

## **TO BREXIT, OR NOT TO BREXIT- THAT IS THE QUESTION...**

UK Prime Minister David Cameron has announced a referendum to be held on 23 June 2016 on whether or not Britain should remain in the European Union. If the referendum result is for the UK to remain in the EU (an “in” or “remain” vote) then the current situation remains (subject to the various changes negotiated by the UK government with the EU in February 2016). But if the referendum result is for the UK to leave the EU (an “out” or “leave” vote, commonly referred to as “Brexit”), what happens? How will it affect me as a British expat living in Italy? Can I vote?

### **How would the withdrawal process work?**

If the Referendum result is in favour of Brexit, the UK would start a two year withdrawal process by invoking Article 50 of the Treaty of the European Union. During this two year timeframe, the UK would unravel the huge range of budgetary, legal, political and other obligations that currently exist between the EU and the UK, and negotiate the future arrangement that the UK would have with the EU going forwards. UK legislation would need to be passed to make necessary amendments to UK law, starting with the repeal of the provisions of the European Communities Act 1972 (by virtue of which the obligations under the EU treaties are binding in the UK and the UK government has power to make payments in accordance with its EU obligations). Additionally, a large number of savings provisions and transitional arrangements would likely be needed to preserve those parts of EU law, or legislation made under it, that the UK would need to preserve in force in order to avoid regulatory gaps by virtue of the UK being outside the EU.

Brexit would mean that, following the UK’s withdrawal from the EU Treaties, EU law would no longer apply to the UK. The EU courts and other relevant institutions would no longer have jurisdiction over the UK and UK citizens would no longer have the rights of EU citizens. The provisions of EU directives, directly effective decisions and regulations, and rulings of the Court of Justice of the EU, would also cease to apply, unless their effect was specifically preserved by UK national law. However, UK law is heavily derived from EU law in many areas and the way in which EU law provisions have been implemented into UK law is very complex, often involving a combination of amendments to existing primary legislation, new primary legislation, secondary legislation and other rules, such as the rules of the Financial Conduct Authority and Prudential Regulation Authority in relation to financial services. For at least a transitional period, provisions derived from EU law would probably be retained and directly effective EU regulations deemed to continue. However, it would still be necessary to ensure that these laws function properly in the new situation. For example, where EU institutions have direct administrative powers, these would need to be replaced by alternative arrangements and the scope and meaning of legislation or rules referring to the EU may need to be clarified.

## So what relationship will the UK have with the EU following Brexit?

There is no comparable example of a country leaving the EU and the UK government has not given any public indication of the nature of the post-withdrawal relationship that the UK might seek to have with the EU. A number of different models of relationship with the EU are commonly discussed in this context although rather than following any of the existing models set out below, it seems most likely that the UK would need to form a new kind of relationship with the EU and other countries based on elements of some or all of those existing models set out below. There are a number of possible opt-out alternatives for the UK following Brexit.

European Economic Area (“EEA”) membership: the EEA currently comprises the EU, Norway, Iceland and Liechtenstein (the last three also being members of the European Free Trade Association (“EFTA”), which administers the EEA and also free trade agreements with a number of other countries worldwide). The purpose of the EEA is (i) the extension of the EU single market and free movement of goods, services, people and capital; (ii) laws on competition, state aid, consumer protection and environmental for the non-EU EEA states; (iii) a number of other areas of co-operation, including R&D, enterprise and education, tourism and culture, but it does not cover agriculture and fisheries, the common trade policy on trade with third countries, foreign and security policy or justice and home affairs. The non-EU EEA member states are required to adopt much of EU law and the non-EU EEA member states are required to contribute to the EU budget. Despite being required to adopt much of EU law and to contribute to the EU budget, the non-EU EEA member states do not have voting power or formal access to the decision-making process, they do not have representatives in the European Parliament, although they do have some influence through participation in expert groups and committees of the European Commission. This enables them to participate in the preparatory work of the Commission, but not in the negotiations by which the final terms of EU legislation are decided.

