

What “Brexit” would mean for UK and global share plans

Mirit Ehrenstein

Nancy Price

Linklaters LLP

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What we will cover

- > EU referendum timetable
- > Exit timetable
- > Current UK – EU relationship
- > EU laws relevant to share plans
- > Possible exit structures
 - > Impact on design and operation of UK and global plans
- > Planning for Brexit?

EU / EEA / EFTA

European Union (EU) – an economic and political union established by the Treaty on European Union (Maastricht, 1992) and evolved from the European Economic Community (EEC) set up in 1957.

European Free Trade Association (EFTA) – founded in 1960, promotes free trade and economic integration to the benefit of its four member states: **Iceland**, **Liechtenstein**, **Norway** and **Switzerland**.

European Economic Area (EEA) – consists of the European Union and all the EFTA countries except Switzerland. The EEA Agreement (1994) enables **Iceland**, **Liechtenstein** and **Norway** to enjoy the benefits of the EU's single market without the full privileges and responsibilities of EU membership.

EU, EEA and EFTA members

EU: 28 Member States

 Austria	 Germany	 Poland
 Belgium	 Greece	 Portugal
 Bulgaria	 Hungary	 Romania
 Croatia	 Ireland	 Slovakia
 Cyprus	 Italy	 Slovenia
 Czech Rep.	 Latvia	 Spain
 Denmark	 Lithuania	 Sweden
 Estonia	 Luxembourg	 United Kingdom
 Finland	 Malta	
 France	 Netherlands	

EFTA: 4 countries

 Norway
 Iceland
 Liechtenstein
 Switzerland

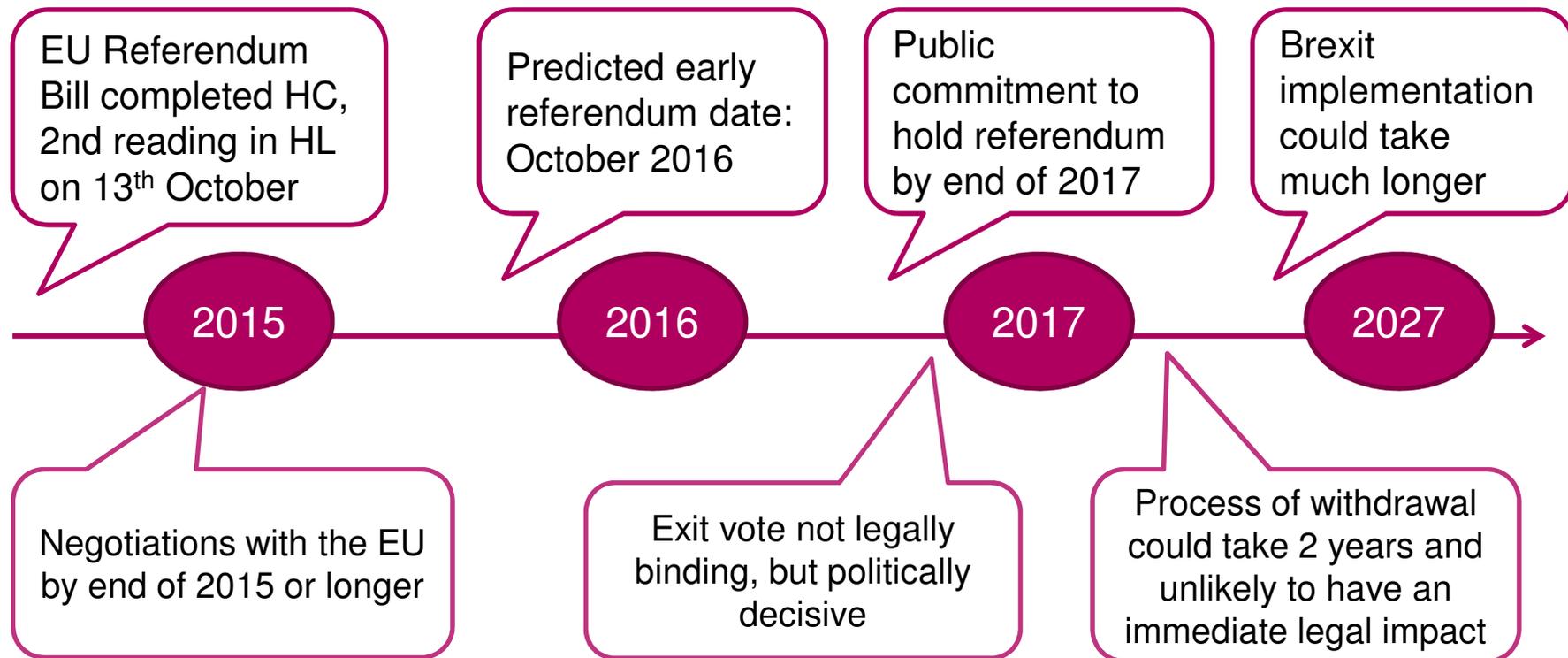
EEA

 EU
 Norway
 Iceland
 Liechtenstein

EU referendum timetable

- > European Union Referendum Bill 2015-16
 - > EU referendum to be held by 31 December 2017
 - > Earlier? By 31 December 2016?
- > Before referendum, UK government plans to *“negotiate the UK’s relationship with the EU and pursue reform ... for the benefit of all member states”*
- > How likely is the UK to leave the EU?

