

Kluwer Competition Law Blog

UK Votes to Leave

Gavin Bushell (Baker McKenzie, Belgium) · Friday, June 24th, 2016

Writing from the floor of my office, you will all now be aware that the British public voted in favour of a so-called “Brexit”, or exit from the European Union (“EU”). Before I turn the lights off, I thought I would share the following, which may be of interest to our readers, on the implications of this seismic and historic decision.*

Whilst the result of the referendum is not legally binding on the UK Government it is politically so and, furthermore, the governing Conservative Party promised that the referendum would be binding in their manifesto.

Mechanics of leaving the EU

The vote in favour of Brexit means that, at some point in the near future, the UK Government will trigger Article 50 of the Treaty on the European Union (“TFEU”) by notifying the European Council of the UK’s intention to leave.

This notification will set the timer on a two year countdown within which the UK and the remaining EU Member States (“EU-27”) will have to negotiate a withdrawal agreement. The form of such a withdrawal agreement will depend on negotiations and there is no guarantee that the UK will be able to withdraw entirely on its own terms.

Importantly, during the two year negotiation period, EU laws will still apply to and in the UK, and the UK will be able to continue participating in other EU business during this time. However, in terms of the parties to the negotiation of the UK’s withdrawal, the UK will be one party, and the EU-27 will be the other party, with the UK having no part in the EU-27 discussions.

Any final deal at the end of the two year process would need to be ratified by EU leaders by way of a qualified majority vote, a majority of the European Parliament and by the national parliaments of the EU-27.

Implications of Brexit on businesses

Many companies are struggling to understand whether or not they will benefit or be at risk now that the UK has voted to withdraw from the EU. Asking the right questions will help companies identify the potential risks and opportunities that the Brexit scenario causes for their organisations.

The implications of the Brexit vote falling into three broad categories: (1) the status of EU law; (2)

the UK's trading relationship with the EU-27; and (3) the UK's trading relationship with the rest of the world.

1) Status of EU law

EU law will continue to apply to the UK throughout the two year negotiation process. This means that there is no immediate change following the results of the Referendum.

Following the UK's exit of the EU, there is a general assumption that the UK will repeal the European Communities Act 1972, under which the UK is obliged to follow EU law. This means that, from the date of repeal, the UK will no longer be obliged to follow future EU law, although the current corpus of EU law in force is likely to remain in force. In addition, EU law contained in EU Directives, that has been implemented in the UK through UK statutory instruments (or SIs), will remain in force, unless the UK decides to repeal the UK SIs that implemented these Directives. Other forms of EU law, such as EU Regulations, will no longer apply directly to the UK. The UK may decide to create similar legislation, or retain only some aspects of EU Regulations currently in force to suit the needs of the UK.

With regard to European court judgments, English court judges will need to indicate the extent to which English courts should follow European court judgments, past and future. It is possible that in the future, an English court judge might decide that the judgment of a European court is persuasive, and so choose to adopt a similar approach in the UK.

2) UK's trading relationship with the EU-27

Once the two year withdrawal negotiations are over, the UK will have to form a trading relationship with the EU-27. Whether the negotiations around the UK's post-EU trading relationship with the EU-27 will happen concurrently with the withdrawal negotiations, or begin afterwards, is currently unknown. As a member of the EU, the UK enjoyed tariff-free trade with the other Member States, as well as free movement of people and services.

It is not certain what form of agreement will be reached with the EU-27, but the current thinking is that the UK will attempt to negotiate a series of free trade agreements ("FTAs") with the EU-27 once it has exited the EU. Negotiations are likely to be extremely complex and lengthy and there are concerns that the UK lacks the manpower and expertise required for such negotiations.

It is likely that the UK will try and achieve its political objectives behind the Brexit vote (namely, controls on the movement of people, reduction in funding payments to the EU, and regained controls of its own laws) with a FTA with the EU. However, whether the EU-27 will be willing to allow the UK to 'cherry pick' the best aspects of EU is far from certain.

Once the UK has exited, until such FTAs are negotiated, the UK will lose a number of the benefits of EU membership, including (but not limited to) tariff-free trade within the EU and 'passporting rights'. This will mean that imports from the EU-27 will be subject to duties, and financial institutions will no longer be able to freely provide cross-border financial advice, or run branches in other EU Member States.

3) UK's trading relationship with the rest of the world

As a member of the EU, the UK benefited from the multiple FTAs that the EU held with the rest of

the world. Since these FTAs are made with the EU, once the UK has exited the EU, it will also cease to be a party to these agreements. This will mean that the UK will, post exiting, also lose out on any benefits that it previously had as a result of these FTAs, such as tariff free trade.

It is therefore important to consider where businesses purchases inputs from, and where business' main markets are, in order to assess whether the loss of FTAs will impact imports and exports to these countries.

In the absence of these FTAs, the default position will be that the UK reverts to World Trade Organisation ("WTO") rules, which include the rule that equal tariffs must be applied to all WTO members, unless a valid FTA is formed between them. On leaving the EU, the UK will therefore move from duty-free trade with the EU countries and with countries with which the EU has FTAs, to having to re-impose duties when trading with these countries.

Unlike with the EU's FTAs, the UK will remain a member of the WTO since it joined as a original member in its own right, and not as member of the EU. However, the UK does not currently have a separate Schedule of Concessions (a document listing the specific commitments made by the members of the WTO which reflect specific tariff concessions and other commitments in the context of trade negotiations), since it only currently has one as a member of the EU. Therefore, when the UK formally leaves the EU, it will need to renegotiate a separate Schedule of Concessions so that the other members of the WTO understand what the UK is committed to offering. As with FTAs, such renegotiations are likely to be extremely lengthy and complex and the outcome is far from certain.

At Baker & McKenzie we are following Brexit developments as they unfurl and considering the implications of what Brexit might mean for our clients. You can keep ahead of the latest Brexit developments by following the Brexit Blog [here](#).

*Original article by my partners Ross Denton and Sunny Mann in our Sanctions Practice in London.

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