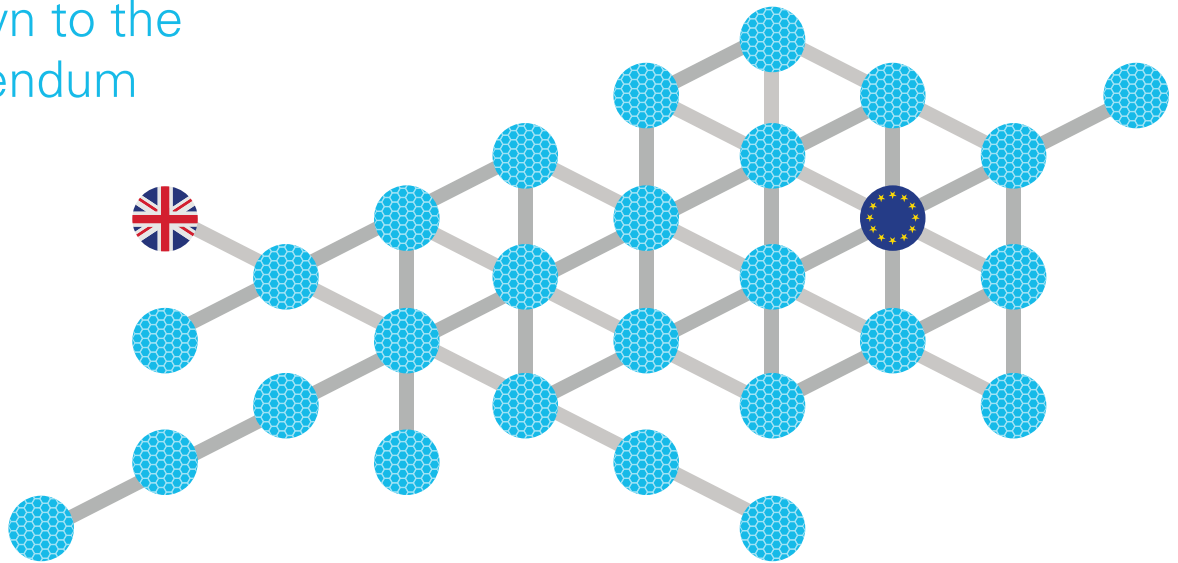




Countdown to the EU Referendum



The terms of a New Settlement for the UK's position within the EU have been brokered by the UK Government, and a referendum date announced. UK voters will go to the polls on 23 June 2016 to decide whether the country is to remain in or leave the EU. **Our attached timeline** sets out the key dates preceding and following the referendum.

As a UK firm, Shepherd and Wedderburn has a dedicated cross-sectoral team analysing, advising and training businesses and individuals on the legal and regulatory implications of both a 'remain' and a 'leave' referendum outcome. We have thoroughly interrogated both scenarios, to the extent that we are able to provide detailed what-if analysis and advice on next steps to clients seeking to understand how developments in the constitutional space will affect them, whatever their sector, and whatever the outcome of the referendum.

To help you cut through some of the issues and to provide you with impartial advice, Shepherd and Wedderburn's Brexit Advisers will be issuing weekly in-depth sector specific articles, to talk you through the 'what-if' questions and best steps advice.

We started the Brexit countdown last year with the **attached commentary**, updated to reflect the latest developments. In this bulletin we look at the latest developments in the concessions won by the UK Government relating to the terms of its membership of the EU. We cover 'staying in the EU', and highlight the legal and regulatory outcomes of a 'Brexit'.

New Settlement Negotiations

On 2 February 2016 the EU Council published a proposal for a New Settlement for the UK in the EU, covering four key subjects: sovereignty, competitiveness, economic governance and immigration. During the EU summit that took place on 18-19 February, the EU government leaders agreed the final terms of the deal addressing the UK Government's requests. The Settlement is now a legally binding and irrevocable decision by the 28 heads of state. If the outcome of the referendum in the UK is to remain in the EU the New Settlement terms will take effect.

