



Brexit

Legal aspects from an EU perspective

Timeline



"Leave"
51,9%

June 23, 2016
**Brexit
Referendum**

EU Council President
Donald Tusk:
**„The only real
alternative to a
hard Brexit is no
Brexit“**

October 13, 2016

**UK High Court
Ruling**

3. November 2016

**UK Supreme
Court Ruling**

January 24, 2017

UK „Brexit Bill“
March 13, 2017

**Brexit formally
triggered**

March 29, 2017 at 1:20
p.m. in Brussels

**EU Council
Guidelines**

“nothing is agreed until
everything is agreed”

April 29, 2017

March 29, 2019

Legal procedure under Art. 50 TEU

Notify intention to withdraw

- *"Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements."*
(Art. 50 Abs. 1 TEU)
- Notification to EU Council

Negotiate withdrawal agreement

- EU Council issues „guidelines“ for the negotiations
- Negotiate agreement on the basis of the guidelines
- Agreement concluded between the EU Council for the EU and the withdrawing member state after ratification by EU Parliament

Withdrawal

- As per the effective date of the withdrawal agreement or at the latest 2 years after the withdrawal notification
- But the 2-year-deadline can be prolonged if agreed between the EU Council and the withdrawing member state
- Consequence of withdrawal: Withdrawing member state no longer member of the EU, EU treaties no longer apply

Brexit scenarios



Future relationship



UK leaves the EU



UK red lines:

- No ECJ jurisdiction
- No free movement
- No substantial financial contribution
- Regulatory autonomy



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- No free movement
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UK red lines:

- No ECJ jurisdiction
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- UK red lines:**
- Independent trade policy



No deal



WORLD TRADE ORGANIZATION

Legal Brexit risks

Examples

Brexit risks

Examples

Legal

Company Law

Explanation:

- > EU-UK restructuring becomes more difficult after the Brexit, in particular, cross-border mergers to/from the UK are likely to be abolished
- > Liability risks for shareholders of UK companies active in EU member states (e.g. UK Limited)
- > Unclear fate of European companies (e.g. SE) based in the United Kingdom

UK-related restructuring

- > Cross-border mergers on the basis of the EU Merger Directive between companies in the UK and EU Member States will probably no longer be possible after the Brexit

Liability risks for UK Companies

- > After the Brexit, UK Limited and other limited liability companies which have their head offices in a EU member state could, by the courts of such member state, be deemed to constitute a non-limited company.
- > For example, German courts will likely regard a UK Limited with their administrative seat in Germany as a non-limited partnership.

Societas Europaea

- > It is unclear whether societies under European law, in particular Societas Europaea (SE), based in the United Kingdom can continue to exist, or whether they must move their registered offices or change their legal form following the Brexit

Brexit risks

Examples

Legal

Employment Law

Explanation:

- > The Brexit may have implications for deployment and/or the flexibility of deployment of workers in or from the United Kingdom
- > Changes can also be expected in the area of the European Works Council and TUPE rules

Freedom of Movement for Workers

- > There is legal uncertainty as to whether, and for how long, British employees who work in a EU member state without other EU citizenship will continue to enjoy freedom of movement, and/or whether and when German residence regulations will be applied.
- > There is legal uncertainty as to whether, and for how long, employees who work in the UK without British citizenship will continue to enjoy freedom of movement, and/or whether and when UK residence regulations will be applied.

European Works Council

- > European Works Councils under UK law may have to be re-elected as part of the Brexit, and other European Works Councils may need to be reconfigured as necessary

Transfer of Undertaking (TUPE rules)

- > Transfers of Undertaking with a UK reference could become more difficult after the Brexit (British TUPE regulations could be repealed)

Brexit risks

Examples

Legal

Procurement & State Aid

Explanation:

- › The consequences of the Brexit on public procurement should receive close attention
- › The fate of European subsidies given out to British companies is currently unclear

Public Procurement

- › The EU Public Procurement Law remains valid for all bidders who participate in public invitations to tender in the EU's internal market
- › As such, attention should be paid to any legislative development towards a so-called "market entry instrument", which could potentially worsen the position for UK companies
- › The legal implications of the Brexit for the UK's and EU's different procurement regulations are still unclear. These depend on various parameters (e.g. WTO (GPA), EEA, bilateral agreements, etc.)

