

# P.R.I.M.E. Finance

## Panel of Recognized International Market Experts in Finance

### Brexit's Implications for Financial Markets



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# DIRECTION OF TRAVEL

The UK is due to exit the EU at 11pm UK time on 29 March 2019

## Deal

Draft withdrawal agreement may still be agreed (perhaps amended)

### Requires (in UK)

- UK Parliament approval
- Act of Parliament to give effect to agreement in UK domestic law
- Compliance with Constitutional Reform and Governance Act 2010 (pre ratification)

### Requires (in EU)

- Approval by European Parliament
- Approval by EU Council (qualified majority)

### Draft agreement establishes transition period until end 2020

- Extendable by mutual agreement to end 2021 or 2022
- 'Full status quo' transition for business: passport/other rights continue in UK/EU

## Delay

UK and European Council can delay deadline

### Requires

- UK request in accordance with constitutional requirements (probably resolutions of both Houses under EUWA)
- Unanimous agreement of European Council
- If delay past May, resolution of issue of UK participation in EU Parliament elections

### Possible prelude to

- UK general election
- Second referendum (requires Act of Parliament)

### Leading to

- Withdrawal of Article 50 notice (may require UK Act of Parliament)
- Deal or no-deal

## No deal

Default position under EU and UK law

UK becomes a 'third country' under EU law

Activation of onshoring of EU law as UK domestic law



# NO DEAL PREPAREDNESS: UK

## European Union (Withdrawal) Act 2018

- Repeals European Communities Act 1972 on 'exit day'
- EU-related domestic law continues in effect
- EU regulations and other direct EU legislation become part of domestic law
- Ministers given power to make SIs amending UK law to remedy deficiencies arising from Brexit

## Progress with statutory instruments (SIs)\*

- Government now expects to make ~600 SIs
- So far, 343 SIs laid before Parliament (~7,000 pages)
- Most require affirmative resolution of Parliament (some only negative resolution, but Parliament can upgrade)
- Of these, only 104 have completed Parliamentary process
- But Government has power temporarily to override need for affirmative resolution in cases of urgency

\*Hansard Society Westminster Lens: Brexit Statutory Instruments Dashboard (25 January)



# NO DEAL PREPAREDNESS: UK

Significant progress on UK preparedness on financial services: generally UK treats EU as a third country

## Delegation to UK regulators

- Powers to amend rule-books and RTS/ITS
- Consultations by both PRA and FCA
- Ongoing powers to make/amend RTS/ITS under onshored EU legislation

## Temporary regimes

- Temporary permissions regime: EU firms and funds passporting into the UK
- Temporary recognition regime: EU and third country CCPs,
- Temporary registration regimes: new UK credit rating agencies and trade repositories
- Financial services contracts regime (FSCR): allows firms, CCPs and trade repositories to run-off outstanding arrangements
- Equivalence determinations and exemptions: HMT powers to make these by direction
- Other transitional arrangements: intragroup exemptions under EMIR, EU registered benchmarks
- Temporary transitional powers (expected): giving UK regulators powers to disapply requirements

## Third-country arrangements

- Discussions with CFTC/others to roll-over reliefs/exemptions

## Accession to Hague Convention

- Covers exclusive choice of court agreements made on or after 1 April 2019

## Financial Services (Implementation of Legislation) Bill

- Allows HM Treasury to adopt legislation to deal with 'in flight' files
- Specified EU legislation adopted but not yet in effect or proposed but not yet adopted as at exit day
- E.g., EMIR Refit/2.2, Risk Reduction Package, Low Carbon Benchmarks, SFTR reporting



# NO DEAL PREPAREDNESS: EU

The Commission only proposes limited measures to mitigate impact of no-deal exit on financial sector

## Recognition of UK CCPs and CSDs

- Temporary equivalence determinations for existing UK CCPs (12 months) and CSDs (24 months)
- Subject to UK regulators and ESMA agreeing extensive arrangements for access to information
- ESMA to progress applications for recognition in advance of Brexit

## Facilitation of post-Brexit novations

- Amendments to RTS to allow novations from UK to EU entities within 12 months after Brexit
- Without triggering clearing or margin requirements

No arrangements for equivalence determinations or other measures to cover, e.g.:

- Data transfers
- UK trading venues for EMIR and MiFIR
- Intragroup exemptions under EMIR
- UK trade repositories, data service providers, credit rating agencies
- Risk weighting of exposures to UK entities
- UK benchmarks



# NO DEAL PREPAREDNESS: EU27 STATES

Derivative contract continuity issues left to Member States:  
‘new patchwork’ of legislative responses

|             | Status   | Addresses contract continuity for derivatives                                                                                                            |
|-------------|----------|----------------------------------------------------------------------------------------------------------------------------------------------------------|
| Finland     | Proposed | New third country licence regime for cross-border MiFID services to professional clients/eligible counterparties (plus transitional regime for UK firms) |
| France      | Adopted  | Temporary powers to adopt ordinances (no published proposals)*                                                                                           |
| Germany     | Proposed | BaFin power to allow UK passported firms temporarily to continue to provide banking and investment services closely connected to existing transactions   |
| Ireland     | Proposed | No specific provision*                                                                                                                                   |
| Italy       | Proposed | Temporary measures to allow intermediaries to continue to provide services in Italy*                                                                     |
| Luxembourg  | Proposed | Temporary powers to take measures to address risks arising from Brexit                                                                                   |
| Netherlands | Proposed | Temporary powers to take measures to address risks arising from Brexit*                                                                                  |
| Norway      | Adopted  | Temporary regime to allow UK firms to provide cross-border investment services to professional clients and eligible counterparties                       |
| Sweden      | Proposed | Temporary regime to allow UK firms to provide cross-border investment services to professional clients                                                   |

\* Also includes specific measures to address membership of UK systems to address loss of settlement finality directive protection



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# SOME KEY ISSUES IN NO DEAL

- Contract continuity: ability to perform 'life cycle' events without requiring a local licence on UK-EU27 contracts
- Possible need for new Article 55 and resolution stay recognition clauses
- Continued use of EMIR intragroup exemption from clearing and margin
- Ability to novate to an EU27 affiliate without triggering clearing or margin requirements
- Choice of court clauses and enforceability of judgements
- Use of English law: impact of local law on contract terms and structure
- Replacement of inappropriate references to EU law with references to onshored UK law
- Impact of Benchmark Regulation
- Prospectuses
- ECB Eligible Collateral
- Insolvency issues