Staying in the EU on the New Settlement terms will largely mean business as usual for the UK, at least in the

short term. The package does not include any dramatic overhauls of the current EU laws that apply in the UK. In many regulatory areas, the UK was leading the proposals and its domestic regulation often goes further than the EU laws.

It is expected that, as a matter of priority, the UK will seek to limit the free movement of persons and welfare benefits available to them. It will also seek to redefine the terms of the 'ever closer Union'. Longer term, the EU has, as a result of the negotiations, committed to reduce regulatory burden on businesses and the national parliaments of Member States will have an additional veto with respect to the Commission proposals. In terms of economic governance, the New Settlement seeks to



underpin the mutual respect between those States that are members of the Eurozone, and those that are not. In practice, the UK will be able to delay draft legislation proposed by the Eurozone countries if it affects the interests of the UK's banking sector, but it will not have the ultimate power of veto.

The New Settlement has been confirmed as within the terms of the existing Treaties with a stated intention to revise the Treaties to reflect the UK's aim of no further political integration.

Questions have been raised on the potential for the European Court of Justice to decide on cases interpreting the Treaties in a way which negates the New Settlement but the current intention is clear that the Settlement terms should apply.

Leaving the EU

Complex and lengthy negotiation process

The vote to leave the EU would trigger a complicated separation procedure under Article 50 of the Treaty on European Union. The UK will be required to notify the European Council of its intention to leave the EU, which will start a complex negotiation process for an agreement setting out the arrangements for the UK's withdrawal, as well as the framework for its future relationship with the EU.

Agreement is expected to be reached within two years and would be concluded by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament. This may prove to be a very difficult task, taking into account that over 55% of the Member States, representing at least 65% of the total EU population will have to agree. If an agreement is not reached within the two years after the notification, then (unless the Council unanimously agrees with the UK to extend the period) the Treaties will automatically cease to apply to the UK. This will include all international agreements concluded by the EU, including the Comprehensive Economic and Trade Agreement (CETA) with Canada, the EU-South Korea Free Trade Agreement and most likely the trade agreement between the US and the EU, Transatlantic Trade and Investment Partnership (TTIP) which it is anticipated will be finalised by that time.

Post-Brexit UK

The UK Government has not given any indication of the possible terms it would seek for a Brexit. Options available to the UK would depend on the appetite of the EU Member States and other trading partners to negotiate with the UK. The UK and the EU membership of the World Trade Organisation (WTO) may add a layer of additional complexity to a Brexit with existing WTO obligations and European-wide market access commitments. The

most favoured nation obligation, which broadly requires non-discrimination amongst all trading partners, could leave any UK/EU deal open to challenge by other WTO members, if it contains preferential market access regime for the UK.

The most likely models to apply post Brexit include joining the European Economic Area (EEA) with the three other EEA Member States (Iceland, Liechtenstein and Norway); following the Swiss model, which is based on bilateral treaties; Customs Union based on the current Turkish model; negotiating a Free Trade Agreement (FTA) with the EU and trading with the EU on terms governed by the WTO. Each of these models has strengths and weaknesses, politically and economically with underlying legal and regulatory differences.

Adopting the EEA route would mean that in the main the UK would have to comply with the EU laws and regulations. The EEA Agreement incorporates the EU legislation on the four freedoms – the freedom of movement of goods, services, persons and capital; and guarantees equal rights and obligations within the Internal Market. The Agreement does not cover the Common Agriculture and Fisheries Policies; Customs Union; Common Trade Policy; Common Foreign and Security Policy; Justice and Home Affairs or Monetary Union (EMU).

