



A guide to BREXIT

Immigration, global mobility and reward



Executive summary

The UK's decision to leave the EU will inevitably cause a period of great uncertainty for businesses and individuals. We have put together this guide to Brexit to offer an insight into what is likely to happen next and the potential issues to consider for immigration, mobility and reward. It is also likely that a number of general measures will be announced. The Government could introduce some pro-business measures in an emergency budget, what is not clear is whether there will be increased tax rates, or longer term changes to the areas of European Employment Law which has been imported into the UK's legislation e.g. the Working Time Directive.

We provide an explanation into how leaving the EU is governed under Article 50 of the Lisbon Treaty and the timelines and stages involved. The main point to stress is that the negotiations to exit are likely to take at least two years so it is important to remember that it is unlikely anything will change immediately. Companies need to give consideration to the critical aspects; any change in policies, payment aspects should be updated to reflect what the future might look like. A key point of view is to ensure that anything that is being planned but not done takes Brexit into consideration.

This is the time for calm and considered decision making and your Deloitte team is here to guide you every step of the way.

The UK has voted to leave the EU

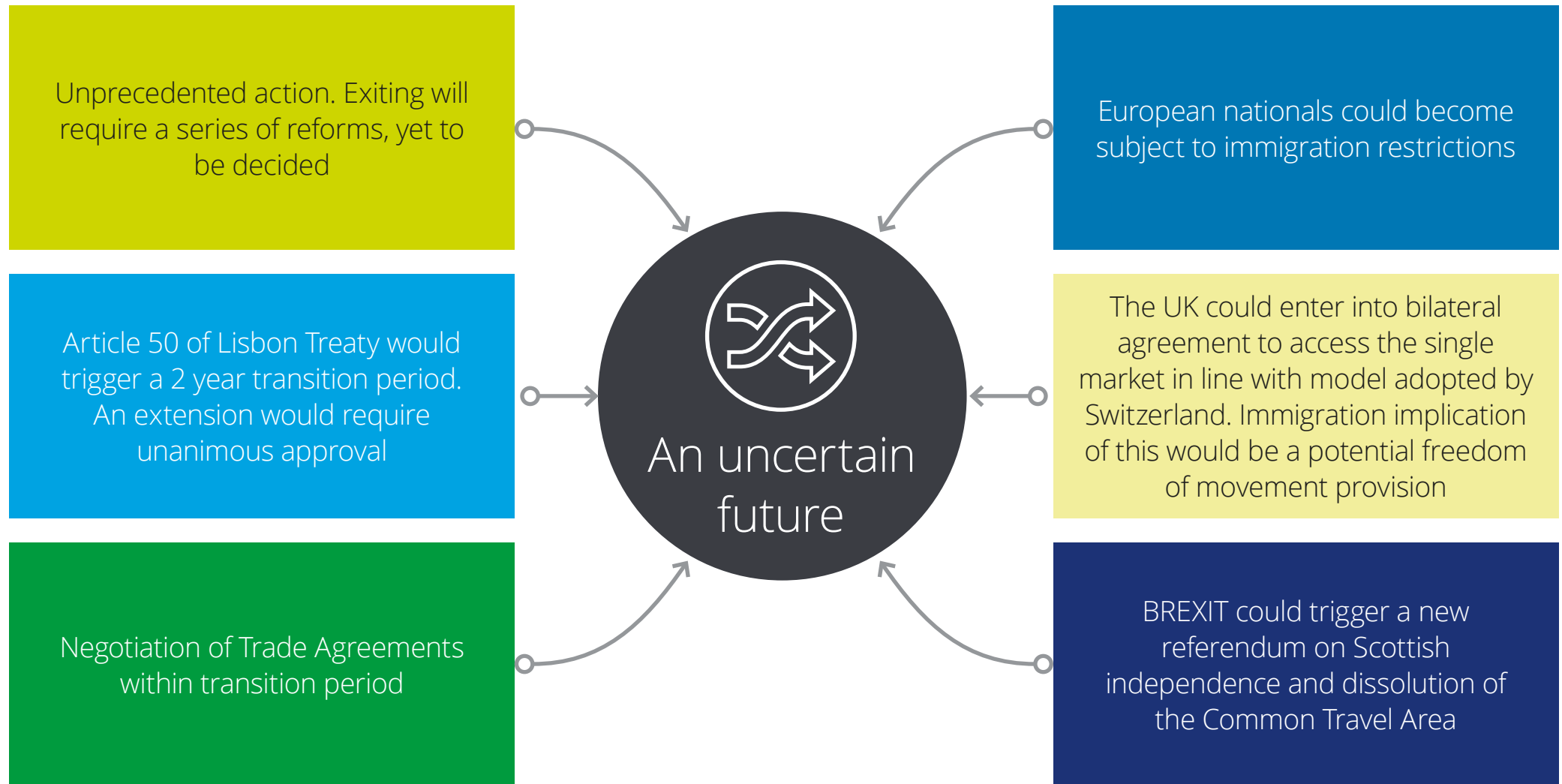
Europe: Explaining Article 50 of Lisbon Treaty

