



An Overview of Brexit

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Introduction

Britain's membership of the European Union is now approaching the end. Thanks to the narrow but decisive win for the Vote Leave campaign on the referendum held on Thursday 23rd June, the UK looks set to be the first major country to leave the EU since the Treaty of Rome laid the foundations for a formal political union between European countries.

The outcome of the referendum creates considerable uncertainty for businesses operating both within the UK and across the EU, uncertainty that is being exacerbated by the current upheaval in domestic British politics. This paper will briefly touch upon domestic political developments and what they may mean for the next stage of the UK's negotiations with the EU. It also addresses questions pertinent to business, including:

- What will be the impact of political uncertainty in Britain on negotiations with the EU?
- What is the process and timeline for withdrawal?
- What are scenarios and models for the future UK relationship with the EU?
- What are the opportunities for business to influence both the negotiations over withdrawal, and EU policymaking in the future?

We have sought to address these questions in this briefing note. We will look at three different scenarios for what the UK's future relationship with the EU may look like, summarise the most likely models of future trade on offer, indicate the impact that this may have on British businesses and how they can mitigate this impact, and then finally summarise the events that are likely to take place in the immediate future.

The Impact of Uncertainty: British Politics & the EU

Britain faces a period of intense, if short-term political uncertainty. The two major political parties are currently both holding leadership contests (albeit one declared, the other not). The Prime Minister, David Cameron, has announced he is departing and although the leader of the Labour Party, Jeremy Corbyn, remains in post, he faces significant opposition from within his parliamentary party and the possibility of a leadership challenge.

The leadership election within the Conservative Party looks the most straightforward. Over the next two months, two candidates will compete for the votes of Conservative Party members to become their next leader and so the next Prime Minister. The two contenders are the Home Secretary Theresa May, who backed the Remain campaign in the referendum, but was moderate and circumspect in doing so, and Energy Minister Andrea Leadsom, who backed Leave and is attracting support from the right of the party.

Seeking to mitigate her support for the Remain side, Mrs May has committed herself to setting up a government department to oversee negotiations with the EU on our terms of departure. She has said this department will be headed by a senior Secretary of State, and that the position will be filled by an MP who campaigned for Leave. Mrs May has said that the right of EU citizens to live and work in the UK post Britain's withdrawal from the EU cannot at this stage be guaranteed, noting that assurances about the rights of British people living in other EU Member States have not yet been received. Mrs Leadsom has stated her position that those already here should be allowed to stay. Freedom of movement will be a key topic of discussion throughout the leadership campaign.

The new Conservative Party leader will be announced on Friday 9th September, and take over as Prime Minister as soon as practically possible after that date. An illustration of the timeframe and process can be found below:

The main opposition Labour Party is in a difficult situation. Although far more united as a pro-EU force than the Conservative Party, most Labour MPs feel betrayed by Mr Corbyn's insipid and half-hearted performance in the referendum campaign. Citing this, along with Mr Corbyn's unelectability and incompetence, the vast majority of Labour MPs and peers are now refusing to serve as shadow ministers. However, despite losing the confidence of his MPs Mr Corbyn has claimed a mandate from the party members who elected him last September and has refused to step down. Different sources of legitimacy are clashing, and an end is not easy to see. A split is more likely in the Labour Party than, surprisingly, the Conservatives.

As for the smaller parties, all sense opportunity. The Scottish National Party has sought to take advantage of the fact that, while the UK as a whole voted to leave the EU, Scotland voted by a significant margin to remain. A second independence referendum, though difficult to achieve (it would require the approval of Westminster, while the SNP no longer enjoys a majority in the Scottish Parliament), could potentially take place at some point in the future should the UK go ahead and depart. Some polls have suggest that under these circumstances, the SNP may win. The Liberal Democrats, meanwhile, have mapped out a path to recovery by focusing on the 48% of voters who opted to remain, and feel let down by the outcome of the referendum.

It will ultimately be a Conservative Prime Minister who will begin the formal process of leaving the EU. She will, however, have to reunite a divided party first, and pay heed to the Conservatives' relatively small Parliamentary majority. Most of all, she will need to propose a deal that the bulk of the Conservative Party, as well as Parliament as a whole, can accept - a hugely difficult political balancing act. Much will depend on how the UK's new Prime Minister navigates the difficult processes of withdrawing from the EU.



