

## Brexit This Way

INTERNATIONAL | INTERNATIONAL: EUROPE | APRIL 29, 2019

**Barry Leigh Weissman***Co-Author, Florence Druguet.*

If Brexit happens, it will impact the entire European Union (EU) in various ways, and not just economically. For instance, what about the expatriates from an EU country residing in the U.K. pursuant to the current EU immigration rules or the 1.4 to 1.8 million U.K. nationals living in an EU country, like France, pursuant to the same EU immigration rules? Depending on whether a Brexit with an agreement (“Soft Brexit”) or without one (“Hard Brexit”) occurs, a lot of retirees could be forced to move back to the U.K., which would likely result in overburdening the U.K.’s health and retirement systems.

Under a Hard Brexit, the U.K. will no longer be required to abide by the same laws and courts as EU members. Businesses will no longer be able to move freely between the EU and the U.K. Indeed, since U.K. businesses will most likely lose full access to the EU single market (whether it is a Hard or Soft Brexit), companies are already hesitating to use the U.K. as a base for their investment in the EU market, resulting in an exodus of EU residents and businesses from the U.K. and potentially a real estate collapse.

Unfortunately, what a Brexit really means is completely unknown. What is certain is that a Hard Brexit would leave the U.K. and the EU without any trade agreements, forcing them to default to the World Trade Organization. Hence the urgency for U.K. officials to negotiate a trade deal with the EU. For the U.K. to leave the EU, it had to invoke Article 50 of the Lisbon Treaty, which gave the U.K. and the EU two years to agree on the terms of an exit plan. Prime Minister Theresa May triggered this process on March 29, 2017. The result of the trigger is that the U.K. was originally scheduled to leave at 11 p.m. U.K. time on March 29, 2019. However, because the parties could not come to an agreement by March 29, Prime Minister May and EU leaders negotiated a two-week delay, moving the deadline to April 12. Even this is uncertain given recent elections in Parliament and the growing movement to have another referendum on whether there should even be a Brexit.

This time of uncertainty has a great impact on businesses looking to open, acquire, merge, or invest in EU or U.K. entities. No one really knows what is actually going to happen. The 21-month transition plan negotiated by Prime Minister May and the EU in March 2018 was defeated by the British Parliament in January, February, and March 2019. Since the defeat, Prime Minister May has not been able to come to an agreement with the divided British Parliament. Out of fear, and in an attempt to minimize the impact in case of a Hard Brexit, the U.K. signed a bilateral trade agreement with Switzerland to lift tariffs in the event of a Hard Brexit.

One of the important terms for a Soft Brexit is the amount of money the U.K. would be required to pay to the EU for the right to leave. Prime Minister May had earlier agreed to pay approximately \$50.7 billion for an organized Brexit. However, given the present political climate, one cannot predict whether there will be a Brexit, or what type it will be if it does occur, and whether Parliament will foot the \$50.7 billion bill.

If there is no Brexit, the U.K. will continue to pay approximately \$206 million a week, or \$10.2 billion a year. Clearly, these numbers indicate the tremendous impact of an exit for both the U.K. and the EU. It also indicates one of the justifications for the EU’s hard stance during those negotiations. The U.K. contributes 13 percent of the entire EU budget, and it is unknown how or where the EU will find another source for these moneys if the U.K. leaves. If the U.K. does leave the EU, the EU has prepared a “no-deal” Contingency Action Plan that will be implemented on the day the U.K. leaves the EU. The British and Irish governments have also prepared plans.

Another uncertainty in a Hard Brexit is whether U.K. businesses and the British government will be able to conduct investigations and prosecutions outside of the U.K., and for the EU to conduct them in the U.K. This means there is both a political fear and business concern about an increase in fraud and the inability to prosecute it, either civilly or criminally.

Today the British political branch is in turmoil. Petition for a second referendum is getting even more support, and a second public vote would need Parliament’s approval. Even so, as of today, it is unclear whether there would be enough time or support for it.

Assuming there will be a Brexit, regardless of whether it is Hard or Soft, doing business in the present U.K. and EU is going to be somewhat perilous and clearly more expensive and risky than in the past.

©2020 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.