Article 50 of the Lisbon Treaty

-  Process is unprecedented as no country has ever used Article 50
-  The withdrawal process will require the dissection of all rights and obligations the UK has participated in during their accession to the EU and during the lifetime of their membership
-  The negotiations are limited to two years. Any extension of the two year period would require the unanimous agreement of 27 Member States
-  If the extension is vetoed, this would mean the UK leaves the EU in the absence of an agreed replacement and has no protection under EU law
-  EU decision-making will continue and UK's decision to leave will impact participation
-  The UK will be constrained in negotiating and concluding trade agreements with non-EU countries
-  The final agreement needs to be agreed by EU and UK. The EU will require a qualified majority (20/27)
-  European Parliament needs to approve deal by a simple majority



Vote to leave: BREXIT Implications

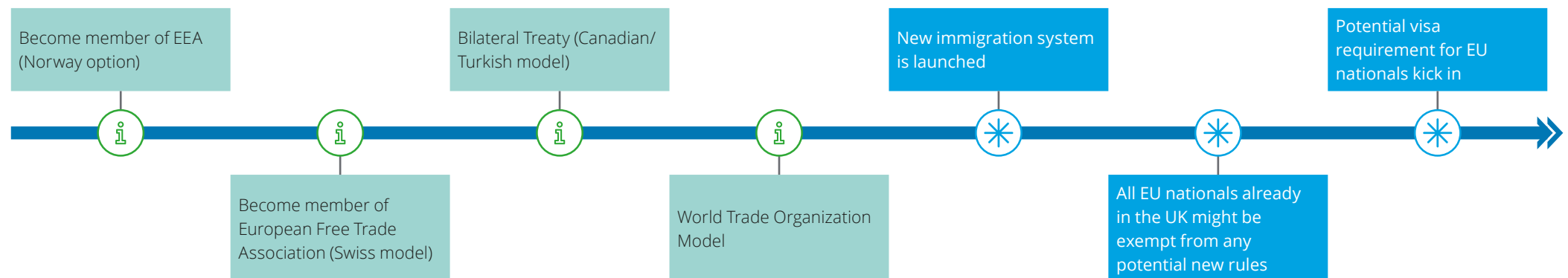


Vote to leave: BREXIT timeline, stages and considerations

To consider on the:
24th June (Negotiation Phase)



+2 years (Settlement Phase)



* Immigration specific

Considerations for employers



Immigration

Assuming you have already identified your EEA population the following implications would now need to be considered for employees:

EEA national with 5+ years residence in the UK

Any EEA national with 5 years continuous residence in the UK can apply for Permanent Residence, and thus gain reassurance that they will be protected from any future legislative changes. To apply for Permanent Residence the employee will need to demonstrate that they have been resident in the UK, exercising treaty rights, i.e. been in employment or self-employment, for at least the last 5 years. We encourage any EEA national who has 5 years residence, or who will have 5 years residence before the official date of exit from the EU, to apply for permanent residence.

