow and piecemeal erosion of those rights which attract most opprobrium from the more vocal business lobbyists: for example, removing limits on working time in specific industry sectors; or reducing compensation payable for failing either to inform and consult employees in respect of a business transfer or to consult collectively regarding multiple redundancies.

Although EU law is often criticised as being burdensome or overly restrictive, UK employment laws have regularly gone beyond the strict requirements of the EU directives. For example, the Working Time Regulations 1998 provide that workers are entitled to a minimum of 5.6 weeks' holiday a year, whereas the minimum required under EU law is only 4 weeks. Even the controversial working-time limit of a maximum of 48 hours a week

> "EU law is often criticised as being burdensome or overly restrictive, but UK employment laws have regularly gone beyond the strict requirements of the EU directives"

has had limited practical impact, as many businesses already utilise the UK's opt-out provisions contained in the legislation. Family-friendly rights are another area where the UK already exceeds EU requirements and the recent introduction of shared parental leave suggests that a scaling back of such rights is unlikely.

Viewed over a five- to ten-year time frame, and again assuming a continuing Conservative administration, it is possible, though unlikely, that the UK's employment law landscape might gradually come to look a little more like the USA and a little less like other Western European jurisdictions than it does now. Any more radical departure from the status quo would be politically unattractive and is, therefore, unlikely to happen. With gender equality and work/life balance issues increasingly under scrutiny, further improvements in some UK employment rights, Brexit or not, cannot be discounted.

# 6. Energy Law

“So far, the ‘Leave’ and ‘Remain’ campaigns have not had a great deal to say about energy policy issues. This is perhaps regrettable, but not surprising”

Within Europe, the UK pioneered the late 20th century privatisation of energy businesses that had been nationally owned. It also went further and faster than many EU Member States in “unbundling” operations at different stages in the downstream gas and electricity value chains—such as transmission and supply to end consumers—into separate companies, competing with each other wherever possible, and subject to strong economic regulation if they are natural monopolies.

However, although the UK may have begun this journey largely on its own initiative, the rules that now govern the operation of UK energy markets at all levels are as densely overlaid and interwoven with strands of directly applicable EU law, or national provisions that implement EU rules, as any part of the UK economy. A few examples will suffice:

- EU rules have done as much as any steps taken by the UK government to close ageing coal-fired power stations and encourage the development of wind and solar farms.
- EU scrutiny of the government’s support package for the Hinkley Point C nuclear reactor project forced changes that made it materially less generous to EDF.
- EU law underpins the regulation of access to infrastructure such as electricity interconnectors and LNG terminals, and key aspects of UK energy trading arrangements and electricity transmission charges.

As in other areas, being part of the EU (and EEA) single market is an obvious benefit to the UK, even if physically linking UK markets with those in continental Europe requires a good deal more infrastructure investment than in most sectors of the economy. National Grid has estimated that each additional GW of electricity interconnector capacity could reduce British wholesale power prices by up to 2%, and that 4-5GW of new subsea cables to mainland Europe “could unlock up to £1 billion of benefits to energy consumers per year”. This is in part because the greater penetration of renewable generation in the countries to which we connect helps to make their wholesale prices cheaper. Current government policy is to support “the market delivery” of 9GW of such new capacity.

So far, the “Leave” and “Remain” campaigns have not had a great deal to say about energy policy issues. This is perhaps regrettable, but not surprising.

- Pro-EU Conservative ministers are unlikely to point to energy policy as an area where EU membership has benefited the UK when many potential “Leave” voters seem to have a negative view of, for example, the proliferation of wind farms or the closure of coal-fired power stations, which they see (not incorrectly) as partly the responsibility of the EU.
- Those on the “Leave” side—if they propose Norway as an alternative model for the UK’s relationship with the EU—have to face up to the fact that those countries that are within the EEA but outside the EU still have to comply with most of the main pieces of EU energy legislation (including those on renewables and emissions), without having had a hand in negotiating them in the European Council or Parliament.
- Government acknowledges the need to tweak the flagship electricity market reforms that were developed, adopted and first road-tested during 2011–2015—in particular the Capacity Market and Contracts for Difference subsidy mechanisms.

