



Agenda

- Background
 The referendum
 The process
 Possible outcomes
- 5. Firm responses6. Impact on US

The development of the single market for financial services

1992 Programme 1987-1992 Financial Services
Action Plan
1998-2005

Post-crisis 2008 –

- Removal of capital controls
- Re-regulation of markets, eg Big Bang
- Minimum harmonisation
- Mutual recognition
- Banking, investment firm passports

- Launch of the euro
- Lamfalussy framework for lawmaking
- EU advisory committees, eg CESR
- Strengthening of passports
- Integration of wholesale markets

- Global and eurozone financial crises
- Action on G20 agenda
- De Larosière report
- European Supervisory Authorities (ESAs)
- Banking Union
- Single rulebook
- Capital Markets Union

Techniques for integrating EU financial markets

Harmonisation of laws

- Increased scope of legislation
- More regulations, instead of directives
- More 'Level 2' rulemaking
- Fewer national options and discretions

Institutionalised regulatory cooperation

- Obligations to cooperate
- Mandatory exchanges of information
- Mandatory colleges
- Binding mediation between supervisors

Principles of non-discrimination

Passporting and mutual recognition e.g.

CRD and MiFID passports

- Available to EU banks, investment firms
- Banking services: deposits, loans, FX, etc.
- Investment services: dealing, advice, investment management, underwriting, etc.
- Right to establish branches and provide cross-border services
- No additional local licence required

Plus

- Protection from additional host state rules
- Remote access to market infrastructure
- Rights of trading venues, CCPs, CSDs, etc
- Passports for prospectuses, UCITS, AIFs, credit ratings, benchmarks
- Recognition of insolvency regimes and judgments

Practical impact of passports

EU firms have centralised capital market services in a single hub

- Providing services across the EU
- Participating remotely in market infrastructure
- Hub can be place of incorporation or a branch in another Member State

'De-subsidiarisation'

Elimination of local entities or replacement by branches

Centralisation of funds, prospectus approvals

eg Dublin, Luxembourg

Market infrastructures provide services on an EU wide basis

Passports critical factor for non-EU groups operating in EU

Choose to operate significant business in EU subsidiaries instead of branches



The EU referendum result

23 June 2016

Leave

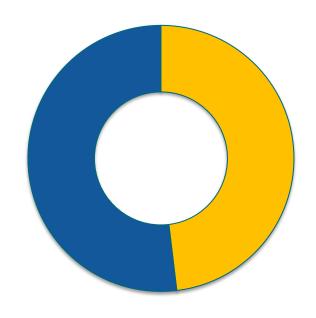
Vote share **51.9%** 17,410,742 VOTES

Remain

Vote share **48.1%** 16,141,241 VOTES

Electorate 46,501,241

Turnout 72.2%





England

Leave 53.4% vs Remain 46.6%

Scotland

Leave 38% vs Remain 62%

Wales

Leave 52.5% vs Remain 47.5%

Northern Ireland

Leave 44.2% vs Remain 55.8%

London

Leave 40.1% vs Remain 59.9%

Where do we go from here?





Article 50 negotiations

Triggered by UK notice to European Council 2 year period to negotiate withdrawal

Long-term UK-EU agreement(s)

No prescribed timeline: EU Treaties only provide for EU to enter into treaties with "third countries"

Negotiations with third countries

Replacing EU FTAs and other arrangements

Limited impact on existing arrangements

Resetting domestic laws

Major amendments to UK law and regulation

Limited changes needed to EU law

Article 50 Treaty on European Union

- 1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.
- 2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.
- 3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.
- 4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.

A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.

5. If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49.

Article 50 Treaty on European Union: key questions

- What are the UK constitutional arrangements for giving the Article 50 notice?
- When will the UK serve the notice under Article 50?
- Can the UK and the EU negotiate in advance of the Article 50 notice?
- Can the UK withdraw the notice after it has been given?
- Is it likely that the negotiating period will be extended?
- What can be included in the withdrawal agreement?
- Can the UK agree a free trade / other long-term agreement at the same time?
- Who must approve the withdrawal agreement before it is signed?
- Can the agreement come into force after the two year period expires?
- Can the agreement include transitional provisions?

Long-term agreement and third countries

UK-EU Long-term Agreement(s)

No specific Treaty provision covering longterm agreement

May be negotiated under existing powers in Treaty e.g. for common commercial policy

Recent timetable for negotiating FTAs 4-10 years

This negotiation different: not negotiating to increase market access

UK government capacity issues

Comprehensive agreement requires
Council, European Parliament and possibly
Member State ratification

