

## Members' Briefing

Brexit: Where are we now and what next?

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## Opening Remarks

**Simon Lewis**  
Chief Executive  
AFME



## Political overview

**Michael Prescott**

Group MD, Corporate and Political Strategy  
Hanover

A profile photograph of Theresa May, looking downwards. She has short, wavy grey hair and is wearing a dark blue jacket, a silver chain necklace, and a small earring. The background features the European Union flag (blue with yellow stars) on the left and the Union Jack (red, white, and blue) on the right.

# POLITICAL OVERVIEW & LIKELY NEXT STEPS



## POLITICAL CAMPS



2<sup>nd</sup> Referendum



May's Deal



No Deal



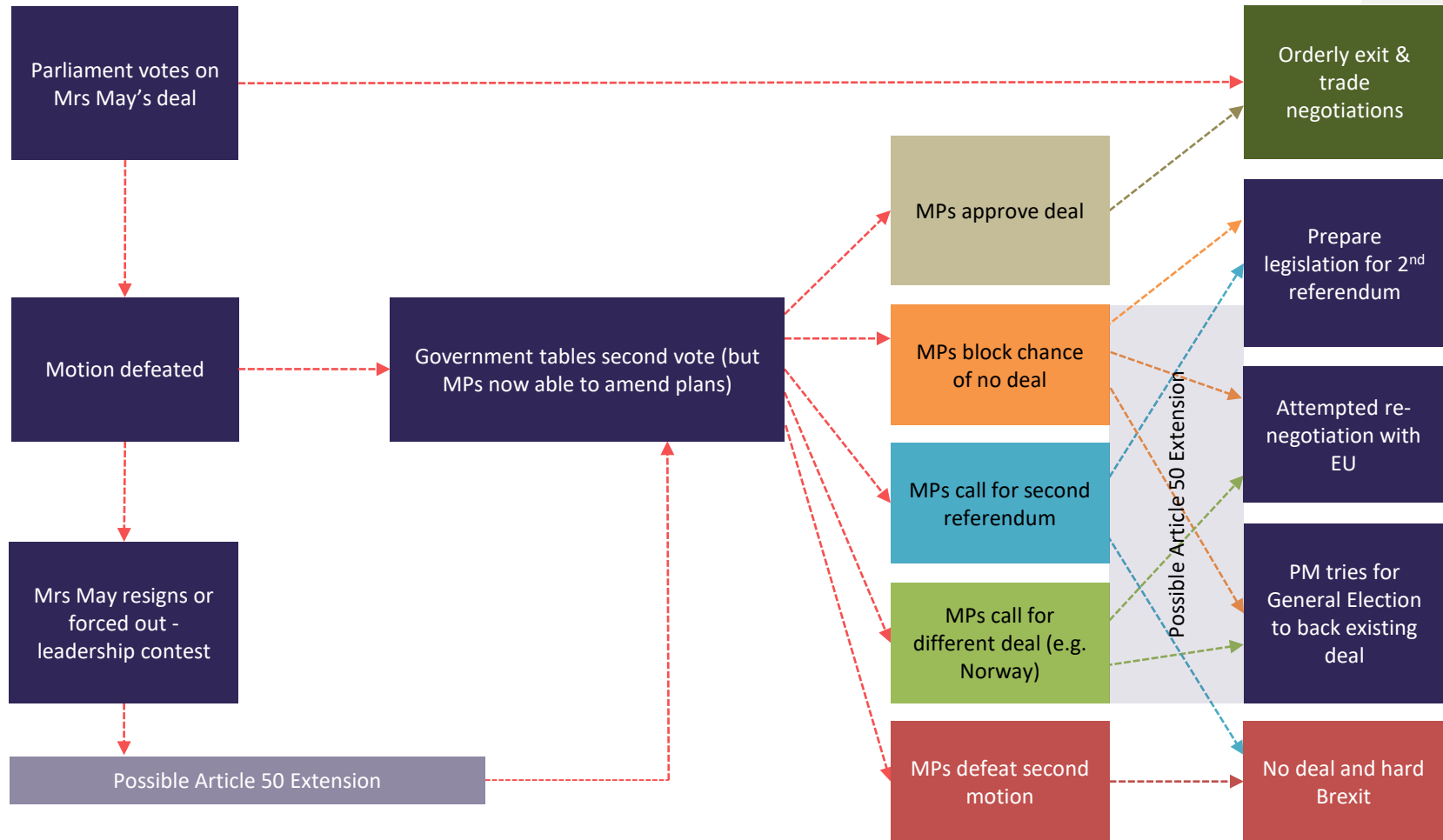
Norway+



Canada+



General Election



## NEXT STEPS

- |                 |   |  |
|-----------------|---|--|
| 12 December     | – | Conservative Party confidence vote               |
| 13-14 December  | – | European Council summit                          |
| 14 December     | – | EU press conference (2pm)                        |
| 17 December     | – | PM likely to face Parliament over summit outcome |
| 20 December     | – | Christmas recess (until 7 Jan)                   |
| 21 January 2019 | – | No 10 deadline for vote                          |
| 29 March 2019   | – | Article 50 deadline                              |
| 23 May 2019     | – | European Parliament elections                    |
| 5 May 2022      | – | General Election, as currently scheduled         |