Some kinds of change to these would require approval from the European Commission under State aid rules. There is a risk that in their desire to avoid being seen to have to "ask permission from Brussels" about how to spend bill-payers' money, ministers may be deterred from making the best choices for the longer term.

- The Brexit debate coincides unhelpfully with the development of a package of energy sector reforms promoted by the European Commission under the banner of "Energy Union". Some of these have already attracted unfavourable comment in the UK press see, for example, "UK business gas supplies could be diverted to households in Europe, under EU crisis plan"[5]
But the bigger concern must be this: although it remains unclear how far some aspects of these reforms will go, they could be very far-reaching indeed. Potential changes include, for example, harmonisation of renewable subsidies and "a new EU electricity market design. As with any EU legislative changes, there will be a lot of discussion before the final proposals emerge and a lot of negotiation before they become law. The risk to the UK in a Brexit scenario where the country wanted to remain part of the EU single energy markets, is that it would have little influence over the shaping of potentially significant new rules in those markets. It is to be hoped that if the decision is to "Remain", the UK still has enough "negotiating capital", after securing the "new settlement" of February 2016, to be able to get what it would want from Energy Union.

5 Daily Telegraph, 16 February 2016

# 7. Environmental Law

EU environmental law is considered to be one of the most extensive bodies of environmental law in the world, and EU environmental law is now deeply rooted within the UK's legal framework. A significant proportion of EU environmental law is delivered through EU directives, enabling Member States, including the UK, to enact domestic legislation that refers directly to the directives. For example, the Environmental Permitting Regulations implement the requirements of several EU directives, and refer directly to the articles and definitions of the directives.

It is likely that Brexit will involve the UK remaining as a trading partner with the EU, so the majority of EU environmental legislation is likely to continue to apply because of the single market linkage, although—given the importance of lobbying from the UK during the EU legislative drafting process—a significant change would be the lack of a UK vote on future legislation.

Brexit also raises the question of how the UK courts will apply case law that refers to EU law, in the event that the UK decides not to continue to apply any EU law.

The UK is party to a number of international environmental conventions, but according to the Cabinet Office paper ("The Process for Withdrawing from the European Union" – see above), the UK would

"EU environmental law is now deeply embedded in the UK's legal framework"

have to consider how to sign up to these again in the event of a Brexit.

There are also areas such as waste management, renewable energy and freshwater quality, where there is no international equivalent, meaning that the UK would need to set its own standards.

# Sector focus: Infrastructure

“The UK’s domestic infrastructure sectors would all be affected by the issues applying to all domestic businesses, and several are heavily regulated by UK laws derived from European legislation”

The UK’s domestic infrastructure market encompasses a broad range of sectors, including transport (railways, roads, airports and ports), water and sewerage, schools and hospitals. These would all be affected by the issues applying to all domestic businesses, including import tariffs (e.g. on building materials), controls affecting employment, the impact on current contracts, dispute resolution, the competition regime and environmental restrictions. Several of these sectors, such as rail, water and airports, are heavily regulated by UK laws derived from European legislation.

Taking the rail industry as an example, the following considerations would need resolution:

- Much of the domestic legislation that regulates the rail industry derives from the series of European Union directives and regulations commonly referred to as the European Railways Packages. Three of these packages are in force and a fourth is expected to pass into law before the Brexit vote. It is unlikely the government would implement the Fourth Railways Package and would probably move quickly to repatriate any functions currently ceded to European institutions. However, it is also unlikely the government would immediately repeal all European-based rail legislation currently in force.
- Careful thought would be needed on many issues, for example whether the government wished to:
- Allow arrangements that grant rights to EU operators to run services to the UK, potentially in competition with domestic operators.
- Continue, as currently planned, with programmes required by European regulations, such as the roll-out of the European Rail Traffic Management System and the introduction of European freight corridors.
- In the longer term there is a strong possibility that lobbying would result in revision of domestic rail legislation. This might arise if a new government wishes to give itself the ability to renationalise fully all sections of the rail industry, free of any constraints that European law might currently impose.