Withdrawal Procedure under Article 50

How to leave? Notification of intention to leave the EU under Article 50

There has been some uncertainty as to the steps the UK will have to take to give effect to the results of the vote. Article 50 of the Treaty on European Union (TEU), introduced with the Lisbon Treaty in 2006, grants Member States the right to withdraw from the European Union through a procedure that starts with a notification of its intention to leave being presented to the European Council. No Member State has ever used it – yet.

The UK will continue to be a full Member State in the EU as negotiations on its departure continue – giving British businesses the opportunity to work with UK officials and MEPs to influence the shape of a future deal. Under the TEU, Article 50 must be formally invoked for the negotiations to start. Whether the notification should be in writing or not has been subject to discussion – which highlights more than anything the uncertainty round the whole process. Yet it appears that the Member State intending to leave would have to give indication of its will to start the withdrawal procedure in an unequivocal manner, with the explicit intent to trigger Article 50.

In theory, the path can be smoothed by informal initial negotiations, outside the formal processes of Article 50 TEU. These could take place between the EU Member States and the UK, neatly sidestepping the need for the UK to enter into the two-year procedure set out in Article 50. Yet this requires political goodwill that the European institutions – the collective name given to the Commission, European Council and European Parliament – have so far not shown. The European Commission under its president, Jean-Claude Juncker, has even asked its officials not to speak with their UK counterparts or travel to the UK. This may be a harbinger of difficult negotiations ahead.

Negotiation guidelines

Once the request for the UK to leave is formally put forward, a negotiation mandate is drawn up by the European Council, without the participation of the notifying Member State. This opens the discussions on the Member State leaving the EU.

During the negotiation period, the Member State continues to be a full Member of the EU, bound by EU law, and with the full rights and obligations as any other EU member. Unless specifically decided otherwise then the UK's MEPs and other UK representatives continue to keep their posts throughout the withdrawal negotiating process.

It is important to continue to engage with these representatives. Many of them have either specific responsibilities for a particular sector – an official in the UK Permanent Representation in Brussels (a sort of embassy to the EU) will be responsible for food policy, for example, whilst

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another will look after energy policy – or have a particular interest in a topic. An MEP serving on the Internal Market and Consumer Committee, for example, may be interested in the smooth running of the EU's Single Market, even if the UK is not a part of it. Inevitably the influence of these individuals will decline, but the relationships and expertise that they have developed does not and they may still be able to influence negotiations on specific areas they are acknowledged authorities in.

Negotiation agreement

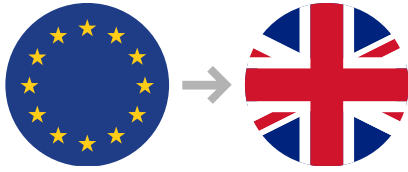
Withdrawal takes effect once a negotiation agreement in accordance with the Council guidelines and Article 218(3) on the Functioning of the European Union is agreed upon, or two years after notifying the European Council of the intention to withdraw. With unanimous agreement by the remaining EU Member States (and so a fair dose of political goodwill on their part), the negotiations period can be extended: given the complexity of the negotiations, it is highly likely that they would last longer than two years. It is possible, even probable, that a notification under Article 50 would be the start of a decade or more of uncertainty until the future arrangements with the EU are negotiated, passed into law and implemented.

As things stand, it is unclear who will be in charge of Brexit negotiations. The Commission is, in theory, the competent institution when it comes to negotiating international agreements; however, given the unprecedented nature of this situation it is likely that the Council will be heavily involved. When an agreement is reached, the European Parliament gives consent to the withdrawal agreement by a simple majority. The Council of the EU representing the Member States (without the UK) then agrees to withdrawal by qualified majority.

While other EU Member States could reject the withdrawal agreement, they however could not stop the UK from leaving the EU. Furthermore, though most EU officials are said to regret Britain's decision, they also share the belief that the results of the referendum should be respected.

One final thing to note: under Article 50, a Member State having previously withdrawn from the EU, can ask to re-join.

Three scenarios for the future of the UK's relationship with the EU



Scenario 1 - Article 50 is triggered starting the withdrawal procedure

In order to avoid prolonged uncertainty and to counteract any negative effects of the vote (including instability in the markets), Brussels has put pressure on the UK to pull the trigger on Article 50 immediately following the vote thereby activating the 'exit clause'. This would be in line with the claims made by David Cameron during the campaign. However, Mr Cameron's resignation has referred this responsibility to whoever succeeds him.

