

# BREXIT

A&L Goodbody

What Questions should Businesses  
be Asking Themselves?

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# SETTING THE SCENE

- What are the key questions posed by Brexit for business?

# INTRODUCTION

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- No one has all the questions or all the answers
- But businesses have to plan
- Planning for Brexit is tougher than for the euro/GDPR etc because we don't yet know what we are planning for...and we will not know even by 29 March 2019
- So what are some of the key questions for business?

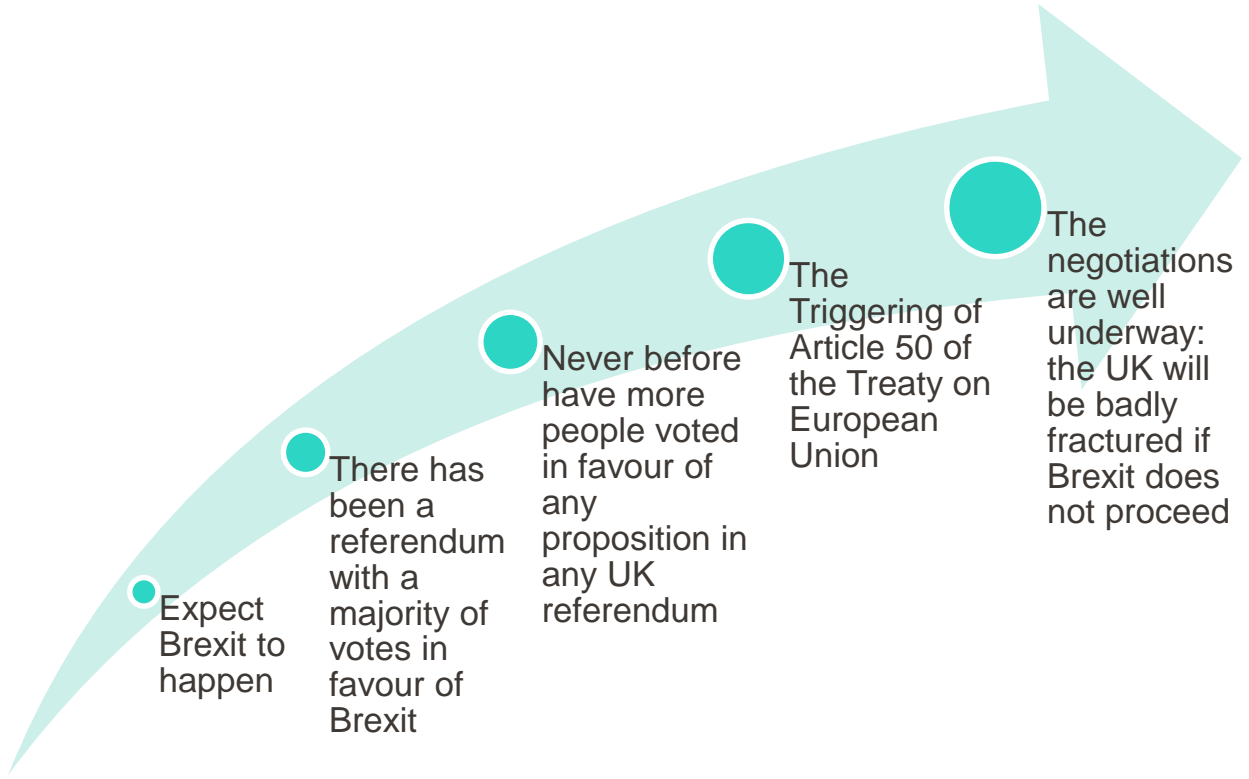
## Q: IS MY BUSINESS TOO DISTRACTED BY BREXIT?

