



## 10 Days, 10 Issues – Countdown to the Brexit Referendum

In view of the upcoming referendum on continued UK membership in the EU, BIICL hosted an event discussing the impact of a Brexit in 10 areas. The following is a summary of what the 10 experts said:

### **Constitutional Matters**

Discussion of the impact of a Brexit on constitutional matters in the UK focused on two issues: sovereignty and devolution. Much of the debate on Brexit concerns national and parliamentary sovereignty which has been allegedly negatively affected by legislation coming from Brussels. As to national sovereignty, the UK will still have to engage in treaties with other countries and be ready for compromise – which encroaches on sovereignty. As to parliamentary sovereignty: the mere fact that there is a referendum on EU membership limits parliamentary sovereignty. Also, if the UK is no longer a member of the EU, the European Communities Act 1972 will be repealed, which will leave a large gap in the law in need of replacing. The decision on which legislation is to retain or to amend is not in the hands of parliament alone. It has been suggested that replacement legislation could be established through a ministerial order. If that is the case, the UK Parliament would be bypassed. Regarding devolution, it was suggested that a vote to leave might trigger another referendum on Scottish Independence. Northern Ireland would likely face a number of difficult issues, considering that the Good Friday Agreement is premised on both states being members of the EU. A Brexit would lead to an external border running across Ireland and potentially to a North Irish referendum on a unity with Ireland.

### **Foreign Relations**

The EU has negotiated international agreements on numerous subjects, including immigration, development, environmental protection, etc. If the UK leaves the EU, it will have to develop its own foreign policies, and it will have to decide whether it will simply replicate EU efforts or become a distinct voice internationally. But it is the UK's future relationship with the remaining EU member states following a vote to leave that will likely be the most important question for UK foreign policy for the next decade, particularly considering that, in terms of both economic and non-economic interests, the main forum for exchange will be the EU. Many new agreements with the EU will be needed. Moreover, in navigating these uncertain waters, there will be no impartial adjudicator available to help determine with authority the conduct of these relationships.

### **Agriculture**

In considering the impact of a Brexit on the UK agricultural industry, the key message was that an extensive amount of legislation and funding for UK agriculture come from the EU's Common Agricultural Policy. If the UK leaves the EU, it will have to develop its own agricultural policy, but there has been no indication or thought as to what that might look like. Moreover, the UK currently pays nothing in terms of trade facilitation costs at the border because of its EU membership, but should the UK vote to leave, tariffs could range anywhere

from 2-8%, which would result in significant costs to the industry. The negative impact of a Brexit on farm income could potentially be huge.

### **Immigration and Free Movement**

It was pointed out that the UK relies to some extent on the rest of the EU to assist in its border control, and that without EU membership, the UK would no longer benefit from a number of cooperative efforts, such as Europol, the Eurodac fingerprinting framework or the European Judicial Network. The existing border control arrangements between the UK and France would be jeopardized. Even now, due to the fact that the UK has opted out of many immigration measures outside of the context of asylum, there is an important imbalance as compared to the other Member States.

If the UK leaves the EU, there is no certainty as to future free movement rights of EU and UK citizens. The Norway or Switzerland models allow for free movement rights, but it is both uncertain whether the EU would offer such a deal and whether the UK would agree to it, as it effectively does not lead to total immigration control. At the moment, statistics show that 3 million EU nationals are based in the UK (of which 70% are working) while 1.2 million UK citizens live across the EU (of which 40% are working). Even those who have been in the UK/EU for more than 5 years would face an uncertain fate. The discussion also focused on the impact of a Brexit on non-EU nationals with EU national family members. Following a Brexit, these would be subject to more stringent entry conditions.

### **Human Rights**

The fate of human rights in the UK post-Brexit is uncertain. Voting to leave would mean that UK citizens would no longer benefit from a number of rights provided by the Charter of Fundamental Rights of the EU, particularly with regard to social rights that are not provided by the European Convention on Human Rights. If Britain leaves the EU, employment rights might no longer be as strongly protected and the guarantee of non-discrimination might be weakened.

### **Consumer Protection**

The EU has created a huge body of legislation which protects consumers in various areas, from unfair terms to air passenger rights and roaming charges. This led to a better coherence of consumer legislation and increased protection of consumers. If Britain votes leave, directly applicable regulations in the area will cease to have effect, domestic legislation giving effect to EU directives can be amended and the CJEU's interpretation of consumer law is no longer binding on UK courts. This will require a great amount of legislative activity and could potentially lead to reduced consumer protection in the UK. However, EU legislation might continue to have an impact if UK-based businesses wish to continue trading with EU based consumers, as they would have to comply with EU standards.

### **Trade**

In the area of trade, the future status of the UK post Brexit is unclear – Britain might be able to secure a deal with the EU which grants it a similar status to Norway or Switzerland enabling access to the single market. But in turn this would require granting EU citizens free movement rights (which would hinder total immigration control). Trade with the EU could take place based on the WTO framework, which would be less beneficial to the UK than the status quo. As to trade agreements which the EU concluded or will conclude with third states – the UK will not benefit from those treaties and would need to make new arrangements in long

negotiations. Also, hopes raised by some politicians as to future trade deals with major global economies seem largely unrealistic. Although there might be more flexibility for the UK to conclude trade deals outside the EU, realistically, no major market has an interest in a country the size of the UK.

### **Financial Services**

The City of London is one of the largest financial centres. It is subject to a largely EU-dictated financial services scheme with countless legal instruments. Pulling out of the EU standards will have a huge destructive effect unless the UK keeps most of the legislation. At the moment, financial institutions incorporated in third States with a basis in London can provide services in the EU to a limited extent. In the event of a Brexit, this existing practice would cease and these institutions might relocate their staff. Also, the attractiveness of London as a financial centre is underpinned by the access to the EU market. In case of a Brexit, Dublin, Frankfurt or Luxemburg might become new financial centres instead. Negotiations with the EU on access to the single market for services will be very tough, a good deal for the UK is unlikely.

### **Civil Justice**

Currently, the UK has a special status in the area of Civil Justice. It is not automatically bound by EU legislation but can negotiate in the legislative process and can opt into legislation if it wishes to be bound. To date, the UK has opted into most instruments in the area of civil and commercial cross-border dispute resolution and conflict of laws which are said to work well in practice and effectively facilitate cross-border transactions and enforcement of judgments. With a Brexit, the current legal framework would cease to apply. The UK could potentially sign up to Conventions between the EU and third states in this area ( Lugano 2007 Convention) or find new bespoke solutions with the EU, but it is very likely that it will be worse off than under the status quo. Even if the UK manages to reinstate some of the EU legislation to achieve a similar status than the current, they will have no say in the future legislative process.