State Aid and Subsidy Law

- › It is unclear whether the UK will still be subject to EU subsidy laws after the Brexit. The decisive factor is whether the UK becomes a member of the EEA
- › It is also questionable whether subsidies granted to companies in the UK by the European Commission or by the national authorities of EU Member States continue to be effective after the Brexit

Brexit risks

Examples

Legal

Commercial and IP

Commercial contracts, especially sales structures

Explanation:

- > The Brexit will have a significant impact on the exchange of goods between the United Kingdom and the EU, as well as corresponding sales structures
- > Union trademarks and EU design rights (Community designs) will no longer be valid in the United Kingdom after the Brexit

- > The sale and/or placing on the market of goods between the EU and the UK will be significantly affected by the Brexit in both directions, e.g. with regard to customs, import, export control, fees and taxes, regulatory responsibilities (e.g., WEEE, RoHS, REACH, and other industry particulars such as LSHC), enforcement of claims, etc.
- > For EU companies selling goods to customers based in the UK via e-commerce platforms, the following applies: web shop structures are largely harmonized based on EU guidelines. Certain discrepancies will occur directly from the Brexit (e.g. telecommunications law). Other changes can be expected in the medium and long term, due to national modifications in the United Kingdom
- > Territorial arrangements with reference to the EU could become difficult to interpret (what territory is meant by "EU"?) (applicable to all types of commercial agreements such as distribution systems, dealer and representative agreements, exclusivity agreements)

Intellectual Property (IP)

- > Union trademarks and EU design rights (especially registered and unregistered Community designs) may no longer be valid in the United Kingdom after the Brexit
- > Territorial agreements in IP-related contracts (licenses, research and development contracts, etc.) with reference to the EU may become difficult to interpret (see above)

Brexit risks

Examples

Legal

Litigation

Litigation, Enforcement

Explanation:

- > The enforcement of claims against UK debtors from within the EU is expected to be significantly more difficult and time-intensive
 - > EU rules on the choice of applicable law may no longer hold, so that applicable law would be determined in accordance with UK IPR rules
- > Simple debt settlement procedures against UK debtors from within the EU may no longer exist. EU creditors have access to various simplified and cost-effective procedures for cross-border debt collection (e.g. the European order for payment procedure for EU parties or the European Small Claims Procedure for civil and commercial claims under EUR 2,000.00), which will probably no longer be available against UK borrowers after the Brexit
 - > No authorization was required under the Brussels I Regulation (Regulation (EU) 1215/2012 and formerly (EC) 44/2001) and the EU Payment Regulation (Regulation (EC) No 1393/2007) to bring lawsuits in another Member State. After the Brexit, this might no longer apply to the UK, with the result that (often time-consuming) international procedures have to be applied, as is currently the case with lawsuits outside of the EU
 - > The enforcement of titles in national courts is also governed by the Brussels I Regulation, with the aim of making such enforcement a simple process. After the Brexit, this regulation will no longer be applicable to the UK, with the result that the enforceability of judgments by UK courts in EU Member States and vice versa is uncertain
 - > The Rome I and Rome II Regulations (Regulation (EC) 593/2008 and (EC) 864/2007) oblige the national courts of Member States to respect the freedom of the parties with regard to choosing applicable law. This means that party agreements which determine the applicability of UK law are in principle recognized by the courts of Member States (subject to a few exceptions). In the absence of such agreements, the conflict-of-law rules (private international law) applicable to the UK would be relevant

Brexit risks

Examples

Legal

Antitrust

Explanation:

- › Other/parallel responsibilities and thresholds for merger control applications with UK relevance may arise in the future
- › Competition compliance programs should be updated in good time

Merger Control Procedure

- › With the abolition of the European Commission's one-stop-shop solution, other/parallel responsibilities and thresholds for merger control applications may arise in future
- › Merger control applications are not mandatory in the United Kingdom. However, additional costs may result from the fact that the European Commission is no longer responsible, since relevant turnover in the UK is no longer taken into account