Irish nationals and the Common Travel Area

At present there is a Common Travel Area made up of the UK and Ireland. There have been some indications that the Common Travel Area will remain and therefore Irish nationals will continue to be able to move freely and work in the UK. This will need to be confirmed during the negotiation period so much like other EEA nationals, if an employee is an Irish national working in the UK and does meet the necessary requirements they should apply for Permanent Residence to make sure that their position is protected.

UK nationals currently working in the EEA

During the period of negotiation, the EU will decide how UK nationals currently living and working in the EEA will be treated. If an employee has been resident in an EEA country, exercising treaty rights e.g. working in employment or self-employment for the past 5 years, they may qualify for Permanent Residence in that country. To protect their position it is advisable for the employee to make an application for Permanent Residence if they qualify.

Future immigration

New UK Immigration legislation to be drafted

Prior to the official exit date from the EU, the Home Office will be working on new immigration legislation to address:

- a. The treatment of EEA nationals already resident in the UK
- b. The treatment of Irish nationals and the common travel area

- c. The criteria for non-UK nationals to qualify for work permits to work in the UK after the official exit date
- d. The treatment of business travellers visiting the UK

EEA nationals who will move to the UK in the future

Until the official date of exit from the EU, EEA nationals can continue to move freely in and out of the UK, and to take employment without restriction while here. New legislation to be drafted will confirm how EEA nationals will be treated after the date of exit. At present indications are that any EEA national in the UK working, prior to the official exit date, may be permitted to stay.

Dual nationality

Many UK nationals qualify for dual nationality with another EEA member state however they have not applied as their British passport allowed them free movement throughout the EEA. They may now wish to re-assess if they or their family members qualify for nationality with the other EEA member state with which they have dual nationality

Business travellers

Currently EEA business travellers to the UK do not require visas for short business trips, attending conferences etc. The Home Office will need to consider if it wishes to introduce visa requirements for EEA business travellers, similar to those in force for travellers from a number of non-EU countries currently.



Mobile employees – tax, social security, mobility policy implications

Mobility compensation policy including currency implications

Assignees will have a number of questions on what the decision to leave the EU means for their compensation package. Given the period of uncertainty it will be important not to make any “knee jerk” reactions that will lead to long term additional costs to the business without giving the actions and the associated impact full consideration.

Given the current volatility of the exchange rate assignees will no doubt be saying that their net take home pay has significantly dropped overnight and may be looking for an additional level of compensation/off cycle exchange rate review. The same argument will be used where compensation is denominated in an overseas currency.

Given the anticipated volume of queries from assignees the company may want to take the lead on managing the approach to the issue through structured communications

Generally most organisations who make payment for exchange rate losses do so on a grossed up basis therefore carefully consideration should be given to the overall immediate increase in costs of such an approach to an organisation with large UK inbound and outbound programmes for an immediate response to short term fluctuations

Global mobility professionals should review their assignment policies to establish what level of protection is available. There may be an “exceptional circumstances” clause for increasing allowances or enhanced exchange rate protection, however the company should carefully consider if and when they invoke such a clause, and if so for what duration, particularly when everything remains so uncertain.

For companies that offer a split pay, assignees may seek to alter their current split in order to protect themselves against any future exchange rate fluctuations. Payroll should be aware of the potential increased demand and assignees aware of payroll cut off dates for any such change.

Over time as things start to unfold the landscape and policies under which assignees are moved overseas and into the UK will need to be reviewed, together with the associated cost implications.



Tax

If there is a tax increase there will need to be a review of hypothetical tax calculations for those on tax equalised assignment packages. Assignees on gross paid packages are likely to request some sort of protection against a rate increase or additional allowances to compensate them. The company can consider the approach they took when the tax rate increased to 50% and whether any expected precedent set in this regard.

Overtime tax costs associated with EU business travellers that were a hidden population need to be evaluated and policies systems and processes to be monitored.