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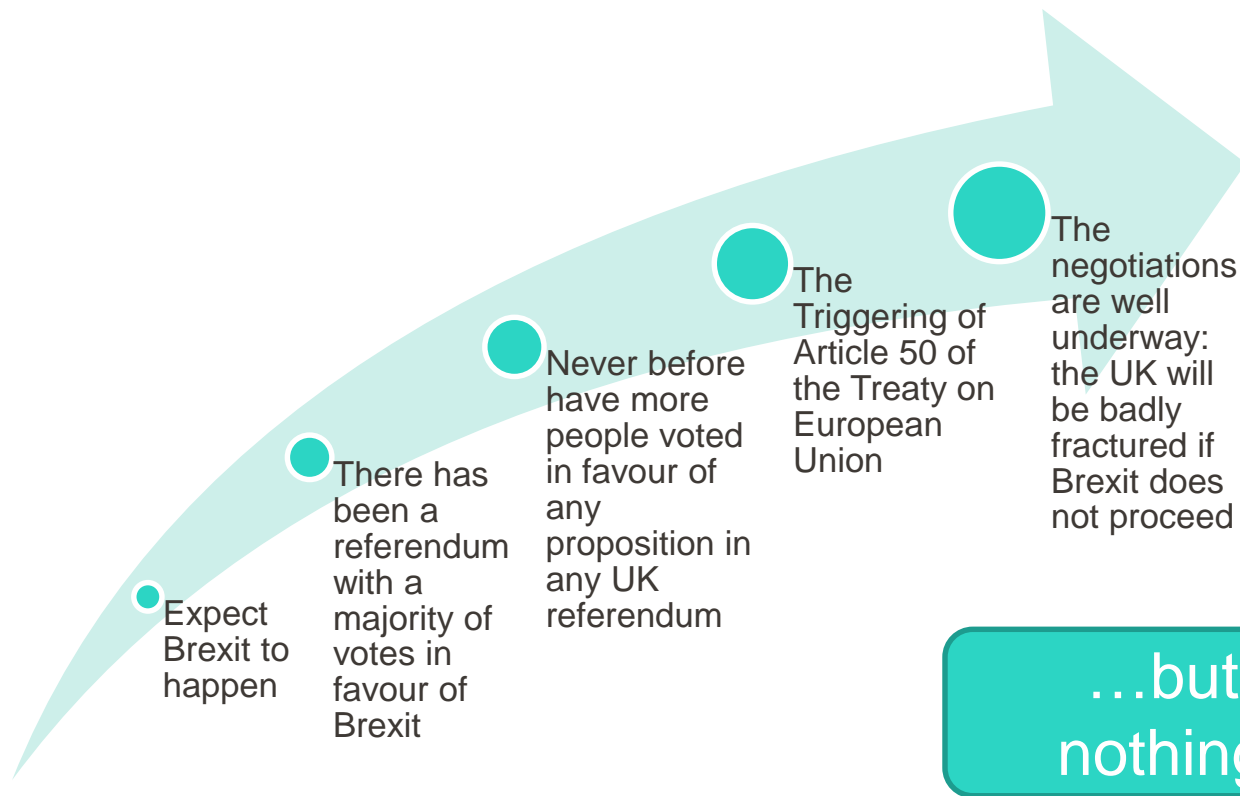
- Brexit is extremely important
- But there is a risk that businesses can be too distracted by the day-to-day developments in Brexit
- Need to see the “Big Picture” and to “Concentrate on the Day Job”
- Ignore the “millimetre” negotiations and concentrate on the “milestones”

Q: SHOULD WE ASSUME THAT BREXIT WILL HAPPEN?

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## Q: SHOULD WE ASSUME THAT BREXIT WILL HAPPEN?



## Q: BUT MIGHT BREXIT NOT HAPPEN OR EVEN BE REVERSED?

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- Yes
- But States rarely leave international organisations
- Only Algeria, Greenland and St Barthélemy have ever left the EU – never a Member State and none was as important as the UK
- There is no explicit provision in the United Nations Charter for leaving the UN
- Indonesia threatened to leave the UN (but did not)
- France “left” NATO in 1966 but returned in 2009
- The US left the International Labour Organisation in 1977 but returned in 1980
- A second referendum *on a different question* or a Brexit-focussed general election might occur (e.g., the terms on which the UK would leave) and that could be a turning point
- Already the UK is on the “slow boat to Brexit” by virtue of the two year-period



## Q: WILL POST-BREXIT TRADE BE THE SAME AS IT IS NOW?

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- No. It cannot be.
- If Brexit is to succeed then trade cannot be the same because the existing rules would change, new relationships would be formed and new protective barriers would be erected (by both the UK and the EU)
- If Remainers are correct then it cannot be the same because the advantages for the UK of being inside the EU would be gone and if Brexiteers are correct then the trade will change too
- There will be differences
- The *degree* of difference and the nature of the differences are what matter most
- Nor will it be the same as it was pre-1973, pre-1992 or pre-the Peace Process
- A Brexit-Future will be different