Competition Compliance

- › Existing competition compliance programs must be reviewed as required due to possible changes in antitrust law (EU and UK antitrust law no longer harmonized)
- › EU antitrust laws (as well as respective member states' laws) continue to apply to UK companies with business in the EU internal market, due to the effect principle in antitrust law

Brexit risks

Examples

Legal

Data Protection

Data Protection

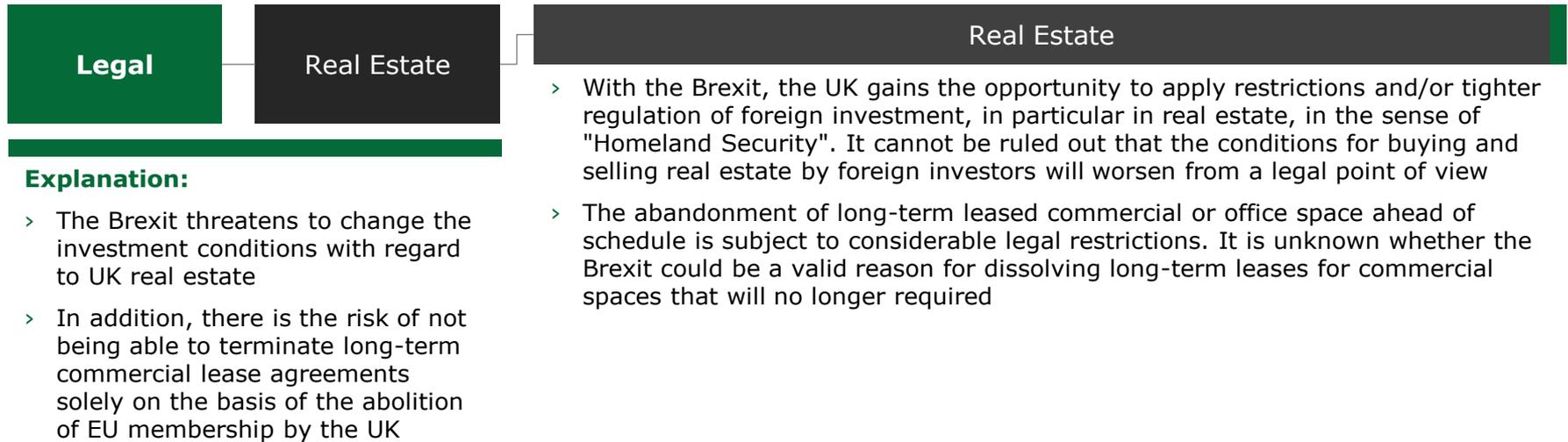
Explanation:

- › Data protection legalities and other conditions for transmitting and processing personal data between the UK and the EU after the Brexit are unclear

- › The Brexit makes the UK a non-Member State from a EU perspective; and the new European Data Protection Law (EU GDPR) does not directly apply to the UK
- › When transmitting personal data from a EU Member State to the UK, the Brexit therefore creates considerable legal uncertainty as to the conditions under which such data transmission is permissible under data protection law
- › This also affects the requirements in terms of processing personal data in the UK