Timing and legal effect of UK's vote on EU membership



Exit timetable

- > No vote
- > No immediate departure
- > Treaty on European Union says:
 - > Two years' notice period
 - > Formal notification to withdraw
 - > Negotiate a withdrawal agreement:
 - > Terms of exit
 - > Framework of future relationship with EU

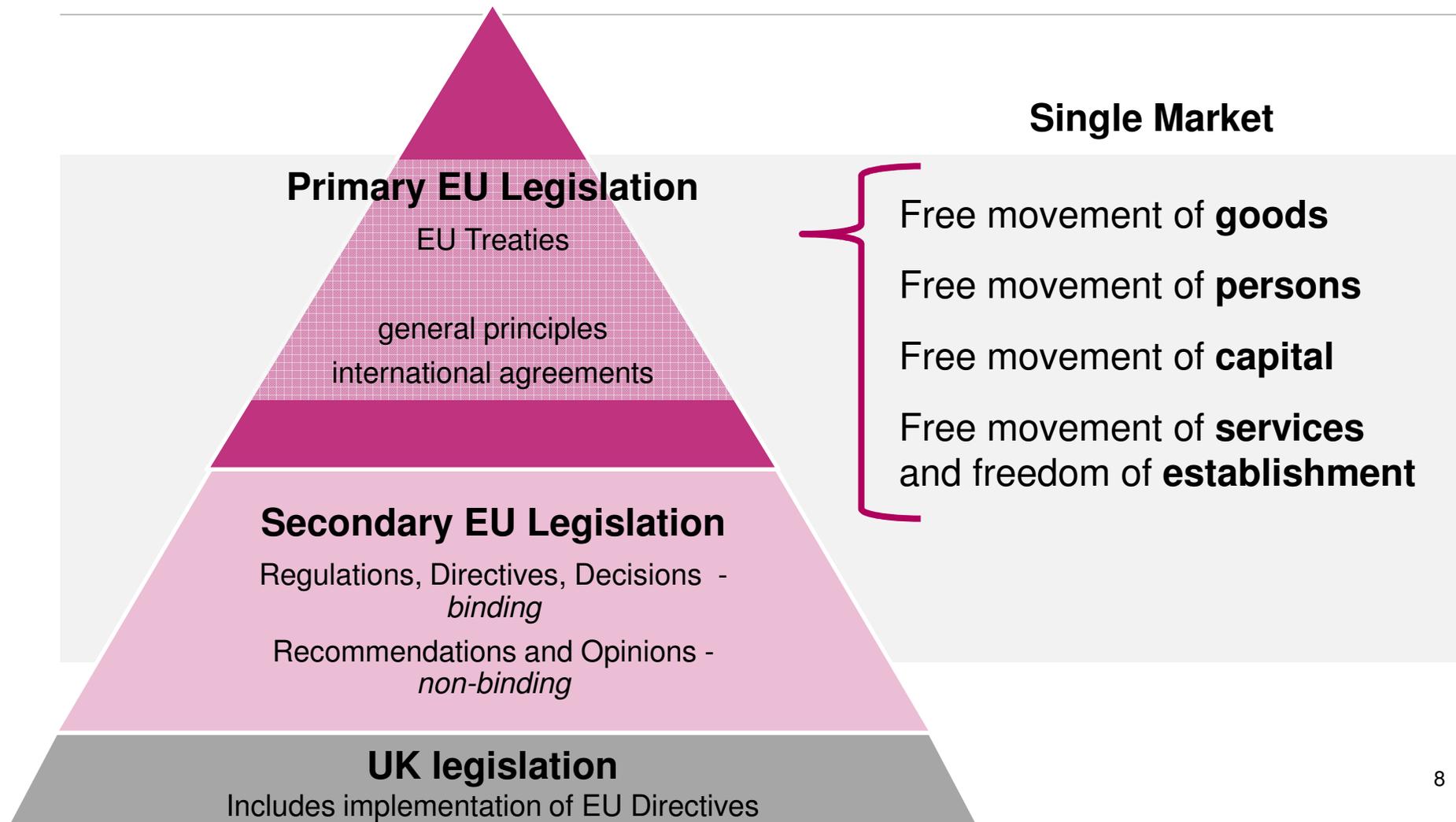
Models for EU exit

	Own trade policy	Access to Internal Market (goods)	Access to Internal Market (services)	Free movement of people	EU budget contribution	Need to transpose or apply EU law	Influence on EU legislation
1 EEA Membership (Norway)	✓	✓	✓*	✓	✓	✓*	✗
2 Bilateral trade agreements + EFTA (Switzerland)	✓	✓	✓*	✓	✗	✗*	✗
3 UK – EU Free Trade Agreement (similar to TTIP)	✓	✓*	✓*	✗*	✗	✗*	✗
4 Customs Union (Turkey)	✓*	✓*	✗	✗	✗	✗*	✗
5 World Trade Organisation	✓	✗	✗	✗	✗	✗	✗