**Q: WHAT IS HAPPENING RIGHT NOW?**

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Article 50 Negotiations - the EU has “taken control” – the UK has conceded on a great deal



The UK/European Commission/R-27 discussions are on-going with mixed progress



The European Commission’s desire to have a conclusion to the negotiations around “October 2018”



The UK is scheduled to leave at 23:00 UK time on 29 March 2019



European Parliamentary Elections in June 2019



Implementation/Transition during two years from 29 March 2019

**Q: WHAT IS HAPPENING RIGHT NOW?: COUNCIL PRESIDENCIES**

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Time Frame	Council President
2017 H2	Estonia
2018 H1	Bulgaria
2018 H2	Austria
2019 H1	Romania
2019 H2	Finland
2020 H1	Croatia
2020 H2	Germany

## Q: WHAT WILL HAPPEN BETWEEN NOW AND “THE END”?

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- Negotiations:
  - » the initial “Three Issues” (€, Ireland and Citizens);
  - » the “Later Issues” (“Just about Everything”!)
  - » There was a fudge in December 2017 over Ireland
- An agreement?
- A deal or no deal or “a deal that there is no deal”?
  - » A “deal that there is no deal” is needed because the Treaties have to be amended so as to provide that they no longer apply to the UK
- A long and late deal? Almost inevitably – “EU law will be switched off without any real agreement”
- A New Treaty?
- Ratification of New Treaty? Referendums?

## Q: WILL IT BE A “HARD” BREXIT OR A “SOFT” BREXIT?

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The wrong question!



It will be a  
“Spectrum Brexit”.  
It is neither hard nor  
soft – there isn’t  
simply a binary  
choice of “hard” or  
“soft”



Instead, it is a  
spectrum of choices  
and the question is  
where will our  
business fit on that  
spectrum?

# BIG PICTURE QUESTIONS

## Q: IS OUR BUSINESS IN A POTENTIALLY VULNERABLE BREXIT SECTOR?

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- No-one knows yet which sectors will be most affected by Brexit but likely candidates include:
  - » Sectors benefiting from EU passports/EU regulation (e.g., transport and financial services)
  - » Sectors benefitting from EU markets/supports (e.g., food and drink/CAP)
  - » Sectors governed by EU standards
  - » Sectors funded by EU research funds
  - » Sectors heavily dependent on EU cross-border workers
  - » Exporting/importing businesses (even those just importing raw materials/components or hiring employees from the EU)
  - » Even in 1973, after 12 years of on/off negotiation and joining with the UK, it was not clear which sectors would be most affected in Ireland
- How relevant has the EU been to our business?

## Q: SHOULD WE JUST IGNORE THE UK MARKET?

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- Seems attractive to concentrate on the world (ex-UK) market and ignore the complexities of post-Brexit EU trade
- However, life is not that simple...
- E.g., components/raw materials may need to be imported from the UK
- E.g., competition could come from the UK post-Brexit
- E.g., need to employ people from the UK