Nevertheless, the UK Parliament theoretically can stop the UK's exit from the EU by not endorsing any Prime Minister's decision to invoke Article 50. Although this is highly unlikely, given that the majority of MPs support EU membership they could prolong the debates around leaving.

Though able to, the next Prime Minister is highly unlikely to use the Parliamentary majority for "Remain" to block departure from the EU.

Article 50 negotiations have been put off for the time being, with many Member States agreeing on the need to let the dust settle, allow the UK to appoint a new Prime Minister and come out with a plan to leave the EU. This is not a situation that can last indefinitely. As noted above, parts of the EU are keen to start negotiations sooner rather than later and end the uncertainty around Britain's membership once and for all.

There is tacit agreement between EU Member States and the UK to avoid triggering Article 50 now - once triggered, a Member State is well on the way to leaving.

Once the withdrawal process is triggered, however, there is little chance of turning back. The body of EU legislation would however continue to apply as the negotiations are carried out and the UK would remain a Member of the EU. This means that the UK would also participate in other EU activities and policy-making processes, including potentially holding the Presidency of the European Council in the second half of 2017, as is currently planned. Politically, it would be difficult for the UK to hold the EU presidency if it is negotiating to withdraw, but legally there would appear to be no impediment.

Scope of the withdrawal agreement – and potential separate agreement on the future relationship between the UK and the EU

It is not clear from Article 50 itself whether it simply covers the process of withdrawing from the EU, or also covers the arrangements for the future relationship between the state leaving and the rest of the EU - including vital issues such as access to the Single Market and free movement of people. This may require the negotiation of a separate agreement with the EU. The scope of the withdrawal negotiations could in practice be as narrow or as wide as the negotiators choose.

There has been a great deal of expert opinion and speculation about this. In particular, some have expressed the view that the withdrawal negotiations would focus on the mechanics of withdrawal and a possible transition period, before a separate agreement on the future relationship with the EU came into force.

Though much discussed, Article 50 only appears to cover the process of withdrawal. Another agreement may be required to settle issues such as free movement of people. This gives more scope for businesses to influence specific aspects of a future relationship between the UK and the EU.

Because EU law applies in most policy areas, probably most (if not all) government departments would have to participate in the negotiations. It seems clear, therefore, that negotiations in the timeframe of the withdrawal procedure under Article 50 would result in a significant bureaucratic and administrative burden both in the UK and in Brussels – but also provides many opportunities for businesses to influence the scope and detail of negotiations in their particular sector.

Legal consequences of leaving the EU

The legal consequence of the UK leaving the EU is the end of the application of EU law in this country, although any national law adopted in implementation or transposition of EU law would remain valid until the Government decides to amend or repeal them. In order to replace EU law that has not been transposed into UK law, Parliament would need to enact substantial new legislation. However, it is also important to note that if there is to be a future relationship between the UK and the EU, complete isolation from EU regulations would be impossible.

If there is to be any sort of relationship between the UK and the EU after the British departure, it will be very difficult for the UK to completely ignore EU law.

Because of this, negotiations and discussions would also revolve around provisions on the transitional application of EU rules, particularly as regards free movement and trade agreements. Among other issues, it is likely cross-border security and foreign policy issues as well as the use of unspent EU funds, would also be a focus for discussion.

Unsurprisingly, business concerns mostly revolve around the future of trade deals. Yet, if the UK were unable to negotiate a free-trade agreement with the EU, World Trade Organisation (WTO) rules would apply and tariffs to UK goods would be applied by the EU on the basis of the rates that the EU applies to WTO Members. Many of those tariffs are quite significant, especially compared to the zero tariff all UK exports to the EU currently enjoy. Further information on this option can be found below.

A Summary of Options for Trade

Following the UK's withdrawal from the European Union, there are three plausible scenarios for the UK's future trading relationship with the EU:

The Norway Model

- Considerable access to Single Market, though not in agriculture or fisheries
- No say in making or amending rules covering the Single Market
- Involves significant contributions to EU budget
- Involves accepting free movement of people

Perhaps the model that would most look like existing EU membership for the UK: but difficult to see the Conservative Party and the millions who voted Leave accepting free movement of people.

