

ISDA Symposium® Brexit  
*Implications for Derivatives and Impact on Market Participants*



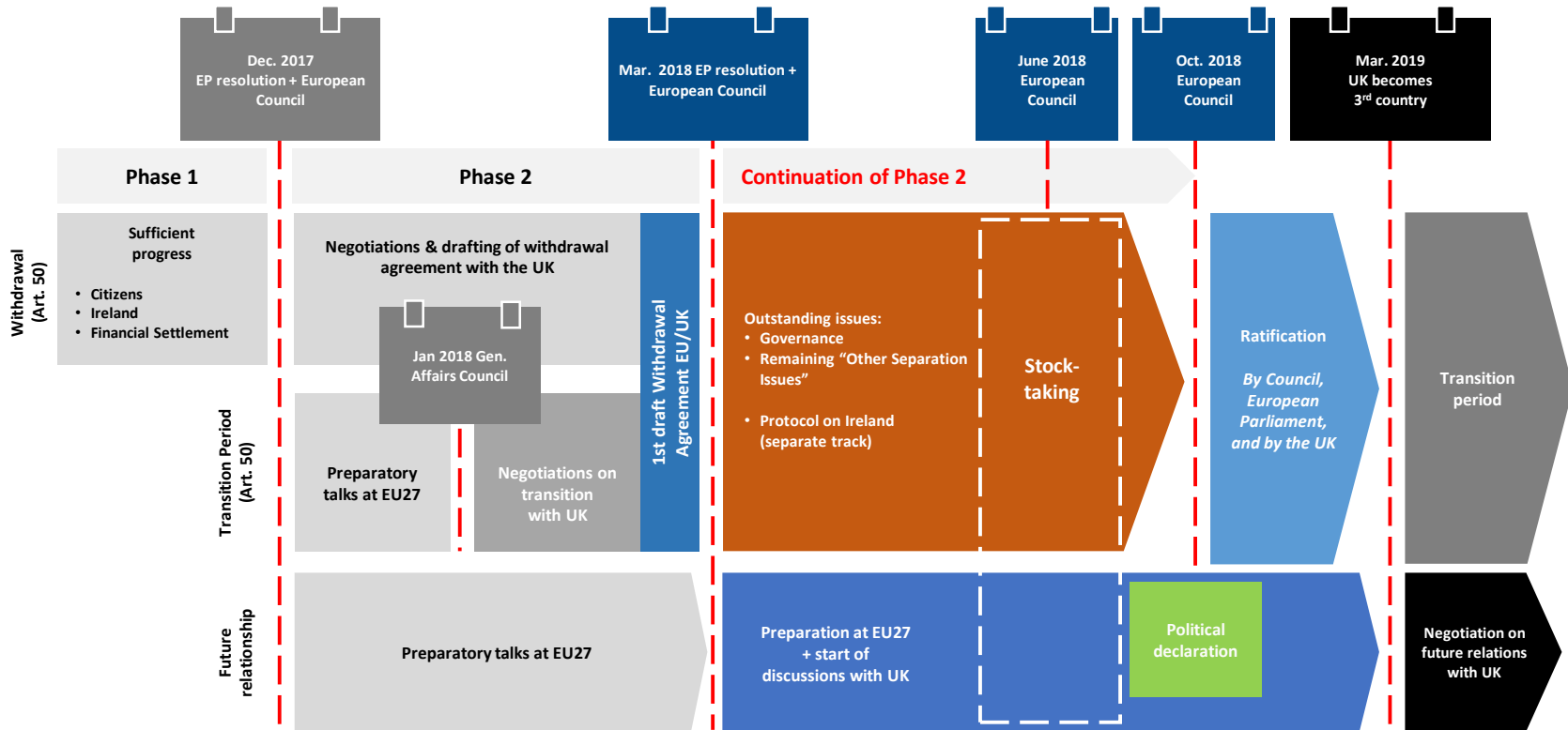
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New York

# European Union (Withdrawal) Bill and firm planning

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# EU-UK negotiations



Source: European Commission

## Leading to...

### Withdrawal Agreement

- Separation issues, including
  - Citizens' rights
  - UK financial settlement
  - Northern Ireland border backstop deal
- Transition period
  - Expiring 31 December 2020
  - 'Full status quo transition'
  - UK treated as if it were a Member State
  - Including implementing new EU legislation during period
  - But UK loses voting and other institutional rights

