

AFME Members' Briefing Call

The Future for Europe's Capital Markets Post Referendum

AFME's priorities post-referendum

Simon Lewis, Chief Executive, AFME



Implications of the UK referendum for market access

Chris Bates, Partner, Clifford Chance LLP

C L I F F O R D
C H A N C E



Agenda

Where are we now?

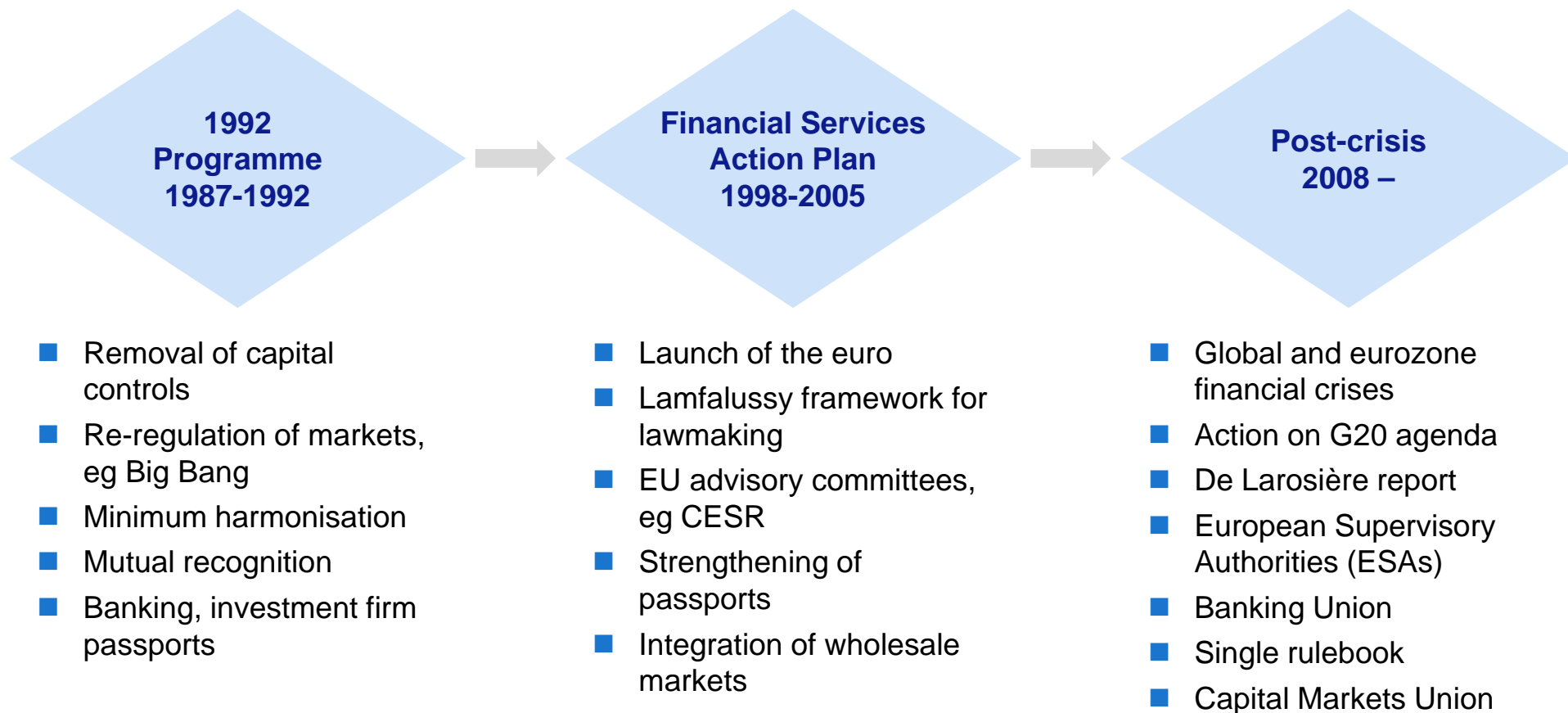
Process and outcomes

EU third country regimes

EU27 firms in the UK

Planning

The development of the single market for capital markets business



Techniques for integrating EU capital 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

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



Four inter-linked processes shaping future market access

Article 50 withdrawal agreement

- UK constitutional issues: role of Parliament and devolved regions
- Two year time-table for negotiation – unanimous agreement to extend
- UK leaves the EU at end of period or when agreement comes into force
- Agreement requires qualified majority approval plus European Parliament

