The UK referendum on membership of the European Union will undoubtedly be the most crucial event this parliament.

The decision to leave the EU will have significant implications for the UK, with the wider macroeconomic and geopolitical impact likely felt across Europe and the wider world.

Whilst the remit of this subject is vast, this briefing focusses on some of the key potential impacts for the public sector, investors, contractors and funders in the UK infrastructure space.

**Impact on Procurement**

Now that there has been a vote to leave, the EU regulations which have been transposed into national law via the Public Contract Regulations will continue to apply unless legislation is passed to repeal or amend them. The UK was very influential in originally drafting the existing EU rules so it would be difficult to justify making such complex and time consuming changes.

Following the leave vote, UK contractors cannot be prevented from participating in EU infrastructure procurement so no change is likely to be felt in that regard. They will need simply to comply with the procurement requirements.

**Impact on Infrastructure Investment**

The European Investment Bank (EIB) has invested £16 billion in UK projects over the last three years, including the extension of the M8 motorway between Edinburgh and Glasgow and a £700 million loan to the Thames Tideway Tunnel.

The UK is currently the joint largest shareholder in EIB but now, post-Brexit, is likely to have to relinquish its equity. Shareholders must be member states, so future EIB lending decisions will no longer involve the UK. More importantly, EIB lending on UK projects will inevitably decrease.

This is potentially a mixed blessing. Some project finance players occasionally complain of EIB muscling in on projects that could readily be funded by the private sector and so might welcome a reduced EIB involvement; however the impact of decreased EIB lending will inevitably be felt most keenly on the larger infrastructure projects such as Crossrail or London Underground upgrades, where EIB’s involvement is undoubtedly beneficial.

The EIB is currently operating as normal however this is likely to change in the near future. If the UK remains in the European Economic Area, still following the same procurement rules, they will now only receive 1/43rd of the EIB’s financing due to the UK no longer being a state member of the EU.

Given the current lack of UK government investment in infrastructure, particularly social infrastructure, it is hard to see HM Treasury stepping in to the breach in the short- to mid-term. However, Theresa May is said to be actively thinking about the infrastructure sector and has suggested the use of the Treasury-backed bonds to finance projects.

The government’s National Infrastructure Delivery Plan sets out an already limited pipeline of new infrastructure so it will be difficult to argue that government support in infrastructure investment could decrease much further. That said, given the likely macroeconomic impact on UK government finances the logical conclusion is that any potential PPP programme of significance will be further delayed.

**Impact on Exchange Rates**

Currencies are volatile by their very nature and we have already seen a drop in the value of the pound against the euro and the dollar and a negative impact on stock markets across the world.

However, in the short- to mid-term a fall in the value of the pound is likely to favour contractors with a UK base by making them more competitive in their overseas markets (and conversely, deter those who do not).

We are aware of at least one major power project in the UK involving a major European contractor which was abandoned a couple of weeks shy of financial close through a combination of currency risk and the moving exchange rate’s impact on IRR.

Because infrastructure investments are, by their nature, long-term, an uncertain climate may lead to some investments being postponed or even cancelled. Nevertheless, some commentators believe that currency concern will only delay investment decisions until the UK-EU relationship is renegotiated, or until the economy stabilises.

**Impact on the UK Construction Industry**

The construction industry is reliant on European labour so any restriction on the availability of migrant workers from EU countries is likely to have an impact. Any skills shortage will potentially lead to higher labour and construction costs and the risk of project delays. This is likely to be felt particularly on large-scale projects such as HS2 and Crossrail 2 where a significant workforce will be required.
Alternatives to EU Membership

Crucially, there will be at least a two-year negotiation period from the point the Article 50 notice is served to conclude a withdrawal agreement and agree transitional arrangements with the EU with some commentators predicting as long as seven years.

The Norway model, the Switzerland model, a Free Trade Agreement and the World Trade Organisation system are all possible alternatives, each with their own pros and cons.

In a number of the scenarios the UK will still be subject to EU law and free movement of people, but crucially would no longer have any input into the formation of new EU laws.

Whilst the Norway model appears to be the preferred option of many Brexeters, ironically it would require acceptance by the UK of a number of chapters of the EU’s “Acquis Communautaire” (including around free movement). A Free Trade Agreement would require the same, as well as ratification by all other member states. The European Commission says any such agreement could take up to five years to finalise.

In short, the actual impact on the UK’s economy and legislative framework (and therefore its long term impact on the infrastructure sector) will not be known for some years to come.

Conclusion

While the macroeconomic ramifications following Brexit are no doubt significant, the direct impact on UK infrastructure is more nuanced. Any significant shifts are likely to be felt in the mid- to long-term rather than immediately. That in itself is difficult to assess as it will depend on the withdrawal agreement made with the EU and the nature and scale of domestic legislative changes introduced.

One outcome that is certain, however, is that Brexit means a proliferation of new legal challenges to deal with. The complexity of Brexit means that there are legal issues to consider in nearly every sector and when our legal system is disconnected from the EU, a gap will be created in respect of rules and legislation which will need to be filled.