### Future EU-UK relationship

- Political declaration
  - Alongside Withdrawal Agreement
  - Non-binding
- Future agreement(s)
  - To be negotiated and concluded during transition period
  - Free Trade Agreement plus other agreements
  - UK government objective remains to seek mutual market access for financial services

# Legislating for Brexit in the UK

## EU (Withdrawal) Bill

- Preserving existing EU law as part of UK law
- Powers for UK government to fix 'deficiencies'
- Impact on powers of Scottish, Welsh, Northern Irish governments

## Other proposed legislation

- Withdrawal Agreement and Implementation Bill
- Trade Bill
- Immigration Bill
- Taxation (Cross-border Trade) Bill
- Sanctions and AML Bill
- Etc.

# Outcomes - scenarios

## Best case

- Withdrawal agreement concluded
- Transition period to end 2020
- Long-term arrangement on market access

## Base case

- Withdrawal agreement concluded
- Transition period to end 2020
- No long-term arrangement on market access

## Worst case

- No (or 'bare bones') withdrawal agreement
- No transition period
- No long-term arrangement on market access

# Can firms rely on transition?

## UK Prudential Regulation Authority

“The Government has committed to bring forward legislation, if necessary, to create a temporary permissions regime to allow relevant firms to continue their activities in the UK for a limited period after withdrawal. In the unlikely event that the Withdrawal Agreement is not ratified, this provides confidence that a back-stop will be available.

In light of this, firms may plan on the assumption that PRA authorisation will only be needed by the end of the implementation period.”

PRA Dear CEO letter, March 2018

## European Central Bank

“[T]here is still political uncertainty as to whether there will be a transition period. Legal certainty will only come with the ratification of the Withdrawal Agreement by all sides involved in the negotiations.

...

The ECB and national supervisors, therefore, expect banks to continue to prepare for all possible contingencies, including a no-deal scenario leading to a hard Brexit with no transition.”