Negotiated Bilateral Agreements

- Each bilateral agreement the EU has is different, but none include full access to services – which make up 80% of the UK economy
- Again, likely to involve access to Single Market but no say in making Single Market rules
- Could potentially involve accepting free movement of people too, as with the EU's deal with Switzerland
- In some cases, involves making contributions to EU budget

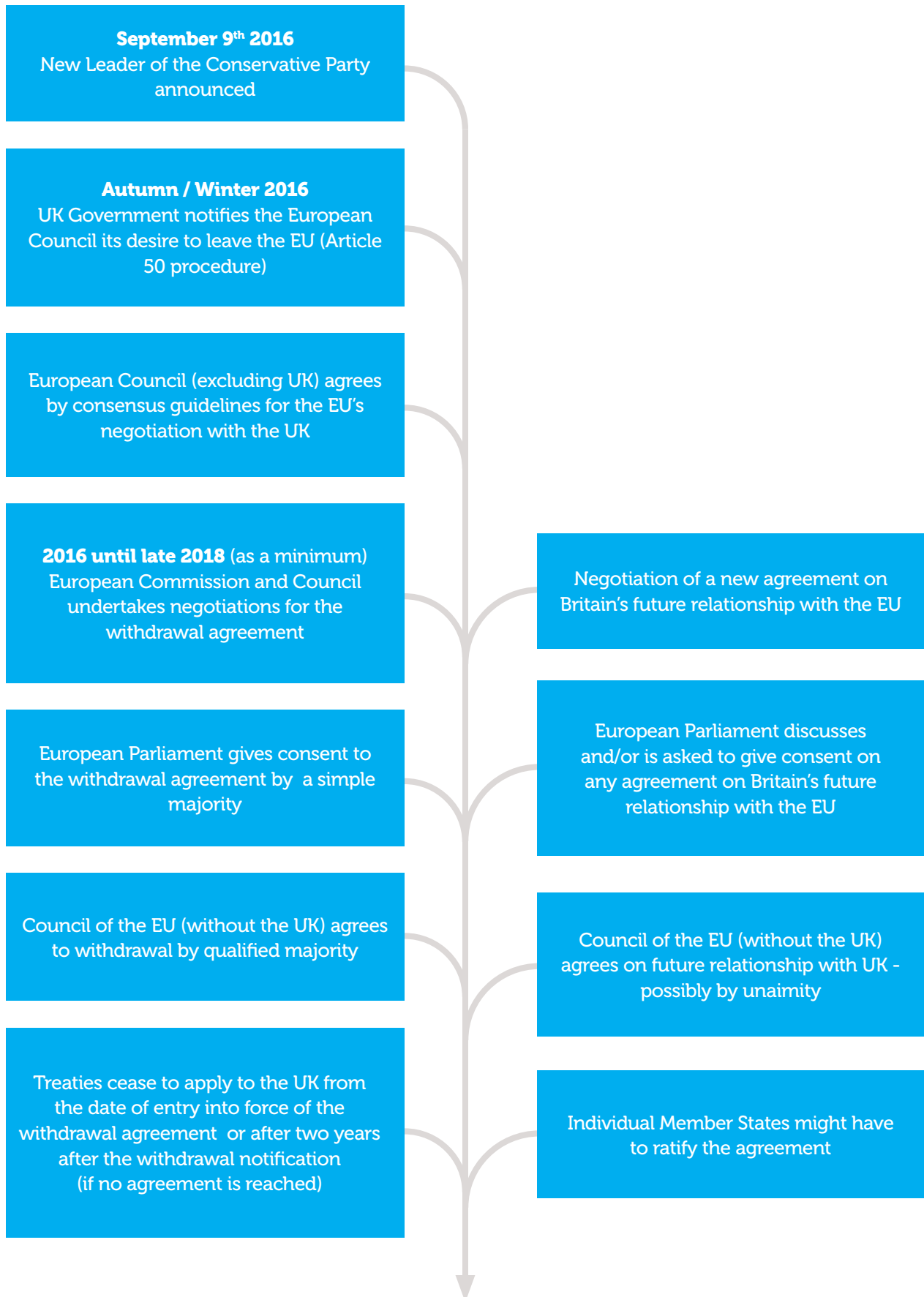
At this stage this is the most likely agreement, not least because it is the solution most favoured by many Leave campaigners. However, this may not be a quick process. Achieving a bespoke deal that protects British economic and political interests (likely to involve restrictions on free movement) whilst giving 27 remaining EU Member States what they want will likely involve difficult and protracted discussions.