Considerations of a similar complexity are likely to apply in other regulated infrastructure industries.

Infrastructure companies and contracting authorities currently subject to legislation deriving from the European Procurement Directives would also be affected by any changes that the government decides to make to that legislation.

However, there would still be some constraints on the government’s flexibility to make changes, such as its obligations as a signatory of the WTO Government Procurement Agreement.

# 8. Human Rights and Freedom of Information

"It is unlikely that the UK would be able to escape being bound by the EU Charter of Fundamental Rights in some way if it wanted to continue to trade with EU Member States on terms similar to those that it enjoys now"

## EU Charter of Fundamental Rights

The Charter of Fundamental Rights of the European Union enshrines certain political, social, and economic rights for EU citizens and residents into EU law. If the UK were to leave the EU, it would then be outside of the Charter. Its status has been a matter of controversy for successive UK governments. However, it is unlikely that the UK would be able to escape being bound by the Charter in some way if it wanted to continue to trade with EU Member States on terms similar to those that it enjoys now, for example if it wanted to remain in the EEA.

## European Convention on Human Rights (ECHR)

Brexit would have no effect on the UK's membership of the Council of Europe and the European Court of Human Rights, which pre-date and are unrelated to its EU membership. The place of ECHR rights in UK law was established by the Human Rights Act 1998—although separate reform proposals in this area are awaited from the government (the so-called "British Bill of Rights").

## Freedom of information

Freedom of information is governed mainly by the Freedom of Information Act 2000 (FoI), which is entirely a domestic UK issue.

FoI provides access to information held by public authorities in one of two ways: public authorities are obliged to publish certain information about their activities; and members of the public are entitled to request information from public authorities. This regime is unaffected by EU membership.

However, access to a broad class of environmental information held by public authorities is regulated by the Environmental Information Regulations (EIR), which implement an EU directive. The FoI and EIR regimes are, theoretically, mutually exclusive, but in practice often overlap in areas such as energy.

# 9. Insolvency Law

Traditionally the UK (predominantly England and Wales) has been an attractive, flexible, creditor-friendly restructuring and insolvency jurisdiction for countries both inside and outside the EU.

As a member of the EU, the UK has had the benefit of the EC Regulation on Insolvency Proceedings 2000 (EIR) to govern insolvency proceedings where an entity has a centre of main interest (COMI) within an EU country. The EIR applies to any entity, whether or not incorporated within the EU (e.g., US-incorporated companies), if its COMI is within the EU. The EIR governs not only the proper jurisdiction for certain key insolvency proceedings based on COMI but the applicable law to be used in those proceedings and, most importantly, their automatic mutual recognition in other EU member states.

For this reason, other countries—including those outside the EU, particularly common law countries such as the US—have used the UK, to get access to the EU, to benefit from the automatic recognition across Europe of the UK insolvency processes they put in place based on an English COMI. COMI migrations to the UK have been common. A Brexit will mean the UK loses the benefit of the EIR and, unless it comes to separate mutual-recognition arrangements with other European jurisdictions (or the EU as an entity), it will lose this major global competitive advantage, as COMI migrations into the UK will have little or no benefit.

It is worth considering the effects of a possible Brexit on the following insolvency-related questions, even if it is not possible to provide concrete answers at this stage:

Will the UK still be a popular restructuring and insolvency jurisdiction for foreign companies?

The main issue will be one of recognition (see above), which will reduce the instance of proceedings being started in the UK to achieve cross-border restructurings/exits. Without the mutual automatic recognition of proceedings under the EIR, it is likely other EU countries (e.g., Germany) will become a more favourable platform into Europe. However, it will still be possible and, in some instances, desirable for foreign companies (including those in the EU) to commence proceedings in the UK after a Brexit. The UK's main rescue procedure, administration, does currently rely on the COMI test under the EIR to place a foreign company into administration. However, before the EIR it was possible to place a foreign company into administration under s.426 of the Insolvency Act 1986 by a relevant foreign court seeking judicial assistance in the UK. English insolvency law has also always retained an ability to place a foreign entity into liquidation, based on that entity having a "sufficient connection" with the jurisdiction. One of the UK's most popular exports, the scheme of arrangement, has been used increasingly to restructure foreign companies (including many companies incorporated in Europe) based on this sufficient connection test. Schemes of arrangement are currently outside the ambit of the EIR and so their use, and their recognition in other jurisdictions, is unlikely to be greatly affected by a Brexit.