ECB FAQs, Relocating to the Euro area

# Firm planning – inbound business from EU27 into UK

## Treatment of EU27 banks with UK branches – new PRA policy

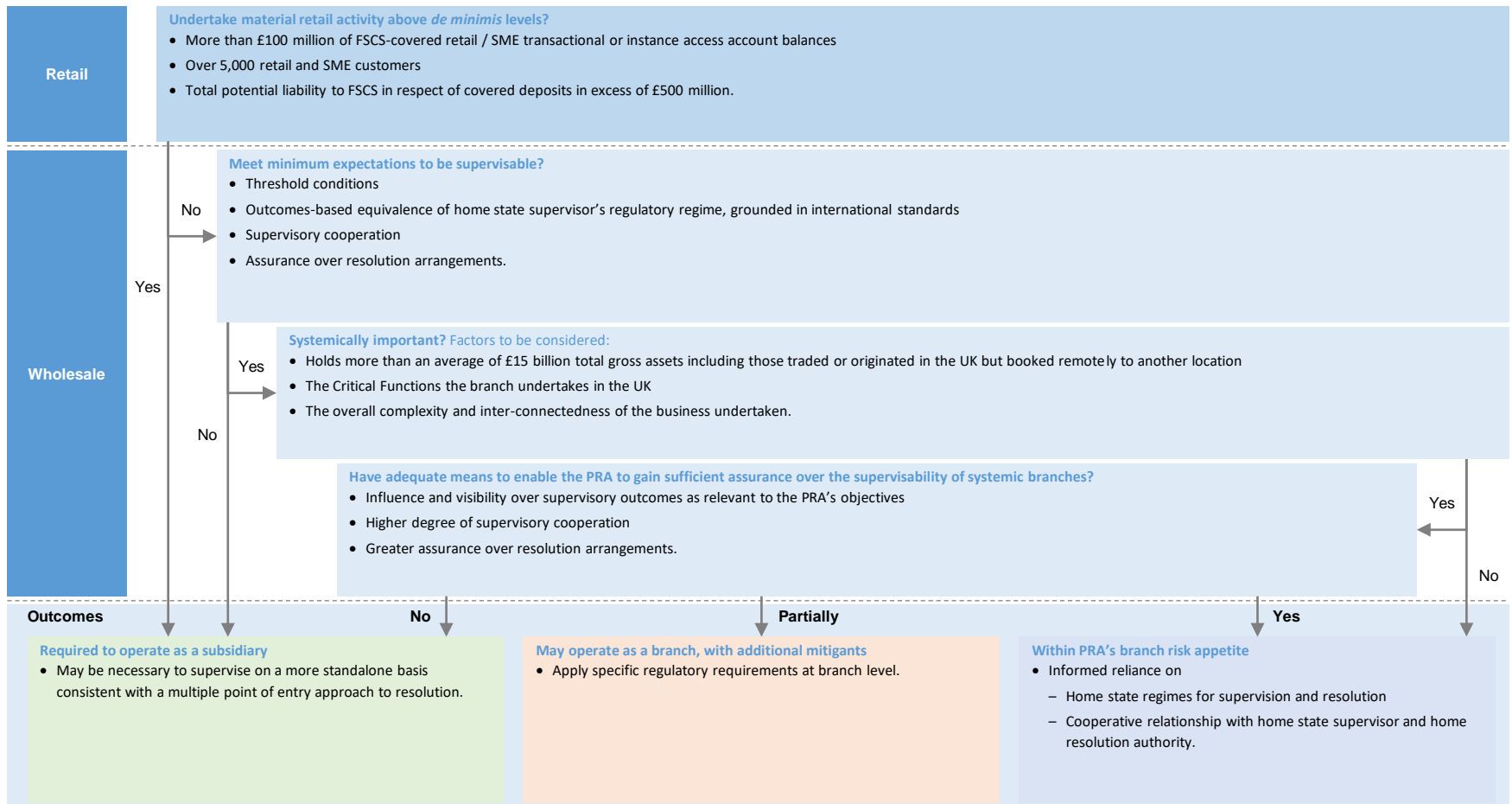


Image credit – PRA



## Firm planning – outbound business from UK into EU27

- EU27 hub entity or entities
  - New or scaled up EU27 entity
  - Branches in other EU27 states
  - Branch in the UK for hedging or support activities
  - Buyside: delegation of asset management to UK entities
- EU27 branches of UK or other non-EU entities
  - New or scaled up branches
  - Serving clients in same state
  - Booking business locally
- Continued cross-border business from UK
  - Relying on national regimes
  - Applying for cross-border exemptions or licences
- Discontinue or limit EU27 business

... ‘mix and match’ strategies

# Implementing the plan – outbound business from UK into EU27

## Statutory mechanisms

- Part 7 Financial Services and Markets Act 2000
  - Cross-border transfer of a UK banking or insurance business
  - Court-approved scheme
- Cross-border merger
  - Merging UK entity into EU27 entity under EU directive
- EU Company Statute
  - Convert UK company into Societas Europaea
  - Transfer HQ to EU27 state

## Bilateral transfers

- New business
  - Repaper clients onto EU27 entity or branch
- Outstanding transactions
  - Novate to new entity
  - 'Branch to branch' transfers
  - Roll-off or wind down 'in situ'

## Outstanding transactions – contract continuity

- Some ‘life-cycle events’ risk contravening licensing laws
  - Performance of obligations
  - Exercise of options
  - Rolling open positions
  - Transfers of collateral
  - Amendments
  - Unwinds
  - Novations
  - Portfolio compression
- Making it difficult to roll-off or wind-down ‘in situ’
- But clients may refuse or delay consent to novations, e.g.
  - Credit issues
  - Country or other limits
  - Loss of clearing or margin grandfathering under EMIR
  - Tax or accounting impact
  - Need for new opinions
  - Negotiation of new documentation
  - Implementation of operational changes
  - Bottlenecks and delay in dealing with multiple relationships

## Contract continuity – potential solutions

- Legislating to continue authorisations on limited basis
  - Sufficient to allow the wind-down of portfolios of existing contracts
  - Similar to UK proposal for ‘temporary permissions’ regime
  - Duration, supervisory powers
- Potentially delivered through changes to:
  - Withdrawal Agreement
  - EU legislation
  - National legislation in EU27
- Plus recognition of clearing, risk weighting, etc.

# Contacts

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