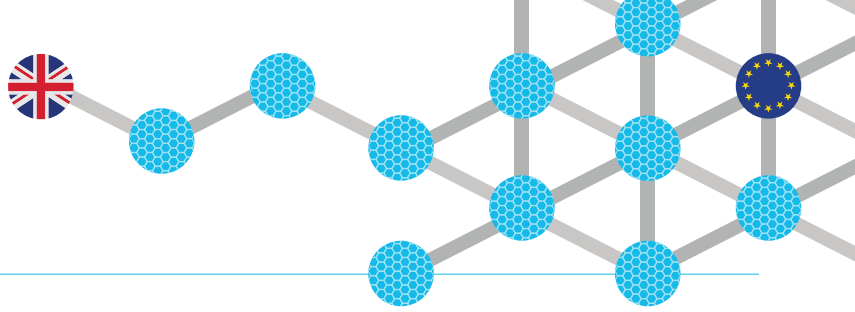
At the other end of the spectrum, trading with the EU under the auspices of the WTO or a negotiated Customs Union, or an FTA would give a degree of market access, but on terms that may not offer the protections afforded by the four freedoms of the EU Treaties.

The future of the EU itself has been the subject of significant debate across the wider EU member states. If a Brexit occurs a possible contagion effect of further disintegration of the EU is a potential consequence. If the EU does not continue to operate as a regulatory harmonised economic block, it may limit market access for the UK businesses in the future.

It is highly likely that the deal that the UK would negotiate following the Brexit would be UK specific and not based on the current models used by non EU member countries. Nonetheless, it is useful to understand legal and regulatory frameworks of the current trading models with the EU. Shepherd and Wedderburn will release policy briefing notes covering in more detail the models outlined above.

What should you be doing now?

A Brexit would impact not only on UK businesses and individuals, but also on EU companies trading with the UK. Each sector faces unique challenges pre- and post-



referendum, regardless of the outcome. The issues surrounding a Brexit should be high on the agenda for all businesses and individuals operating within the UK. Assessing and addressing the issues is key and we will be guiding our clients through the necessary legal steps.

Shepherd and Wedderburn will be issuing specific guidance over the forthcoming weeks covering wide ranging practice areas.

Please call your usual Shepherd and Wedderburn contact to discuss what the referendum means for you and your business.

SHEPHERD AND WEDDERBURN'S BREXIT ADVISERS JOINING THE DOTS OF THE EU REFERENDUM

What if?

Shepherd and Wedderburn has been for many years offering balanced and impartial advice on how the different scenarios might play out in the event of constitutional change.

With the EU referendum now only months away, members of our dedicated Brexit Advisers group will continue to interrogate the 'what if' questions, relating to specific sectors, that will emerge when the UK decides whether to remain in or leave the EU.

For further information in the first instance please contact **Louisa Knox and Gordon Downie, Co-Chairs of the Shepherd and Wedderburn Brexit Advisers.**

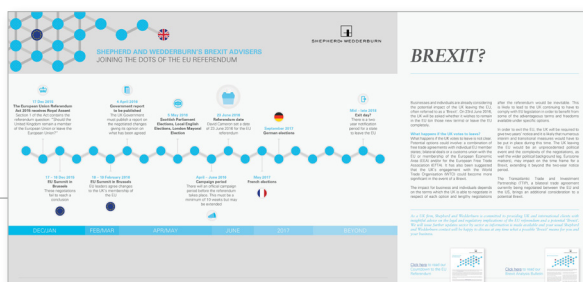


Louisa Knox
Partner & Co-Chair Of Brexit Advisers
T +44 (0)131 473 5216
M +44(0)781 800 2191
E louisa.knox@shepwedd.co.uk

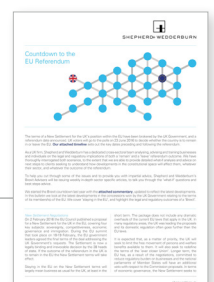


Gordon Downie
Partner & Co-Chair Of Brexit Advisers
T +44 (0)131 473 5162
M +44(0)771 863 7298
E gordon.downie@shepwedd.co.uk

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