**An EU relationship based on the current Swiss model:** after EEA membership was rejected by the Swiss electorate, Switzerland instead took the route of agreeing specific bilateral agreements with the EU in areas in which it wanted access to the single market, and has now concluded over 120 separate agreements. The Swiss agreements provide for the free movement of goods (but importantly do not cover the free movement of services) by removing tariffs, but Swiss goods must still meet EU regulatory requirements and are not assumed to comply with them (as is the case with goods coming from EEA member states). Switzerland is not required to adopt relevant EU legislation but instead will typically copy it domestically as its laws will need to be considered to be “equivalent” to those of the EU in order for the agreements to function. The Swiss agreements with the EU are constructed so that if it breaches any one agreement, the EU could in theory terminate all of the agreements. The Swiss financial contribution to the EU is much lower than that of the non-EU EEA member states but it is still required to make a contribution. Switzerland was also required to sign up to the

free movement of people and is in the Schengen area. However, the complexity of having to put in place such a large number of agreements that continuously need to be updated has led the EU to conclude that the Swiss model is not viable in the longer term and it has stated that a framework agreement (along the lines of the EEA Agreement) will be required to be agreed in the future with Switzerland.

**A “Customs union” relationship with the EU based on the current Turkish model:**

Turkey is part of a customs union with the EU which allows for tariff free access without quotas to the internal market for goods, but importantly not for services. Turkey has to a large extent control of its own trade policy and does not have to allow for the free movement of EU persons. Turkey is required, however, to adopt a common tariff with the rest of the EU for third country goods and is restricted in its ability to conclude agreements with other countries without the consent of the EU. The requirement to impose a common tariff for non-customs union imports means that where the EU agrees a free trade agreement with a third country, Turkey is forced to follow suit in reducing or dropping tariffs, even though it cannot itself derive any benefit from the trade agreement. Turkey is required to harmonise its laws with those of the EU in relation to competition, intellectual property and consumer protection. However, Turkey is not required to permit the free movement of EU persons.

**A Free Trade Agreement with the EU:** a number of countries have standalone free trade agreements with the EU, most recently Singapore, Canada and a number of African and South American countries. A significant agreement will be the Transatlantic Trade and Investment Partnership (“TTIP”) which the EU is currently negotiating with the US. The UK may negotiate a similar free trade agreement with the EU based on these recent examples.

**World Trade Organisation membership:** the UK is already a member of the WTO (although as with all the EU member states, the EU currently acts on its behalf at WTO level). The WTO operates on the basis that the “Most Favoured Nation” principle will be applied among its members meaning that exporters for a member country can trade with other members on the best terms offered to any other member country. The UK would benefit from this membership which is already in place, but there has been press commentary on the pros and cons of WTO membership.

**A hybrid of the all or some of the above:** it seems most likely that the UK would not follow a single precedent from those models set out above, but would form a new kind of relationship with the EU based on elements of some or all of those existing models set out above.

**So what relationship will the UK have with non-EU countries following Brexit?**

As well as negotiating a new relationship with the EU, in the event of withdrawal, the UK would simultaneously need to put in place trade arrangements with other countries with whom it currently deals on EU negotiated terms. Since the EU has exclusive competence

in the area of trade policy, the EU's existing trade agreements with third countries are entered into by the EU as a block rather than by the individual Member State, and so the UK would not (unless otherwise agreed) continue to participate in them on withdrawing from the EU. Any such agreements would require separate negotiations with the relevant countries.

### **How would Brexit affect my business?**

Businesses would need to consider their own private contractual or other arrangements to ensure that they still operate as intended in the changed circumstances, or whether they need to take steps to change anything as a result of the different political climate and any consequential commercial impacts on their affairs. Withdrawal from the EU would be a complex, lengthy and uncertain process. In developing a new relationship, much would depend on the attitude that the EU and other countries take to a post-withdrawal UK and how co-operative all parties choose to be. Disentangling the UK from EU law and regulation would raise many technical issues. Businesses and individuals who are affected by the UK's membership of the EU would need to consider the implications of uncertainty and potential change on their operations and strategy. Key issues include product sales or supply chains that span the EU or other countries with which the EU has trade agreements; provision of services in reliance on EU passporting regimes or other forms of mutual recognition of qualifications or standards; sector-specific regulation, for example financial services, where the impact of a UK exit would be strongly felt; employment of workers from the EU in the UK, or vice versa; the impact of the UK's withdrawal on free movement of capital, data protection rules, competition and consumer policy, research and development, energy policy, environmental laws, agriculture and fisheries and regional aid. Brexit would have wider implications resulting from geopolitical change that businesses would need to consider in their daily operations.

