



A summary of the legal implications of Brexit for businesses and investors in Ireland and Northern Ireland.

While Brexit will have immediate and fundamental political and economic consequences, many of the key changes to the legal environment will evolve gradually over time. Businesses with exposure to the UK need to plan and organise themselves for the legal changes and business issues that may arise.

A&L Goodbody has been closely monitoring the Brexit debate for some time. We will continue to assess the implications for businesses in Ireland and Northern Ireland as the withdrawal process develops. Our team of experts from all our key practice areas in our Dublin and Belfast offices will provide ongoing guidance and in-depth sectoral analysis.

The following is a summary of the likely withdrawal procedure, together with some suggestions as to how businesses with UK trading relationships and/or operations might begin to assess the legal consequences for them.

What will happen next?

The UK is likely to invoke the mechanism under Article 50 of the Treaty on European Union to terminate the UK's membership and begin negotiations on the institutional and financial provisions of the withdrawal. Article 50 envisages that the withdrawal process will take up to two years and this can be further extended by agreement between the UK and a qualified majority of the remaining Member States.

When agreement is reached, it must be passed in the EU Council of Ministers by a qualified majority vote as well as in the European Parliament and in the UK Parliament. We believe it is likely that the



“Brexit has profound and significant implications for the UK and Ireland in the years ahead. Now is the time to understand the challenges, and opportunities, that face your business.”

Julian Yarr, Managing Partner



“Operating from Belfast and Dublin, we are ideally placed to assess the consequences of Brexit for clients with interests across the island of Ireland.”

Mark Thompson, Head of Belfast Office

withdrawal negotiations will take longer than two years bearing in mind (i) this will be the first time a Member State has exited the EU and (ii) the mechanics of the withdrawal process itself.

The UK Parliament must also decide which EU laws (that currently form part of UK law) it intends to preserve, what should be modified, and what should be repealed. Given the vast body of EU law (it is estimated that over 100,000 legislative measures have been adopted by the EU), we believe the process of replacing EU legislation with UK statutes will be a gradual one in many areas (especially those of a technical nature) and one which will continue for many years beyond the initial two year period.

We have drawn up a more detailed note on the likely exit process which can be accessed [here](#).

KEY AREAS OF FOCUS

In considering the likely changes to the legal environment and its impact on businesses, we believe the key areas of focus can be categorised as follows:

CUSTOMER FACING ISSUES

Sale of Goods/Supply of Services: Brexit may result in protective measures being put in place to restrict the supply of certain goods or services into the UK (with similar EU measures arising in relation to outbound supplies from the UK as well). Also, new UK standards for certain goods (foodstuffs, clothing etc.) and rules relating to the supply of services (such as distance marketing/internet selling rules) may be introduced by the UK government.

Financial Services/Regulation: The EU single market in financial services has been at the core of the UK and EU financial services industry for many years. A consequence of Brexit may be that suppliers of financial services to UK residents/customers will need to become licensed under a separate UK regulatory regime. Similarly, it is likely

that UK financial services providers will not be able to rely on an EU “passport” to operate in EU countries. Separate UK technical standards and rules (for example rules as to capital requirements, business conduct, prospectuses and market abuse) may apply to financial institutions with operations in the UK and EU.

Tax: Brexit may have material implications for tax on supplies of goods and services between the EU and UK through the imposition of additional customs duty and value added tax burdens. Additionally, the UK would be able to change its corporate income tax, withholding tax and other taxes in a manner which could have material implications for businesses in Ireland and potentially for the location of future FDI projects.

BUSINESS OPERATIONS/INTERNAL ISSUES

Data Protection (DP): Following Brexit, the free flow of personal data between the UK and the remaining EEA States will come to an end. The UK will be in the same position as other third party States (e.g. the US) meaning that data exporters to the UK will have to identify one of the limited legal grounds that exist for transferring data outside the EEA. The UK could decide to adopt a “light touch” DP regime. We believe this is very unlikely as it could prompt the European Commission to impose a complete ban on data transfers to the UK. We believe the most probable outcome of Brexit on DP is that the UK will continue to comply with EU standards and it will negotiate to become a “white listed” country like Switzerland.