What about recognition and enforcement of UK proceedings (including the stay) in other jurisdictions without the EIR?

Without the EIR or separate treaties, certain UK insolvency and rescue procedures (excluding schemes) simply cannot be automatically recognised outwardly into the EU.

What about foreign insolvency proceedings getting recognised in the UK?

"A Brexit will mean the UK loses the benefit of the EIR and, unless it comes to separate mutual-recognition arrangements with other European jurisdictions (or the EU as an entity), it will lose this major global competitive advantage"

Overseas office holders in acceding states (now over 40 countries including the US and Canada) will still have the benefit of the inward-only gateway of the Model Law on Cross-Border Insolvency (incorporated into English law by the Cross-Border Insolvency Regulations 2006) to get their own foreign procedures recognised in the UK. This is not automatic. They will also have the benefit of judicial assistance from the UK courts under s.426 of the Insolvency Act 1986, which provides for cooperation between courts exercising insolvency jurisdiction in relation to certain named countries, mostly former British Commonwealth countries. They can also rely on common law principles of comity and judicial recognition.

Looking outside of the current regime, Denmark is an example of an EU country that has never been a party to the EIR and has chosen instead to negotiate separate automatic recognition treaties with certain Scandinavian countries. While the Danish model is unlikely to be a useful one for the UK to follow on a possible Brexit, the UK does have the (albeit unlikely) option of negotiating treaties with other major EU countries to seek to replicate the mutual benefits of the EIR.

# 10. Intellectual Property and Data Protection

## Intellectual Property

Intellectual property in the UK is governed by several distinct regimes and a Brexit would have differing levels of impact on these regimes. Certain consequences will very much depend on the nature of the UK's relationship with the EU following the Brexit, for example, whether the UK remains a member of the EEA.

### a) Patents

A Brexit would have no impact on UK national patents, which are governed by the Patents Act 1977. A Brexit would also have no effect on European Patents designating the UK, as these are governed by the European Patent Convention, which is not an EU instrument.

However, the new EU-wide patent system—the Unitary Patent, together with the Unified Patents Court system—is due to go live in 2017. It may be that the UK is able to agree terms to enable it to participate in the Unitary Patent system post-Brexit but, as currently drafted, the Unitary Patent will only apply to participating EU member states.

The UK is one of the three countries that must ratify the Unified Patents Court agreement (UPC) in order for the new system to take effect (Article 89 of the agreement requires the three countries with the most European patents in the preceding year to ratify). Therefore, if the UK public does vote to leave the EU, this would impact on the system as whole. If a Brexit does take place, this will lead to a delay in implementation but is unlikely to be fatal to the EU Unitary Patent system as another member state will be able to step into the UK's shoes to cast the third vote—probably either the Netherlands or Italy. The relevant ratifying party in the event of a Brexit remains to be determined.

London is intended to be a seat of the Unified Patents Court's central division, hearing all cases covering certain categories of patents (Chemistry, metallurgy and "Human Necessities), which would help to drive litigation to the UK. If there were a Brexit then the Unitary Patent would not apply to the UK, subject to any special terms being agreed; the UPC agreement would also need to be amended to allow the movement of the London seat.

Not only would the system as a whole suffer as a result of a UK exit, since the UK is an important EU economy and a large player in the patent sphere; but, with the intention being that both existing European Patents and Unitary Patents would be litigated under the UPC system, the UK would become a less attractive place for IP enforcement. The new UPC court system would not apply when litigating the UK designation of a European patent and such litigation would have to take part in UK courts.

