

P.R.I.M.E. Finance

Panel of Recognized International Market Experts in Finance

Brexit's Implications for Financial Markets



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P.R.I.M.E. Finance Annual Conference 2019
4 & 5 February, Peace Palace, The Hague

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