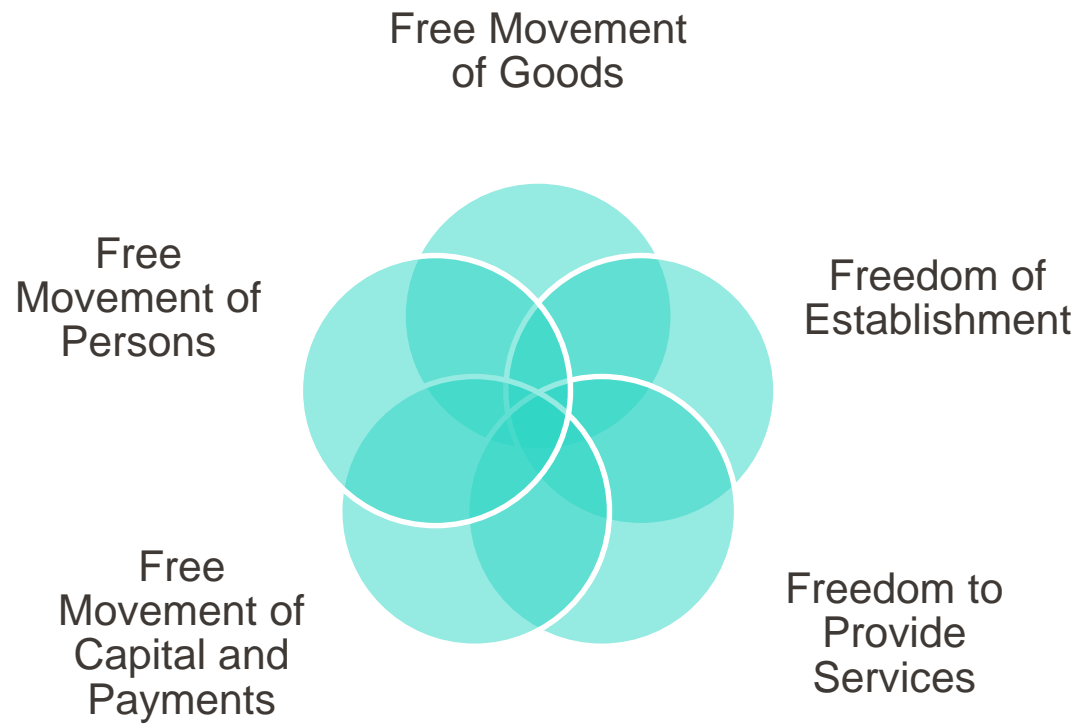
## Q: HOW WILL MY WORKFORCE BE AFFECTED?

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- Are my employees nationals of the UK (and not the Remaining Member States)?
- Are my employees in family/personal relationships with nationals of the Remaining Member States or the UK?
- How unsettled is my workforce?
- Have we done enough to reassure, on an on-going basis, our staff?

**Q: WHICH EU FREEDOMS IS OUR BUSINESS UTILISTING?**

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## Q: WHAT EU LAW RIGHTS IS OUR BUSINESS UTILISING?

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- What EU Law rights could we potentially lose?
- Non-discrimination on the basis of nationality?
- EU procedural rights?
- EU substantive law rights?
- What might we gain by the UK leaving?

## Q: WHICH STANDARDS WILL APPLY TO MY PRODUCTS POST-BREXIT?

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The UK could have different standards and laws for products post-Brexit than would exist in the remaining EU (and vice versa)



How does our business cope with that reality?



## Q: WILL TRADE BE SEAMLESS?

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- The UK's Federation of Small Businesses say that 9 out of 10 exporting SMEs trade with the EU and 1 in 5 trade exclusively within the EU's Internal Market
- If the UK imposes tariffs then these tariffs may be lower than WTO tariffs but have we done enough to influence Governments on the debate as to what the level of tariffs might be for our products?
- Tariffs by the UK/EU would make exports to/imports from the UK more expensive (and create cash flow/currency issues)
- How realistic, for my business, are the alternative markets in Canada, Australia, Asia, Africa and so on? What would I need to do to capture those markets?
- Have we done a dry run on the formalities of exporting something to Canada, Africa and so on?

## Q: ARE WE BENEFITTING FROM THE EU'S FREE TRADE AGREEMENTS?

- There are three main types of EU trade agreements:
- **Customs Union Agreements**
  - » eliminate customs duties in bilateral trade
  - » establish a joint customs tariff for foreign imports
- **Association Agreements, Stabilisation Agreements, (Deep and Comprehensive) Free Trade Agreements and Economic Partnership Agreements**
  - » remove or reduce customs tariffs in bilateral trade
- **Partnership and Cooperation Agreements**
  - » provide a general framework for bilateral economic relations
  - » leave customs tariffs in tact

# Terminology

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<i>Term</i>	<i>Meaning</i>
Customs Union	Members agree to apply the <i>same</i> tariffs to goods from outside the union. If goods enter the union and clear customs in one member then they may be shipped to others in the union without further tariffs being imposed.
Internal Market	Customs Union plus elimination of tariffs, quotas or taxes on internal as well as, importantly, the free movement of goods, services, capital and people. It is like one country for trade and economic purposes.
European Union	Customs Union and Internal Market and more: policies on areas such as agriculture, transport, competition, data etc as well as institutional mechanisms to deal with these issues