World Trade Organisation Deal Only

- Provides the most radical, complete break with the EU
- Does not involve accepting any free movement or contributing anything towards the EU budget or being bound by Single Market rules
- But the EU would apply WTO tariffs to UK exports, raising their price and causing economic problems for exporters
- The UK could either impose tariffs on EU imports, raising the price of basic foodstuffs or lower tariffs on imports from all countries, cutting the UK's revenue stream

The 'nuclear option', this would cause economic damage for both the EU and the UK and so is unlikely to come to pass. EU governments, however, will keep this option in reserve as a negotiating tool, correctly judging that such a scenario would hurt the UK more than themselves.

Timeline for Negotiating EU/UK Agreements





Scenario 2

EU membership is renegotiated so could the UK only partially withdraw from the EU?

While the United Kingdom voted to leave the EU, there is a strong will to maintain a special relationship with Europe, in particular to maintain access to the EU's free-trade Single Market. While some deal to that effect could be negotiated whilst leaving the EU, all the possible alternative models to EU membership would come at significant costs.

Something will have to give: the UK will not be able to achieve full access to the Single Market without also accepting some sort of free movement. If the British Government chooses to prioritise ending free movement, access to the Single Market will be restricted - and businesses will suffer.

Indeed, it is highly doubtful that full access to the EU's Single Market could be achieved without allowing some degree of the free movement of people and/or some contribution to the EU budget and programmes. Similarly, access to the Single Market would still require the UK to implement EU rules without having a vote on these rules. An approach based on a Free Trade Agreement, while not coming with the same set of obligations, would mean a reduced access to the Single Market in key sectors where the UK is historically strong - such as, services. Last but not least, the UK could also lose preferential access to an important number of markets outside the EU, which could take years to renegotiate.

While a scenario in which the UK would remain or partially remain in the EU is unlikely - the citizens of Britain have after all voted to leave - some experts and politicians are considering whether the UK could simply partially withdraw from the EU, so to gain a new type of 'a la carte' membership from which the country to a certain extent already benefits (for example, through opting out of the Schengen border-free agreement).

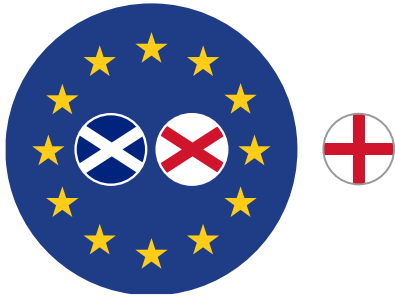
The most important objective would be to reduce the UK's obligation under EU law, whilst not losing or limiting its participation in EU decision-making.

Article 50 is key, however, and it seems to completely exclude this scenario. Under Article 50 - the only legal way of leaving the EU - you either leave completely, or you stay completely. Therefore, if partial withdrawal of some sort was the route chosen by the UK, another legal instrument would need to be found. A revision of the EU treaties is seen by many legal expert as the only route to achieve such an objective.

To do so, however, a future government would need to avoid triggering Article 50. This scenario would depend on UK's internal politics and the willingness of the EU itself and of its Member States to agree to negotiate on these terms with the UK. While some countries seem to be open to further negotiations with the UK, as noted for example by the German Chancellor Angela Merkel, others are reluctant to grant the UK such a special status, which runs the risk of other countries also asking for such an 'a la carte membership'.

At this stage, this scenario looks unrealistic. A big stumbling block is, if the UK were to stay in the EU for whatever reason then a second referendum would almost certainly to take place in the UK. Yet for a club of 28 Member States, the EU can prove remarkably flexible. Treaties can be rewritten if need be, and political deals can be made whilst the process of rewriting takes place.

All of this would require immense political will and the approval of the voters of the UK at the very least. Voters in other Member States may also get a say. The Presidential election in France in 2017 is followed by an election in Germany in 2018, and so, at this point in time, this scenario looks unrealistic. In any event, even if this outcome were to come to pass it would take time, perhaps a lot longer than simply triggering Article 50 and the UK withdrawing from the EU. This will add to the uncertainty around what legislative and regulatory regime UK companies will follow in the future.



Scenario 3 - Partial withdrawal

The devolved nations and the Scottish case – can certain UK territories remain part of the EU?

Some parts of the United Kingdom – including Scotland and Northern Ireland - are keen to remain in the European Union, and have been vocal in raising concerns over their future relationship with the Union. As mentioned above, Scotland's First Minister Nicola Sturgeon has threatened to launch a second referendum on independence with the goal of gaining membership of the EU in its own right. This would require the consent of the Westminster Parliament, however, and the major parties there are unwilling to agree to another independence referendum. Furthermore, since the major political parties have so few Westminster Parliamentary seats in Scotland (the SNP has all but three), there is little incentive for them to grant the SNP's wish for another referendum.