### b) Trade marks and designs

The (soon to be renamed) Community Trade Mark and Community Designs would cease to apply in the UK if there were a Brexit (subject to any special terms being agreed), leaving businesses in a position where they will have to have UK national registrations as well as Community Trade Marks and Community Designs in order to have protection in both the UK and Europe. This could cause issues with existing security over IP rights, licences, injunctions and judgments.

### c) General

If the UK is not a member of the EEA, the exhaustion rules in relation to trade marks, design rights and copyright could be used to restrict imports from the UK into the EU. At the moment the exhaustion rules mean that right holders are not allowed to stop parallel imports from another EU country into the UK where they had consented to an initial sale in the EU.

EU legislation harmonising national laws, including in relation to trade marks, copyright and database rights or the proposed Trade Secrets Directive, would no longer bind the UK if there were a Brexit. The UK courts would no longer have to consider European case law, guidance or legislation in coming to decisions on intellectual property matters, which may result in a gradual divergence in the UK and European approach. This may have some benefits where the European position is more onerous for businesses, but will also result in a possible lack of consistency and certainty in relation to how issues may be decided.

## Data protection

In the event of a Brexit, the Data Protection Act 1998 (DPA) would still be UK law, but the UK would no longer be required to have the DPA in place. Theoretically, the UK government could repeal it, but this is unlikely as the DPA may be required to enable trade with Europe and allow for membership of the EEA. The UK courts would, however, no longer have to consider European case law, guidance or legislation in coming to decisions on data protection matters.

Developing international links with other countries such as Malaysia, Singapore, Japan and Russia is likely to be dependent on adequate data protection law, as these countries take comfort from the UK's law being at least at the levels of the 1981 Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. Accordingly, the UK would be unlikely to repeal the DPA even in the event of Brexit.

## International data transfers

A UK withdrawal from the EU would be likely to mean (at least temporarily) a loss of its position as a member of the EEA as well. In this case, the UK would need to ask the European Commission for an adequacy decision, to allow for the transfer of personal data from the remainder of the EU to the UK. It is unclear how quickly an adequacy decision would be made or even whether the UK would qualify for one. This is due to claims about UK national security measures eroding the right to privacy in the UK. The Schrems case (which concerned the US failing to adhere to European data protection standards as Facebook allegedly transferred consumers' personal data to the US National Security Agency) could apply to the UK. Schrems led to the Court of Justice of the European Union (CJEU) ruling that "adequate" safeguards for the protection of data were not met. The UK could suffer a similar fate, especially due to concerns with the Investigatory Powers Bill currently going through the UK Parliament, which has been criticised for enabling the government to collect individuals' personal data in bulk. This could become a difficult issue for the UK, leading to uncertainty in terms of international data transfers.

There could be discussions around implementing a UK version of the US "privacy shield", at least until an adequacy decision by the European Commission is made. Effectively, the UK's national security measures, which may impinge on the privacy of its citizens, can be ignored while the UK is a member of the EU, because national security measures are outside of the European Commission's competence, but not after. However, the UK may be able to resurrect the safe harbour regime with the US (which was struck down by the CJEU in the Schrems case), as the UK would no longer be bound by EU court decisions.

In light of this uncertainty, in the event of Brexit, any entity with operations in an EU country and one or more subsidiaries in the UK, would be likely to need to enter into model contracts to be able to transfer data to the UK.

## General Data Protection Regulation

The General Data Protection Regulation (the DP Regulation) is a proposal by which the European Commission intends to strengthen and unify data protection for individuals within the EU and to address the export of personal data outside the EU. The EU Council is currently aiming for formal adoption of the DP Regulation in early 2016, so there would be a question of whether the UK would adopt the DP Regulation. The UK Information Commissioner's Office (ICO)[6] has been critical of the heavy administrative burden associated with the DP Regulation, which makes currently optional good practice compulsory.