Social Security

- **Immediate situation – no change**

In the short and possibly medium term, nothing will change, UK and European law remains unchanged. EU assignees coming into the UK will still be able to obtain A1 certificates to exempt them from National Insurance Contributions, and UK expatriates will be subject to the same EU regulations when moving to the rest of Europe. EU-wide rules on sickness, pension and unemployment benefits remain in force.

- **Future approach will determine the level of impact**

Until Article 50 of the Lisbon treaty is invoked, and maybe beyond, there will be considerable uncertainty as the UK decides what sort of relationship it wants with the EU, these could include

- a complete exit or
- something which retains formal links such as those enjoyed by Norway and the other EEA countries (the 'EEA approach')

From a narrow social security point of view, it is the decision on which type of approach above is chosen that is the key decision – not so much about the exit, but more 'what sort of exit'.

The 'EEA' approach is likely to lead to least change in the social security arena – the UK would be likely to keep the same legislative framework and it would be largely 'business as usual'.

A complete exit would have very significant implications – the UK has old social security treaties with many EU members but these were typically put in place in the 1950s and they varied significantly in nature and are not really fit for purpose in the modern business environment. We suspect that the UK and foreign authorities would appreciate this point but renegotiating these agreements would take time – probably much longer than the Article 50 exit process – which would leave the legislative landscape very confused.

If a complete exit approach is chosen, the medium term impact would be significant. Established mobility policies which provide for continued home country social security contributions would no longer work in the same way or be as comprehensive; individuals moving to Europe may need extra layers of pension and healthcare protection, and compliance with payroll and other related obligations would become much more challenging and expensive. However it is too early to take steps to mitigate any changes in this area as the new landscape is unknown.

The UK-US axis for High Net Worth individuals

Brexit thoughts for Americans living in the UK or with UK assets, and non-US individuals moving to the US or with US assets:

Donald Rumsfeld famously said:

"There are known knowns, there are things we know we know. We also know there are known unknowns, ... But there are also unknown unknowns – the ones we don't know we don't know, ... it is this latter category that tend to be the difficult ones."

Perhaps the above conveys the Brexit implications for those with UK/US connections. The most obvious immediate impact is perhaps the significant currency swings, which change the value of funds entering the UK, which change the value of UK property or debt from a US perspective, while largely an investment issue there are tax concerns on the increased or decreased gains or losses that can result. It may also alter the value of earnings denominated in one country but required for expenditure in the other, and that goes to the individuals affordability.

To give some context the exchange rate was slightly lower than it was overnight in early 2009 and around the same level in Mid-2001, even though quite a bit lower than the 20 year average.

So for now there are some known knowns ... but don't underestimate them yet!

Reward

Market volatility on performance conditions for incentive plans

As part of the ongoing focus from shareholders on the link between pay outcomes and corporate performance, Remuneration Committees may need to consider the impact of market volatilities (including exchange rate movements) on performance conditions for annual and long-term incentive plans. These considerations need to be balanced with ensuring pay outcomes are sufficiently aligned with shareholders' experience. As companies evolve their business strategies, reward strategies are likely to need to be adapted to support changes to the longer term business strategies.



Increased market volatility may lead to employees considering the value of certain elements of the package, including pension values and share plans, both for all-employee share plans and performance-linked executive plans. Companies will want to continue to monitor developments in the coming months, and consider bespoke employee communications.

Financial Services & EU regulations

One of the key questions for Financial Services firms is the extent to which the EU regulations on reward will apply going forward. From a Financial Services regulatory perspective:

The UK remains a member of the EU, and is unlikely to be in a position to leave for at least another two years following an exit process set out in the Treaty on European Union.

- EU law continues to apply up to the point the UK leaves the EU.
- Therefore, at least for the time being, the current regulatory regime on reward is likely to continue to apply.

Over time, there is clearly scope for the UK reward regulatory regime to diverge from the rest of Europe. We expect that many of the principles will continue to apply, as they stem from the FSB principles which apply to the G20 globally. However, the UK regulators may re-consider certain aspects (e.g. bonus cap).

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