Intellectual Property (IP): The overall impact on IP rights is that over time the UK will revert to a system of national rights and protection, although in the immediate aftermath of Brexit there will be a lot of legal uncertainty. For Community rights (like EU trade marks and designs), we believe the UK is likely to “grandfather” existing rights - this will require a complex and costly conversion regime. The UK will continue to be a member of the European Patent Convention (which sits outside the EU treaties), however, it may not be able to participate in the Unified Patent Court (UPC). In practice, this would mean that patent holders would need to take a separate action in the UK courts.

Employment: Businesses in Ireland that are active in the UK may have to address different approaches to working time, calculation of holiday pay, parental leave and TUPE. Mutual recognition of professional qualifications may also change and the status of UK workers could also be affected by the application of Irish immigration law to non-EU citizens.

Environmental/Energy: EU energy and environmental rules (to the extent they have not been incorporated directly into national law) may no longer be applicable to the UK or UK businesses. Businesses looking to carry on activities in the UK may become subject to a separate regulatory regime and standards. From a regulatory point of view, given that the UK has been at the forefront of development of EU cross-border energy markets and its interconnection with other EU markets, it would seem unlikely that the UK would not continue to implement, and be co-operative with, many aspects of EU energy policy. We also believe withdrawal by NI from the current all-island (NI and RoI) electricity market and proposed I-SEM would seem unlikely based on the fact that the all-island market has operated independently as a single island market from the GB market since 2007. However, Brexit could see changes to some aspects to UK (including NI) energy policy, such as carbon pricing, emissions trading and renewables policy. The bulk of general UK environmental law developed over the last three decades (as with Ireland) has been in response to the introduction of EU legislation (particularly directives). The extent to which the UK might actively repeal such laws would seem remote – particularly if the UK wanted to have access to the Common Market and/or become a member of the EEA.

Litigation & Dispute Resolution: The EU has streamlined and facilitated litigation systems in the EU. Post-Brexit, the recognition and enforcement of EU judgments in the UK, and UK judgments in Member States, may be more difficult than at present unless there are separate arrangements agreed to address the issue.

CORPORATE TRANSACTION ISSUES

Mergers & Acquisitions: M&A deals may become subject to separate UK merger/competition clearance and any new UK standards/rules applicable to takeovers and mergers. There may also be increased UK competition law application to deals and practices in the UK if EU competition law is no longer applicable.

Contracts: In regard to contracts, there has been some debate as to whether Brexit might constitute a frustrating event. That would seem unlikely in the vast majority of cases. Nonetheless, it is possible that in some contracts, the presence of a party in the EU may be required so as to perform the contract (eg. to provide services around the EU). Businesses will need to review their contracts to see if there is any clause dependent on EU membership.

Insolvency & Restructurings: The ability to effect cross-border insolvency or restructurings with a UK element may become more difficult if new UK insolvency rules are introduced. There could also be an increased risk of conflict between the Irish/EU and UK insolvency regimes. This could have consequences for creditors or financiers of UK businesses or operations as well as for the businesses themselves.

State Aid: The UK may no longer be bound by the EU’s State aid rules thus putting businesses (including Irish businesses) operating in the UK at a disadvantage to UK businesses benefiting from such State aid. In such case, while UK businesses may be able to complain to the European Commission about EU Member State aid to EU businesses, EU businesses could not complain to the European Commission about UK State aid to UK businesses.

NORTHERN IRELAND

Brexit is likely to have a particularly significant impact on trading relationships between Northern Ireland and the Republic of Ireland. Potential risks include introduction of border controls, restrictions on free movement of people and services, regulatory and other imbalances on either side of the border, and adverse consequences for any all-island economic arrangements, such as the energy market.

The introduction of border controls and restrictions on free movement between the two jurisdictions could prove to be very contentious given recent political progress. It will be interesting to see if specific derogations are agreed to address these issues as part of the withdrawal process.

Our Brexit team (in Belfast and Dublin) will have a particular focus on the above risks. Given our all-island offering we are ideally placed to advise fully on the legal implications of Brexit on your business.

A&L GOODBODY BREXIT TEAM

The A&L Goodbody Brexit team will circulate further updates on the above issues and any other related developments as they arise. In the meantime, if you would like further information or advice on any of the issues raised in this briefing, please contact any member of the Brexit team below, your usual A&L Goodbody contact or send your query to brexit@algoodbody.com.



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