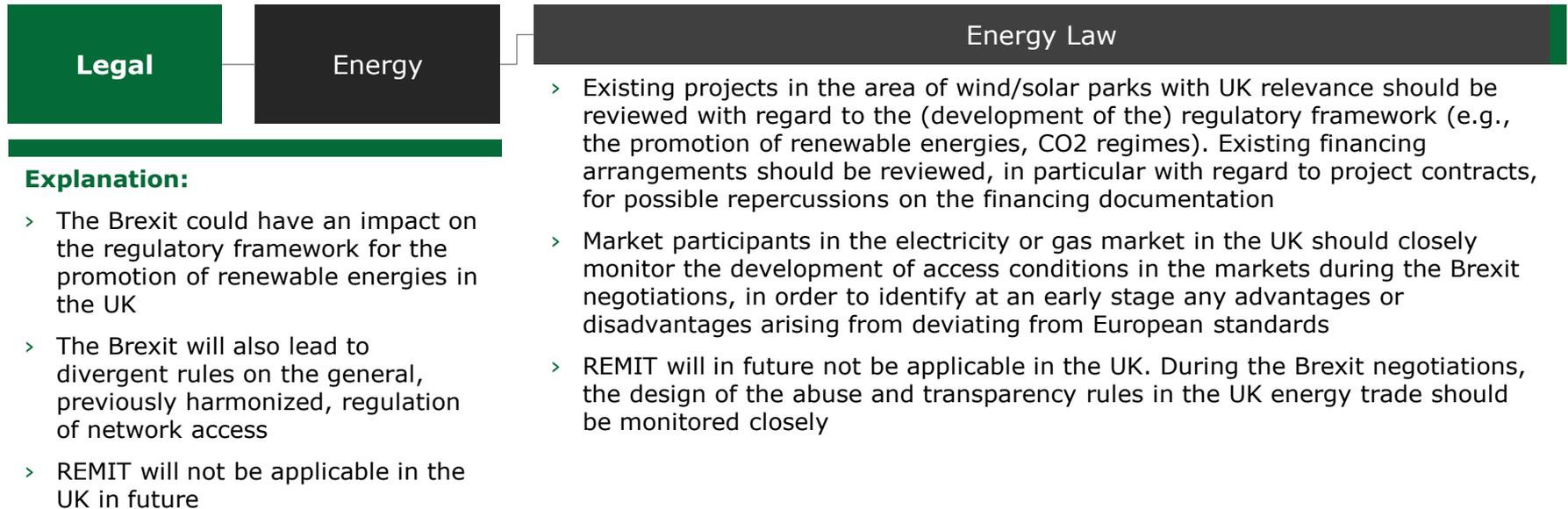
Brexit risks

Examples



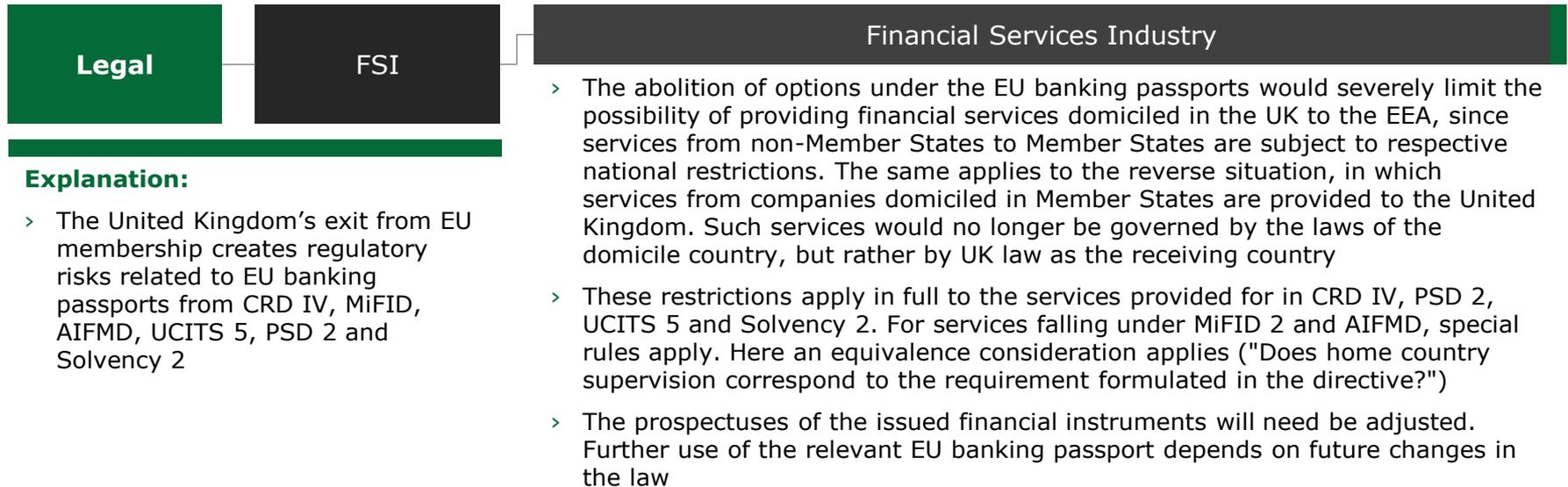
Brexit risks

Examples



Brexit risks

Examples





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