**Q: DOES OUR UK BUSINESS BENEFIT FROM THE EXISTING EU TRADE AGREEMENTS? (I.E., THE AGREEMENTS WHICH THE EU ALREADY HAS WITH THE REST OF THE WORLD)**

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Albania	Algeria
Andorra	Armenia
Azerbaijan	Bosnia and Herzegovina
Chile	Egypt
Faroe Islands	Georgia
Iceland	Israel



**Q: DOES OUR UK BUSINESS BENEFIT FROM THE EXISTING EU TRADE AGREEMENTS? (I.E., THE AGREEMENTS WHICH THE EU ALREADY HAS WITH THE REST OF THE WORLD)**

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Jordan	Kazakhstan
Kosovo	Lebanon
Macedonia	Mexico
Moldova	Montenegro
Morocco	Norway
Palestinian Authority	Russia

**Q: DOES OUR UK BUSINESS BENEFIT FROM THE EXISTING EU TRADE AGREEMENTS? (I.E., THE AGREEMENTS WHICH THE EU ALREADY HAS WITH THE REST OF THE WORLD)**

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San Marino	Serbia
South Korea	Switzerland
Syria	Tunisia
Turkey	

**Q: DOES OUR UK BUSINESS BENEFIT FROM THE EXISTING EU TRADE AGREEMENTS WHICH ARE PARTLY IN FORCE?**

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Antigua and Barbuda	Bahamas
Barbados	Belize
Botswana	Cameroon
Canada	Colombia
Costa Rica	Dominica
Dominican Republic	Ecuador

## Q: DOES OUR UK BUSINESS BENEFIT FROM THE EXISTING EU TRADE AGREEMENTS WHICH ARE PARTLY IN FORCE?

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El Salvador	Fiji
Ghana	Grenada
Guatemala	Guyana
Haiti	Honduras
Ivory Coast	Jamaica
Lesotho	Madagascar

## Q: DOES OUR UK BUSINESS BENEFIT FROM THE EXISTING EU TRADE AGREEMENTS WHICH ARE PARTLY IN FORCE?

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Mauritius	Mozambique
Namibia	Nicaragua
Panama	Papua New Guinea
Peru	Seychelles
Singapore	South Africa

## Q: DOES OUR UK BUSINESS BENEFIT FROM THE EXISTING EU TRADE AGREEMENTS WHICH ARE PARTLY IN FORCE?

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St Kitts and Nevis	St Lucia
St Vincent and the Grenadines	Suriname
Swaziland	Trinidad and Tobago
Ukraine	Zimbabwe

## Q: DOES OUR UK BUSINESS BENEFIT FROM THE EXISTING EU TRADE AGREEMENTS WHICH ARE PARTLY IN FORCE?

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Azerbaijan
Mexico
Morocco
Tunisia

## Q: WILL ANY UK BUSINESS WE HAVE BENEFIT FROM THE EXISTING EU TRADE AGREEMENTS WHICH ARE BEING NEGOTIATED?

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Argentina (Negotiations resumed May 2010) (8 years)

Bahrain (Negotiations started 1990, suspended since 2008) (28)

Brazil (Negotiations resumed May 2010) (8)

India (Negotiations started 2007) (11)

Indonesia (Negotiations started in 2016) (2)

Japan (Negotiations started in 2013) (5)

Kuwait (Negotiations started 1990, suspended since 2008) (28)

Myanmar (Negotiations started 2015) (3)

Oman (Negotiations started 1990, suspended since 2008) (28)



## Q: WILL ANY UK BUSINESS WE HAVE BENEFIT FROM THE EXISTING EU TRADE AGREEMENTS WHICH ARE BEING NEGOTIATED?

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Paraguay (Negotiations resumed May 2010) (28)

Philippines (Negotiations started in 2015) (3)

Qatar (Negotiations started 1990, suspended since 2008) (28)

Saudi Arabia (Negotiations started 1990, suspended since 2008) (28)

Thailand (Negotiations started in 2013) (5)

United Arab Emirates (Negotiations started in 1990, suspended since 2008) (28)

United States (Negotiations started in 2013) (5)

## Q: WILL ANY UK BUSINESS WE HAVE BENEFIT FROM THE EXISTING EU TRADE AGREEMENTS WHICH ARE BEING NEGOTIATED?

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Uruguay (Negotiations resumed in 2010) (8)

Venezuela (Suspended)

Vietnam (Negotiations started in 2012) (6)

## Q: DO UK COMPETITORS LOSE EU LEGAL RIGHTS?

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- Everything depends on the terms of the exit agreement but some rights will be lost
- Right of establishment in the EU on the same basis as a business from the host Member State?
- Right to provide services in the EU on the same basis as a business from the host Member State?
- Losing the protection of EU law?
- Losing EU passport rights?
- Losing regulatory equivalence?
- Losing, in part, the right to complain to the European commission about a breach of EU law?