### **What about my right to receive Italian healthcare?**

Although it is possible that UK expats could be barred from Italian healthcare and benefits, it seems unlikely, not least given that it would open the door to retaliatory measures from the UK which hosts a massive number of Italian expats (there are an estimated 500,000 Italians, and as many as 3 million EU nationals, living in Britain). British expats can also claim to pay their own way in Europe as the UK paid GB£674 million in 2014-2015 to other European countries for the treatment of UK nationals, yet the UK received just GB£49 million from other European nations in the same year to treat those from other countries residing in the UK. Specifically in respect of Italy, the UK paid GB£7.3 million to Italy in the same period yet received just GB£1.5 million back from Italy. It seems that it is not in the EU's (or Italy's) interest to cancel this system.

## Could I be deported from Italy?

There are numerous political reasons for EU states not to start deporting UK citizens, including the reciprocal treatment of their own nationals living in the UK (around 3 million). Mass expulsions of UK citizens from Italy would be likely to cause foreign investment in Italy to halt overnight and potentially cause economic turmoil in Italy. Lawyers have argued that British expats living in the EU at the time of Brexit would have individual "acquired rights" under the Vienna Convention of 1969, which states that the termination of a treaty does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination. Withdrawing from a treaty releases the parties from any future obligations to each other, but should not affect any rights or obligations acquired under it before withdrawal, so that UK expats who have already exercised their right to live in Italy would keep that right after Brexit. However, following Brexit, UK expats' rights to live and work in EU nations would depend on the new agreement that the UK negotiated with the EU, which would also need to take into account the reciprocal rights of 3 million EU citizens currently living and working in the UK.

## What about my Italian property?

The EU is a signatory to the United Nation's Universal Declaration of Human Rights and the European Convention on Human Rights, so Italy would still have to respect individual property rights following Brexit. However, Italy could take a variety of measures, depending on how vindictive it feels towards Britain post-Brexit, like making UK homeowners pay more in property tax. However, it is unlikely that Italy would jeopardise the rights of the nearly 500,000 Italian citizens living in the UK the majority of whom own property in the UK.

## Can I vote?

Yes you can vote, and you should vote! The Referendum result affects you and your fellow 66,000 UK citizens currently living and working in Italy. If you are not yet registered to vote then you can register online at <https://www.gov.uk/register-to-vote>. If you have been living outside the UK for more than 15 years, you have lost your right to vote. The UK government has signaled its desire to change this rule so that all UK citizens will be able to vote irrespective of how long they have lived abroad, but the "Votes for Life" Bill has not yet been passed by Parliament. You can petition the government to change the law before the Referendum by signing an online petition here:

<https://petition.parliament.uk/signatures/12441445/verify/iErbZiR5I8HyBDXM2>.

One British expat living in Italy, Harry Schindler MBE (a 94 year old 2nd World War veteran), is currently part of a High Court action against the government trying to force a judicial review into the law with the aim of permitting all British expats (including those who are excluded from voting in the Referendum because of the 15 year rule) to vote. If Harry wins the call for a judicial review, it could force a delay in the Referendum as the

government would have to process an estimated 1 million UK voters living in the EU who are currently barred from voting. Watch this space.

by Martin Pugsley

***Martin Pugsley** has lived and worked in Italy for more than 15 years (and has lost his right to vote!). He is a Partner at law firm Studio Legale Delfino e Associati Willkie Farr & Gallagher LLP in Milan where he works on cross-border corporate finance matters. He is also Vice President of the British Chamber of Commerce in Italy, and the co-founder of an Italian charity, Comitato Fiori di Lavanda Onlus, for research into childhood leukaemia.*