Long-term UK-EU relationship agreement

- TFEU envisages negotiation of treaty with UK after it becomes a ‘third country’
- Sequential process creates risk of a regulatory ‘gap’
- Council mandate, qualified majority or unanimity, European Parliament role
- Role of Member States, ratification

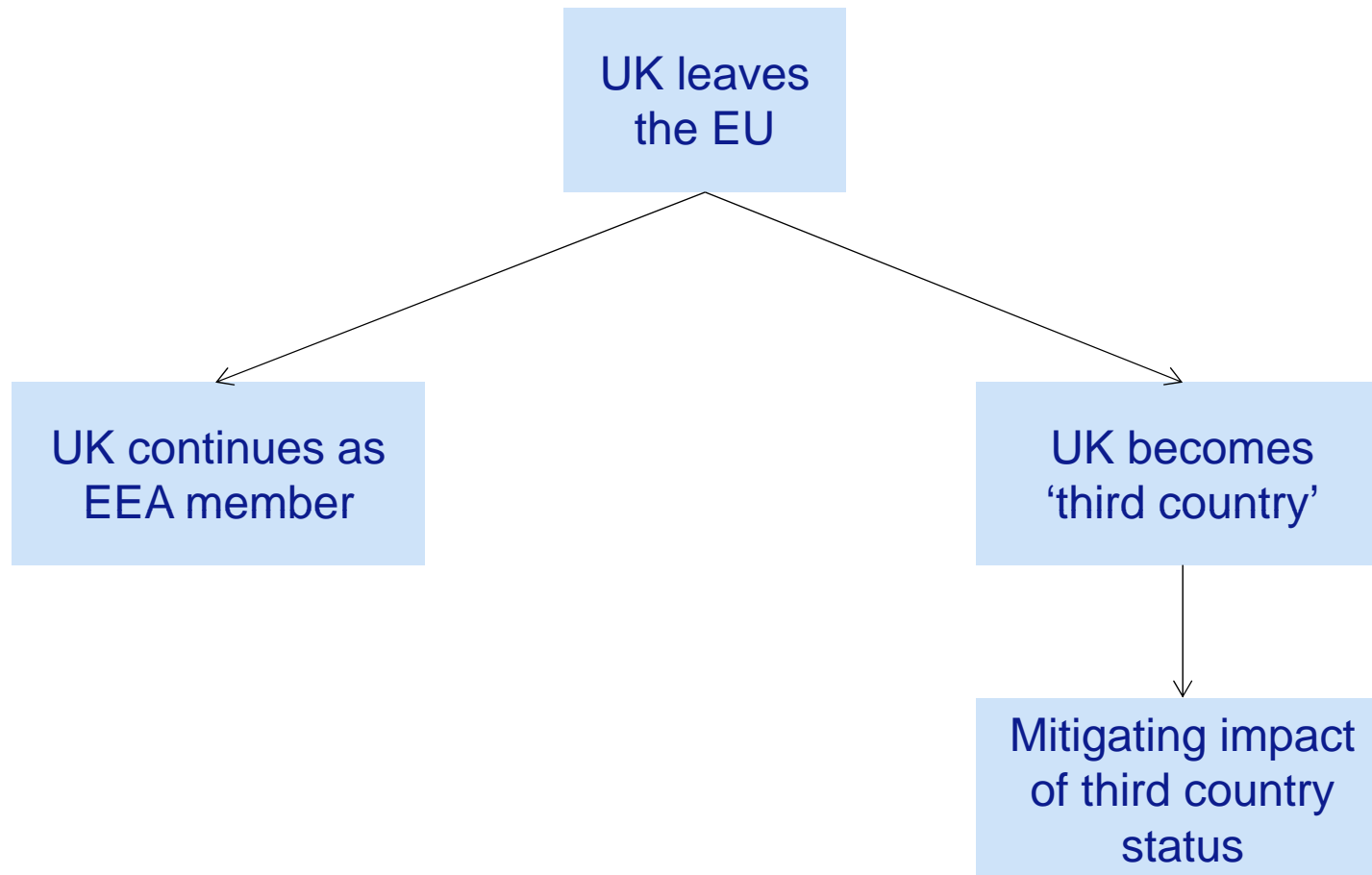
UK relationships with third countries

- Regularisation of UK position in the WTO
- Negotiation of trade agreements with third countries to replace EU FTAs
- Leaving the EEA and replacement arrangements with EEA EFTA states
- Replacing EU mutual recognition arrangements with third countries