## Q: WHAT ABOUT CURRENCY?

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- How are we dealing with currency issues?
- How did we deal with the fall in the value of Sterling against the euro in the immediate aftermath of the 2016 Referendum?
- How will we deal with the inevitable turmoil, tension and volatility during the “talks” and the conclusion of the process? Expect volatility!

## Q: WHAT ABOUT CUSTOMS?

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Does anyone in our business know how to deal with the customs regime?

Do we know where to turn for support?

Who will bear the costs? What do our contracts say?

Could there be delays?  
How would we cope?

Should we lobby for a customs voucher scheme for SMEs?

## Q: WHAT WILL OUR TRADE BE LIKE?

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- Tariff-free?
- Quota-free?
- Barrier-free?
- What are the potential additional costs?
- Will there be barriers to trade, more difficult movement of labour, increased compliance, higher customs costs and less choice because EU companies may be less inclined to supply the UK?

## Q: WHAT ABOUT STATE AID & FUNDING?

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- **STATE AID**

- » Will the UK be free of the EU State Aid rules?
- » Could the EU impose, as part of the deal, State aid-like rules on the UK? (E.g., Ukraine)
- » Can UK businesses still complain about State Aid in the remaining Member States?
- » Corporation Tax?

- **UNIVERSITY/RESEARCH FUNDING**

- » Will UK businesses lose EU university/research funding?
- » Will the UK replace the EU university funding?
- » What about industry/university partnerships?

## Q: WHAT ABOUT STATE AID & FUNDING?

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### ■ EU FUNDING

- » £4.5b in grants for the UK
- » 32% of small businesses in Northern Ireland apply for EU funding - it is the region in the UK with the highest proportion (e.g., Scotland and London were each 9%)
- » 118,000 SMEs in Northern Ireland, employing over 450,000 people more than large businesses/public sector combined – EU funding is important for SMEs



## Q: WHAT ARE THE OPERATIONAL BUSINESS QUESTIONS?

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- Do we need to buy/sell a business?
- Do we need to accelerate diversification?
- Do we have adequate Working Capital?
- What about additional costs? (E.g., customs duties and delayed VAT refunds)
- Do we have adequate Funding generally?

## Q: WHAT ARE THE OPERATIONAL BUSINESS QUESTIONS?

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- Have we influenced Government enough about the black market?
- Winston Churchill: “If you destroy a free market you create a black market”
  - » - House of Commons, 3 February 1949

## Q: WHAT ARE THE OPERATIONAL BUSINESS QUESTIONS?

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- What has been happening to our margin? And what is likely to happen?
- Do we need to diversify?
- Are we at the right scale to trade post-Brexit?
- Are our contracts Brexit-proof? Or, at least, do the contracts contemplate Brexit? Is Brexit on our contract negotiation check list?
- What investments do we need to make (if any) to cope with Brexit?
  - » Have we delayed an investment decision, because of Brexit?
  - » Should we revisit that decision?
  - » Do we need to relocate some or all of our operations?
  - » What about M&A post-Brexit? Will the UK change the rules?

## Q: WHAT ARE THE OPERATIONAL BUSINESS QUESTIONS?

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- Do we need to reinvent ourselves?
- What about cash flow?
- Have we been lulled into a false sense of security? At one level, little or nothing has happened but is it the calm before the storm?
- Will the barriers come down in the rest of the world for UK business? Possible but far from inevitable (e.g., Japan's reaction)
- What about changes in taxes and VAT?