Third countries

Re-establish UK position in WTO

Replace 50+ existing EU FTAs

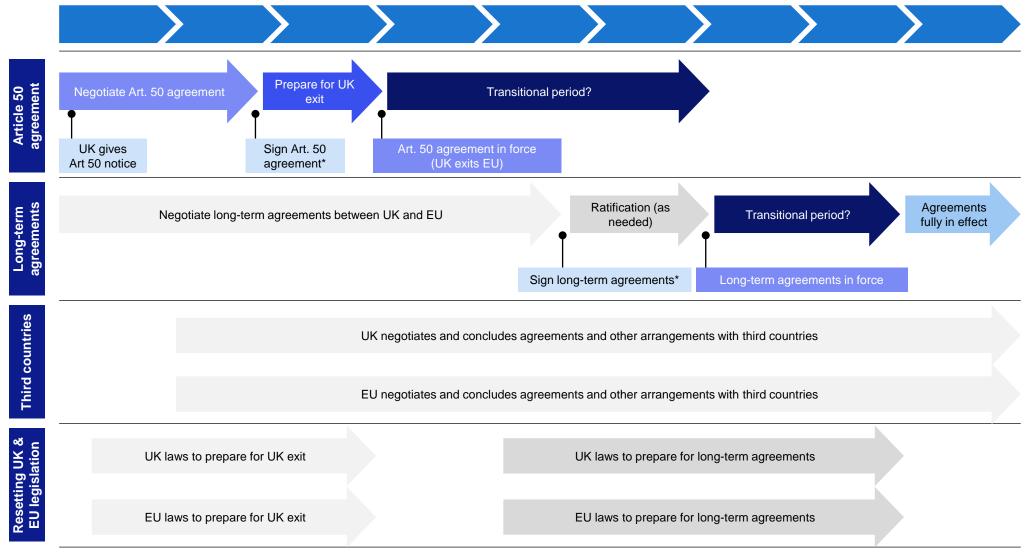
Replace existing EU mutual recognition or substituted compliance arrangements

EU-UK transitional provisions do not affect third countries

Treaty restricts UK's ability to conclude 3rd country agreements while still a Member State

Other countries will 'wait and see'

The UK exit from the EU: an illustrative timeline



^{*} Agreements subject to EU Parliament and Council approval and UK Parliamentary process under Constitutional Reform and Governance Act 2010.

UK government key players



Theresa May Prime Minister



Boris Johnson Foreign Secretary Foreign and Commonwealth Office



Philip Hammond Chancellor HM Treasury

Tom Scholar Perm Sec, HMT

Charles Roxburgh Second Perm Sec, HMT

Katharine Braddick Director, Financial Services, HMT



David Davis
Department for exiting the European Union

Oliver Robbins Perm Sec, DExEU

Catherine Webb Dir Market Access and Budget, DExEU



Liam Fox
Department for
International Trade

EU member state and EU key players



Angela Merkel German Chancellor (Elections October 2017)



Donald Tusk President of the European Council



Jean-Claude Juncker
President of the
European Commission



Michel Barnier European Commission Chief Negotiator



Martin Schulz
President
European Parliament



François Hollande French President (Elections May 2017)

Piotr Serafin, Chief of Staff of President Donald Tusk

Didier Seeuws, European Council, Special Task Force on the UK

Hubert Legal (France): Council Legal Director

Martin Selmayr, Head of Cabinet of President Juncker

Alexander Italianer, EC Secretary-General

Luis Romero Requena, Commission Head of legal services

Sir Julian King (UK) European Commissioner for the Security Union (designate)



Guy Verhofstadt Brexit negotiator European Parliament

Initial positions

"There cannot be freedom of movement of goods, free movement of capital, free movement of services if there isn't a free movement of people." – **President Hollande**, reported 21 July 2016

"we need to make sure that we don't allow Britain to keep the nice things, so to speak, related to Europe while taking no responsibility" - **German economy minister Sigmar Gabriel**, reported 28 August 2016

"We are listening to the UK, we are listening to Britain what it actually wants and then we will give the right response" – **Chancellor Merkel**, reported 20 July 2016

"I'm looking at this with an open mind... I think we should be developing the model that suits the United Kingdom and the European Union. Not adopting, necessarily, a model that is on the shelf already" – **Prime Minister May**, reported on 27 July 2016

"Brexit means Brexit... that means no second referendum, no attempts to sort of stay in the EU by the back door" – **Prime Minister May**, reported on 31 August 2016

"Hard" or "soft" Brexit?

Greater market Soft Brexit Onerous and unlikely EEA + EFTA membership access in return for free movement of people, budget contributions, regulatory equivalence and institutional oversight **Customs Union** Onerous and unlikely Package of FTAs and IAs Most likely Less market access with reduced free movement of people, no budget contributions, possibly diverging regulation **Hard Brexit** If negotiations fail WTO / GATS and little institutional coordination

Financial services perspective on potential outcomes

EEA or EEA-like agreement

Norway model Maximises continuity: e.g. passports continue

But

- Freedom of movement of workers
- Contributions to EU budget
- Required to apply EU laws with no vote

"EEA minus"

"Canada plus"

Alternative bilateral financial services framework

- Treaty based mutual recognition
- Institutionalised cooperation
- Addressing GATS issues

Conventional trade relationship

Risks of disruption to existing business

- GATS/conventional FTAs do little for cross-border financial services
- Non-EU firms face 'patchwork' of national licensing regimes
- Limited unilateral relief under some EU/national legislation (e.g. MiFIR)

Firm responses: "Hope for the best, plan for the worst"

- Ongoing regulatory implementation plans
- Due diligence
- Structural responses: relocation of activities
- Revenue sacrifice models
- Timing and politics

Impact on the US

- New mutual recognition arrangements needed with UK
- Future for the EU-US Financial Regulatory Forum: dialogue to trialogue?
- Role of the FSB and other international organisations
- Impact on relative roles of London vs New York as financial centres

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Topic Guide – Brexit



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Financial Markets Toolkit Topic Guide — Brexit

The UK has voted to leave the EU in the referendum held on 23 June 2016.

This topic guide helps you to navigate relevant legislation and provides commentary on Brexit.

This Topic Guide features:

- Topic overview and current status
- Possible implications of a Brexit: area by area
- Clifford Chance briefings, call recordings ("Insights on Brexit") and seminar videos
- External links

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