‘Domestication’ of UK law

- Repeal or replacement of European Communities Act
- Preserving effect of existing regulatory framework
- Treatment of EU27 states under UK law
- Relationship with equivalence based access

Outcomes: future UK-EU relationship in financial services



Outcomes: future UK-EU relationship in financial services

EEA membership

- Maximises continuity for firms
- Passports and single market privileges continue
- UK continues to implement single market legislation

Political issues for UK

- Freedom of movement of labour
- Contributions to EU structural funds
- UK as 'rule-taker' on single market legislation

Also

- EEA EFTA states and EU27 must agree
- Resolving existing EEA issues over ESAs and 'log jam' of unadopted EU single market legislation
- Ongoing delays in adoption of single market legislation and risks of partial suspension of rights
- Possible bespoke UK arrangements

UK as a 'third country'

- Loss of passports, mutual recognition, non-discrimination
- Non-EU entities face 'patchwork' of differing national licensing regimes and other discrimination
- Loss of institutionalised regulatory cooperation framework

Mitigating the impact

- Non-treaty based mitigants
 - Reliefs under national law
 - Existing EU third country regimes
 - Bilateral regulatory cooperation arrangements
- Withdrawal agreement
 - Transitional provisions, grandfathering
 - 'Activation' of existing third country regimes
- Bilateral agreement(s)
 - Additional equivalence-based market access
 - 'Protection' of market access arrangements
- Other e.g. multilateral judgment conventions

EU third country regimes

EU 'third country regimes' could mitigate some impacts

- Usually conditioned on equivalence of regulation and effective reciprocity
- New MiFIR regime allowing non-EU firms to provide cross-border wholesale investment services
- At outset, UK could maintain equivalence and could provide reciprocal access

Risks


- Political constraints on extending regimes to UK
- Period of uncertainty before confirmed whether regimes available
- Significant gaps in coverage of existing third country regimes e.g.
 - Retail, private wealth, deposit-taking, payments, lending and other banking services
 - Other obstacles to cross-border business
- Over time:
 - Regulatory divergence leads to loss of equivalence
 - EU legislators can unilaterally amend or withdraw regime
 - New EU legislation may not contain third country regimes

Addressing risks

- Withdrawal agreement and bilateral agreement
- GATS constraints on specific UK-EU preferential equivalence arrangements



Other areas of impact

- 
- Branches*
 - Bank groups
 - UCITS
 - AIFs*
 - Portfolio management and advice*
 - Prospectuses
 - Trading venues*
 - Central counterparties*
 - Settlement finality
 - Central securities depositories*
 - Transparency and reporting*
 - Credit rating agencies*
 - Benchmarks*
 - Central banks and governments
 - ECB eligibility
 - Judgment enforcement
 - New legislation: securitisation, structural reform, etc.

* Existing EU third country regime could mitigate some impacts



EU27 firms in the UK

UK branches of EU27 firms

- Ability of branches to rely on passport for business in other EU27 states
- Relicensing and PRA /FCA role and responsibilities for branches in the UK
- Additional regulation of UK branches outside EU framework

UK subsidiaries

- Similar issues to other UK firms for trade across the EU

Cross-border business into UK

- Relatively liberal for wholesale investment services: 'overseas persons' exclusion
- Cross-border corporate lending, deposit-taking, payment services
- But restrictions around retail services, consumer credit, etc.

Product: UCITS, AIFs, prospectuses

Changes to insolvency, resolution regimes

Planning

Developing the industry 'policy ask'

Dealing with uncertainty: 'Hope for the best, plan for the worst'

Differing business models means different impacts and strategies

Recognising the 'point of no return' on implementation

Regulatory implementation – business as usual

Contractual documentation:

- jurisdiction clauses, illegality provisions, transfer rights, contractual recognition of bail-in under Article 55 BRRD

Q&A

The Association for Financial Markets in Europe advocates stable, competitive and sustainable European financial markets that support economic growth and benefit society.

London

39th Floor
25 Canada Square
London, E14 5LQ
United Kingdom

Tel: +44 (0)20 3828 2700

Brussels

Rue de la Loi 82
1040 Brussels
Belgium

Tel: +32 (0)2 788 3971

www.afme.eu