# WHAT ARE THE OPERATIONAL BUSINESS QUESTIONS?

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- **Should our business be thinking about non-EU markets?**
  - » Yes. But it is important to recognise the barriers (e.g., standards, languages, tastes, quotas, currencies, costs, transportation, transport costs, transport losses, scale, marketing costs)
  - » It is always easier to trade locally or contiguously
- **Have we planned for possible inflation?**
  - » Need to be on-top of budgets, costs etc.

## Q: WHAT ARE THE OPERATIONAL BUSINESS QUESTIONS?

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- **What about raw materials/components?**

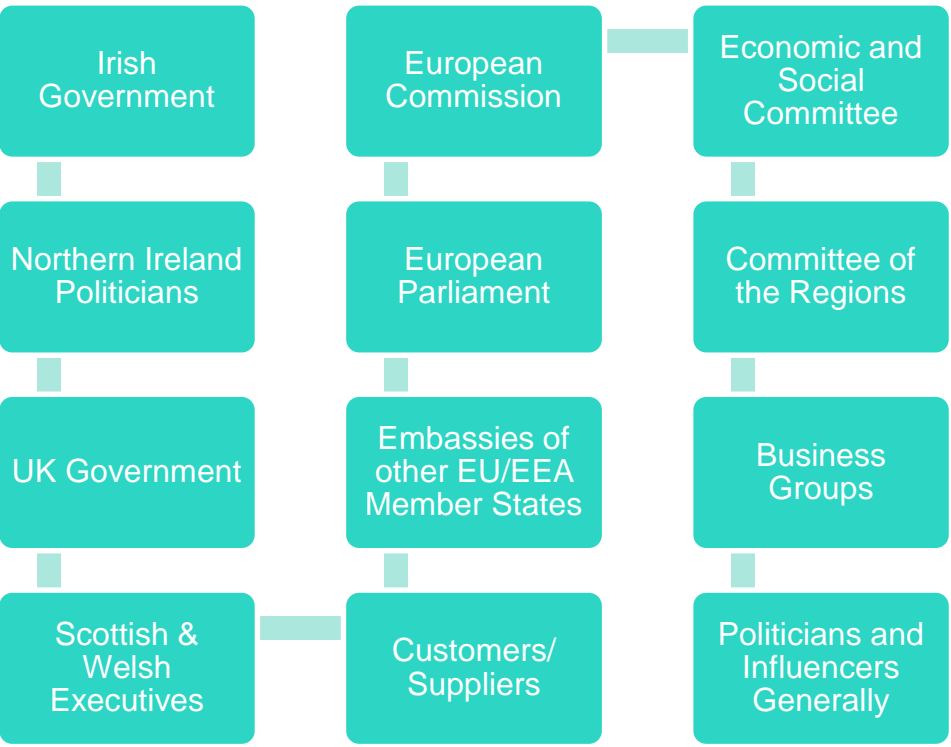
- » Where do we currently get our raw materials/components?
- » Should we switch?

- **What about delays at borders, ports and airports?**

- » What would be the impact on our product mix?
- » Do we have the necessary equipment to deal with delays and costs (e.g., refrigerated and large vehicles)?

# Q: WHO SHOULD WE BE LOBBYING?

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## Q: ARE WE DOING ENOUGH RESEARCH?

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- [www.intertradeireland.com](http://www.intertradeireland.com)
- [www.europa.eu](http://www.europa.eu)
- [www.ibec.ie](http://www.ibec.ie)
- [www.britishirishchamber.com](http://www.britishirishchamber.com)
- [www.isme.ie](http://www.isme.ie)
- [www.irishexporters.ie](http://www.irishexporters.ie)
- [www.algoodbody.com](http://www.algoodbody.com)



## CONCLUSIONS

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- When will the uncertainty and volatility end? It won't, it will ease but not end
- Uncertainty, volatility and unpredictability are the only certainties
- The EU has always been uncertain – from 25 March 1957 until now...just think of what it was like on the day the six Member States signed the EEC Treaty...





## CONCLUSIONS

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- There was no blue print, there was no certainty but they succeeded...a draft was signed, there were no specific rules and it has evolved ever since
- In 1973, it was easier, as Ireland and the UK moved together and followed the path of six other States...but this is different

## CONCLUSIONS

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- The EU does negotiations long, late and latent
- It will work itself out...imperfectly
- Be mindful of the big picture and, simultaneously, concentrate on the day job! But keep asking the questions *across* your business...

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