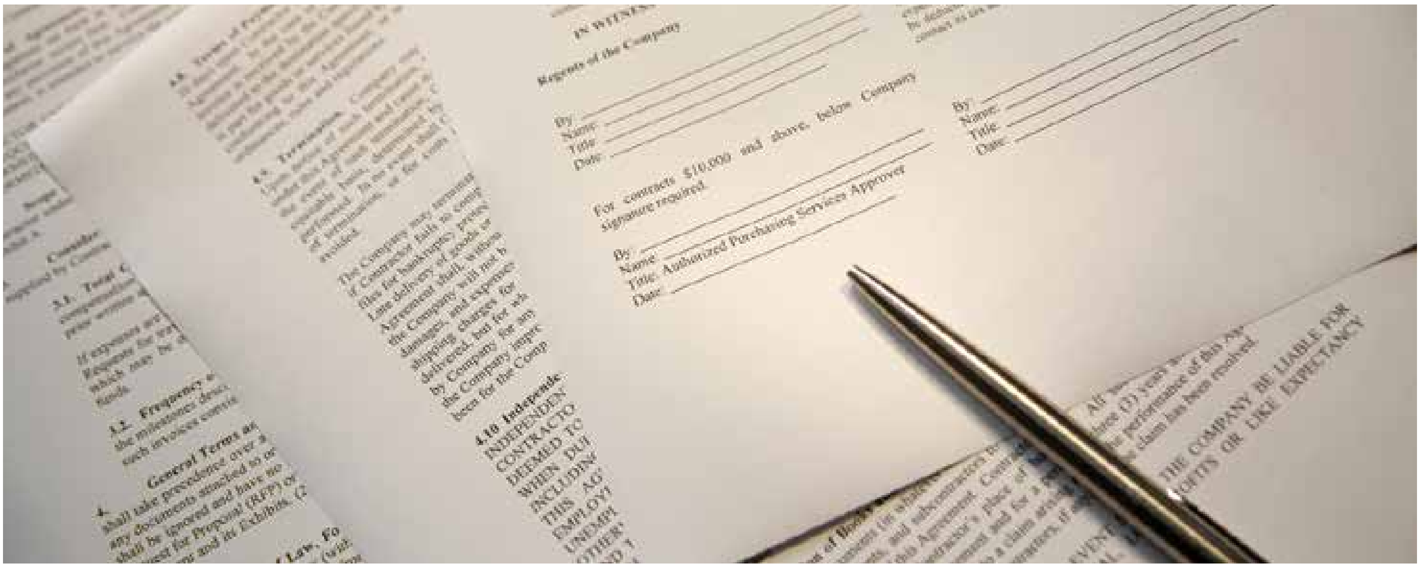
The UK would either adhere to the DP Regulation in order to maintain adequacy with the EU or reject it due to the ICO's dislike of the bureaucracy associated with it. Down the line, there is the possibility of UK legislation diverting more from European standards and, thus, giving companies with a presence in both jurisdictions two distinct regulatory schemes to consider.

## Summary

While there will be short-term issues with data transfers, this might be counterbalanced by a longer term reduction of the regulatory burden under the commercially-minded ICO, particularly—but not exclusively—if the UK is outside the EEA.

6 The ICO is the UK's independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals.

# 11. Pension Law



“In the event of a ‘leave’ vote, any impact on UK pensions law (at least in the short term) would be likely to be limited, with much of the implementing law and UK regulatory bodies remaining in place”

UK pensions law is a matter for the UK government, although legislation must comply with the framework of EU laws and the decisions of the CJEU. In a pensions context, the most relevant EU Directives have been the IORP Pensions Directive and the Insolvency Directive. These Directives were incorporated into UK law through the Pensions Act 2004.

In the event of a “leave” vote, any impact on UK pensions law (at least in the short term) would be likely to be limited, with much of the implementing law and UK regulatory bodies remaining in place. Only legislation predicated on the UK being a Member State (for example, the Cross-Border Regulations) would immediately be affected.

One change would be to remove the influence of the CJEU in relation to the interpretation of UK pensions law (as derived from EU Directives), where its influence can be seen in the way gender equalisation was handled in the UK (Barber) and the TUPE/occupational pensions interface (Beckmann), which can cause issues on corporate deals with pension elements.

Looking forward, the UK would also miss out on the current batch of EU law proposals such as IORP II and its holistic balance sheet (a concern for employers with defined benefit pension schemes), and the EIOPA proposals around an industry levy on Member State “market participants” (an additional cost no one is looking forward to).