Whilst gaining independence from the United Kingdom and applying for membership is a solution, another potential scenario could be a partial withdrawal where some parts of the territory of the United Kingdom would leave the EU but not others.

The SNP may be seek - or be pushed into seeking by internal party pressure - a new referendum, but there is no guarantee, and not much incentive, for the UK Government to grant them one.

It must be stressed that this scenario is hugely unlikely to come to pass, if not impossible. Nor do senior figures within Europe, such as President of the European Council Donald Tusk, seem keen to encourage it: the latter refused to meet Scotland's First Minister Nicola Sturgeon on a trip to Brussels shortly after the referendum. Neither Scotland nor Northern Ireland would be sovereign states if they remained within the UK and could not therefore be formal members of the EU. The only way these territories could remain member of the EU is by either becoming independent (as Scotland would), or voting to join another Member State (as Northern Ireland would with the Republic of Ireland). Even if these scenarios were to take place, by the point the necessary processes were completed, the UK – and hence Scotland – would already be outside the EU and thus would have to re-apply for membership in their own right.

What's Next?

It is vital that businesses use this immediate post-referendum period to assess the threats and opportunities of the UK leaving the EU for their operations and their sector – because no business area in will be unaffected.

As is clear, much depends both on the new Prime Minister and the attitude of the other 27 Member States towards the UK when (and if) Article 50 is finally triggered.

Opportunities During the Renegotiation Process

Assuming that Article 50 is triggered during the next six months, the formal negotiation process will then begin on terms decided by Member States (but not the UK). Discussions will be general, focusing on one of the three trade options outlined above. Businesses should, however, follow developments closely and engage as and when appropriate.

There will be both general and specialist negotiators involved in this process. It is likely that those specialists will be civil servants who have long provided liaison between the UK and other Member States as part of the EU law-making process. Maintaining and building links with these experts will be vital in ensuring that a business or sector has its interests protected to the fullest possible degree.

It is also possible to engage at the EU level through MEPs, for example, from different Member States. Many non-UK actors will be keen to see a deal that creates a harmonised market across the UK and the EU for businesses that operate in their country.

Influencing the EU During the Renegotiation Process

As noted above, there will also be opportunities to engage during the renegotiation process. Unless the European Council specifically decides otherwise, the UK can take part in normal EU decision-making process as its departure is being discussed. Inevitably the UK's influence will dwindle, but the relationships and the expertise built up over many years of engagement by experts within the UK Permanent Representation to Brussels, and by certain British MEPs, will remain. Businesses should take advantage of this, working with these civil servants and elected officials to protect key interests and head off threats that may appear during the renegotiation process.

In many respects, engagement by UK companies in the EU will increasingly mirror engagement from US-based businesses. Many American firms have extensive contacts with EU officials and elected representatives and regularly seek to influence the development of policy. They must

rely, however, on arguments based on science or trade and employment within Member States rather than the impact of a law on their home market – as UK firms could and can currently do for the foreseeable future.

Opportunities Post-Brexit

When the UK does finally depart the EU, it will be more difficult for UK-based businesses to shape and influence EU policy development. It will not, however, be impossible. Businesses should seek and exploit links in other EU Member States to advance interests through them. They should also look to form alliances/trade associations that cover both the UK and the EU: it will be as much in the interest of all to achieve a harmonised regulatory framework in both polities.

Much depends on the shape of the deal achieved by the UK in the coming years. In any event, The Whitehouse Consultancy can help. Our European team has more than a decade's worth of experience conducting successful campaigns on behalf of multinational corporations, small companies and pan-European trade associations. Our success is based on our multilingual team's expertise in both European politics and law, as well as valuable experience of working with and within the institutions of the European Union.

In 2014, the Whitehouse Consultancy was nominated for the "Best Campaign in the European Union" award at the Public Affairs Awards for its work on EU food policy. In 2015, the Whitehouse Consultancy was nominated for "Best European Union Consultancy Campaign of the Year" at the same awards for its work on tax policy in the EU.

We can help you navigate the next few years of uncertainty from both a UK and a European perspective. In particular we can help you:

- Follow and make sense of the debate
- Understand what various proposals on the future relationship between the UK and the EU will mean for your business
- And crucially, influence the shape of a future deal to maximise opportunities for your business and minimise the threats.

Contact us now for a conversation about what Brexit means for your business, for your sector and for your future.

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