“Non EEA” status

Legend ✓ yes ✓*yes to large extent ✗*no to large extent ✗ no

Current UK – EU relationship



EU laws relevant to share plan design

- ✓ Eligibility
- ✓ Grant levels
- ✓ Vesting
- ✓ Malus and clawback
- ✓ Rights on termination
- ✓ Equal treatment
- ✓ Consultation
- ✓ Governing law / jurisdiction

Part-time Workers Directive

Working Time Directive

Equal Rights Directive

Capital Requirements Directive (FS)

Market Abuse Directive; MAD II

Acquired Rights Directive (TUPE)

Information and Consultation Directive

Recast Brussels Regulation

EU laws relevant to share plan operation

- ✓ Data protection
- ✓ Information to employees
- ✓ Shareholder rights
- ✓ Global offers
- ✓ Savings accounts
- ✓ Nominees
- ✓ Share dealing
- ✓ Tax?

Data Protection Directive

EU Prospectus Directive

MiFID

E-Commerce Directive

Directive on Consumer Rights

Share plan offers – current regime

- > EU Prospectus **Directive** (EUPD) + Prospectus **Regulation**
- > = single regime throughout the EU governing prospectus requirements (obligation, content, format, approval, publication)
- > Also applies to EEA member states
- > Starting point – prospectus needed when granting options/awards/shares under a share plan, BUT ...
- > Exclusions (not subject to EUPD) and exemptions
- > Local variations
- > Ability to passport a prospectus approved in one member state to other EEA member states

Share plan offers – current regime (contd.)

- > Companies listed or headquartered in the EEA:
 - Employee share scheme exemption
- > Companies not listed or HQ in the EEA:
 - Exemptions and exclusions (non-transferable options, 150 persons, EUR 5 million)
 - RSUs, SSARs and options OK in most countries
 - Smaller grants OK in most countries
 - Problems most likely with broad-based share purchase plans
 - Employee share scheme exemption? Requires EU Commission to adopt “equivalence decision” re: non EEA market (none yet)

Brexit – Share plan offers

- > Brexit unlikely to lead to significant changes given London's global standing as a financial centre
- > **EUPD** implemented in the UK by the Financial Services and Markets Act 2000 (FSMA) and the Prospectus Rules
- > **The Prospectus Regulation** would cease to apply on Brexit, so the UK would need to replicate it in national law (if desired)
- > Ability to **passport** a prospectus approved in the UK to other EEA member states (and vice versa) may fall away
- > **EEA exit model**: no change likely

Brexit – Share plan offers (contd.)

- > Other exit models (non EEA status):
 - Offers in or into the UK
 - Stricter regime? – unlikely
 - More relaxed regime? – e.g. offers to employees only
 - More regimes to comply with!
 - Offers from the UK into the EEA
 - EEA listing – employee share scheme exemption (ESS)
 - No EEA listing – look for another exclusion/exemption (possibly ESS if equivalence decision); may need to produce and passport a prospectus

Brexit – Employment law

- > Wholesale abolition of EU-led employment laws doubtful
- > **EEA and/or Swiss model**: unlikely to opt out of EU employment laws
- > **Other exit models**: potential for abolishing or replacing EU originated legislation, specifically:
 - Discrimination and family-friendly rights? Probably not
 - TUPE regulations? Possibly, but TUPE gives certainty to businesses
 - Collective consultation requirements? Enshrined in UK law and unions likely to object
 - Working time and holiday pay? Often regarded as unclear and unpredictable; lobbying for deregulation is expected

Brexit – Data protection

- > Repeal or amendment of Data Protection Act? Unlikely as data protection laws are an international norm
- > **International transfers of personal data:** currently, restrictions on transfers to countries that do not provide an adequate level of protection as determined by the EU Commission
 - **EEA exit model:** no change to current regime
 - **Other exit models (non EEA status):**
 - Adequacy finding as part of any withdrawal agreement?
 - Rely on consent?
 - Increased use of model clauses?
- > EU's General Data Protection Regulation – comes into force in 2018

Planning for Brexit?

- > **Flexibility** in plan rules (e.g. cash alternative)
- > **Amendment** power (e.g. to delay vesting)
- > Can you **pull the plan**?
 - No new grants; terminate / unwind existing grants
 - Exclusion of liability provisions
 - Global hotspots for “acquired rights”
- > **UK tax qualified plans**
- > **Administration**
 - > Service agreement
 - > Liabilities

Questions?



Thank you!

Linklaters LLP

One Silk Street

London EC2Y 8HQ

Tel: (+44) 20 7456 2000

Fax: (+44) 20 7456 2222

Linklaters

A30253808