# 12. Taxation

"In theory, a Brexit would free the UK government and its taxation authorities from the constraints of all EU tax legislation ... but a UK government is not likely to rush out and put all EU tax legislation on a bonfire immediately"

Although in principle EU Member States enjoy considerable autonomy in the setting of their domestic tax policies and the tax measures that implement them, membership brings with it a number of controls and mandatory requirements that either have direct effect from EU legislation itself or which must be given effect to in the tax legislation of each Member State. Examples of these can be found in:

- A number of the fundamental freedoms established in the Treaty of the European Union, including freedom of movement of workers and capital, freedom of establishment of businesses and the prohibition of unlawful state aids
- The "common system of value added tax", which requires all Member States to adopt a VAT system that complies with the EU Principal VAT Directive 2006/112/EC

These principles infiltrate the domestic tax systems from top to bottom—from the competence of national courts to rule definitively in disputes between the taxpayer and the taxing authority to the legality of administrative measures that might have an indirect effect contrary to the EU objectives. Examples of infiltration include the requirement to allow cross-border surrenders of group relief and the inability to zero rate supplies of women's sanitary products. Ultimately, non-compliance by Member States may be referred by the Commission to the CJEU in "infraction" proceedings and the court can (and does) impose substantial financial penalties on defaulting Member States. The court can (and does) also adjudicate on points of law that are referred to it by the national courts.

In theory, a Brexit would free the UK government and its taxation authorities from the constraints (if they may be so regarded) of all EU tax legislation and its requirements, and from the supervision of the CJEU. However, two factors suggest that a UK government would not rush out and put all EU tax legislation on a bonfire immediately:

- The purpose of EU tax measures is to provide a level (non-discriminatory) playing field for businesses operating in the EU internal market and to remove barriers to cross-border trade, which many consider is a good thing.
- If, following a Brexit, the UK adopted separate membership of the EEA (in essence giving it access to the EU internal market on terms equivalent to those currently enjoyed) it would still have to comply with EU legislation as a condition of access. Whether such access on those terms is desirable is of course a political and economic—rather than a legal—question.

# Sector focus: Real Estate

"Brexit is probably more of a challenge to the attractiveness of real estate in England and Wales and, in particular, investors' views of the market here, rather than to how real estate business is done within the jurisdiction"

Property law and the conveyancing system in England and Wales have both remained largely untouched by the EU. Consequently a Brexit would not result in fundamental changes to the way in which land is bought, sold or held within the jurisdiction. Instead Brexit's impact on real estate would be likely to be more indirect and/or commercial.

One exception could be the direct impact of any withdrawal of EU support from areas such as agriculture and energy. If not replaced by a system of domestic incentives, related land uses may become less attractive and/ or viable.

Another consideration is the application of certain rights enshrined in the ECHR to property-related matters. Brexit would not, however, alter this status quo as:

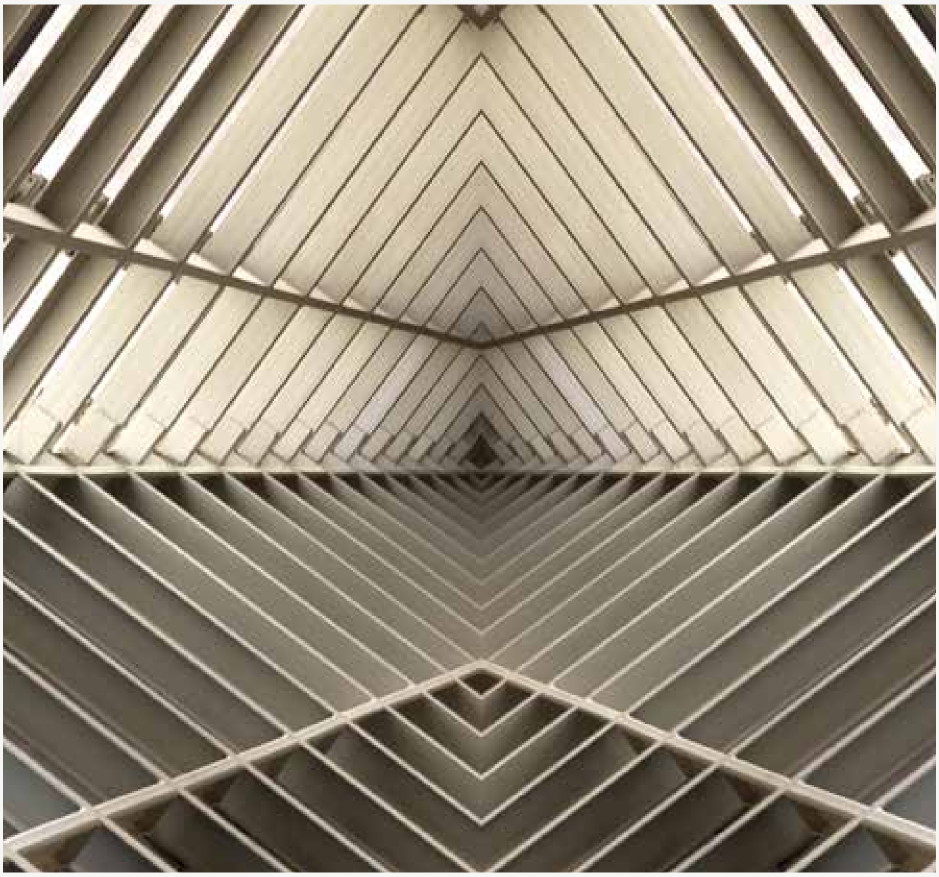
- The majority of the ECHR rights are incorporated into domestic law by virtue of the Human Rights Act 1998.
- The ECHR is an international treaty agreed by the Council of Europe, not the EU.

The Conservative Party's proposals in relation to this issue are separate from the issue of Brexit and therefore not considered here.

As noted elsewhere, Brexit may have a more immediate impact on related areas of law such as construction, banking and the environment. This would be likely to have a knock-on effect on property, as these are all relevant to the retention, enhancement and realisation of the value of real estate. For example, difficulties procuring labour for construction projects would inevitably cause delays and increased costs to an array of development projects from simple house extensions to nationally significant infrastructure projects. Alternatively, some may argue that if Brexit resulted in less regulation in these areas costs would actually go down and output would increase.

Another potential Brexit effect is that entities with property portfolios across the EU, England and Wales may need to reconsider how they are set up to allow investment across the different jurisdictions. Brexit would certainly force companies with real estate interests in England and Wales to rethink whether, commercially, this is the best location for them, particularly for entities using their base here as their EU platform. Where Brexit would make it less attractive for businesses to operate out of the UK, it would be logical for those affected to consider physically relocating to another EU country. This could then trigger a ripple effect as those supplying or supporting the affected sectors may also have to rethink their own strategy. The resulting reduction in demand and the increase in supply could deflate pricing, making real estate less attractive to investors.

Conversely, there may be investors in English and Welsh real estate whose draw to the jurisdiction is based more upon geographical location (of either the property or the investor itself), language, the ease of investing into property here as well as the market's reputation as a "safe haven". Some may take a long-term view, looking beyond the short- and medium-term impact of Brexit. There could still be continuing opportunities: for example, the current housing crisis is not going to be resolved by the referendum, instead demand for housing in the lower and medium price brackets will continue to outstrip supply, sustaining price growth and ongoing market interest.



There appears to be a consensus amongst investors that the uncertainty generated by the prospect of Brexit can only have a negative impact on the market. Comparisons have been drawn with the Scottish referendum, when the markets appeared to stall in the immediate run-up to the vote as investors exercised caution and then accelerated strongly once the outcome was known. The uncertainty following a decision to leave the EU would, however, be without precedent not least because it would take so long to map out the post-EU landscape. Some may see this as a chance to seize the market, while others may think it is not worth the wait and look elsewhere to expand their property portfolios.

In conclusion, Brexit is probably more of a challenge to the attractiveness of real estate in England and Wales and, in particular, investors' views of the market here, rather than to how real estate business is done within the jurisdiction.

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