## **A Legal Perspective**

**Chris Bates**

Global Head of Financial Regulatory and Markets Practice  
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- UK ratification of Withdrawal Agreement requires (s. 13 EUWA)
  - Laying of Withdrawal Agreement and Political Declaration before Parliament
  - Approval of these by House of Commons (the 'meaningful vote')
  - Motion to take note of these which has been debated in House of Lords or debate not concluded within 5 sitting days of meaningful vote in Commons
  - Passing of an Act providing for implementation of the Withdrawal Agreement (the proposed European Union (Withdrawal Agreement) Bill)
  - Compliance with the Constitutional Reform and Governance Act 2010

## Other EUWA provisions on process (s 13 EUWA)

- If meaningful vote does not pass:
  - Within 21 days, Minister must make a statement on how the UK proposes to proceed
  - Within 7 sitting days thereafter, a motion must be moved in Commons considering the statement and in the Lords taking note of the statement
- If by 21 January 2019 Prime Minister makes a statement that no agreement in principle can be reached on the Withdrawal Agreement/Political Declaration:
  - Within 14 days, Minister must make a statement on how the UK proposes to proceed
  - Within 7 sitting days thereafter, a motion must be moved in Commons considering the statement and in the Lords taking note of the statement
- If by 21 January 2019 no agreement in principle reached on Withdrawal Agreement/Political Declaration
  - Within 5 days, Minister must make a statement on how the UK proposes to proceed
  - Within 5 sitting days thereafter, a motion must be moved in Commons considering the statement and in the Lords taking note of the statement

- EU ratification of Withdrawal Agreement requires (Art 50 TEU)
  - Consent of the European Parliament
  - Decision of the Council (acting by a qualified majority)
- Extension of the 2 year period for negotiations requires (Art 50 TEU)
  - Unanimous decision of the European Council in agreement with the UK
  - Adoption of UK statutory instrument making corresponding amendment to the EUWA definition of 'exit day' (approved by both Houses of Parliament)
- Revocation of the Article 50 notice requires (CJEU *Wightman* judgment)
  - Decision by the UK to revoke the notice taken in accordance with its constitutional requirements
  - 'Unequivocal and unconditional' notice to the European Council before Withdrawal Agreement in force or, if not concluded, expiry of negotiation period
  - No requirement for consent of European Council

- The Commission has published a communication on contingency measures in a no deal scenario (13 November 2018).
  - The Commission will adopt a conditional and time-limited equivalence decision to enable continued access to UK CCPs and CSDs. However details are lacking on the timeframe, duration and conditions.
  - UK CCPs and CSDs should pre-apply to ESMA
  - ESAs should start preparing cooperation agreements with UK regulators
- Uncleared derivatives: proposals to facilitate novations from UK to EEA counterparties
  - Proposed amendments to clearing and margin RTS (8 and 29 November 2018)
  - Allowing novation within one year after 'no deal' exit without triggering clearing and margin obligations for legacy contracts
  - Subject to endorsement by Commission and no objection by Parliament/Council
- Data: the Commission is not preparing an adequacy decision to enable personal data to continue to flow.

- Proposed national legislative measures for 'no deal' scenario
  - **Finland:** new regime allowing third country firms to obtain cross-border licence for wholesale MiFID business (with transitional provisions for UK firms)
  - **France:** Government powers to adopt measures securing participation of French firms in foreign settlement systems, continuity of use of master agreements and continued performance of ongoing contracts
  - **Germany:** BaFin powers to extend passport rights of UK firms for 21 months (covers post-exit transactions only if closely connected to existing transactions)
  - **The Netherlands:** powers to take temporary measures deviating from existing legislation and extension of SFD protection to third country systems
  - **Sweden:** Government powers to exempt UK firms from requirement for investment services licence during a transitional period
- Member State regulators seek cooperation agreements with UK regulators and may use other existing powers

- Legislative framework
  - European Union (Withdrawal) Act 2018 'onshores' EU law and gives Government powers to address deficiencies arising from UK exit
  - Financial Services (Implementation of Legislation) Bill ('in-flight files' Bill) gives Government powers to adapt UK legislation to reflect EU legislative developments after exit day
- Statutory instrument process
  - 10 SIs made, 20 other SIs published, approx. 50 more yet to be seen from HMT
  - Temporary permissions regimes for passported firms, temporary recognition regime for CCPs, other transitional relief for trade repositories, AIFMs, funds, etc.
- Delegation of powers to regulators
  - Powers to remedy deficiencies in technical standards and own rules arising from UK exit (without full consultation process)
  - Powers to make / amend technical standards going forward (subject to similar processes as for regulators own rules)
  - Powers to grant transitional relief to firms and others from existing rules
  - Consultation papers from PRA and FCA
- Engagement with third country regulators
  - Roll-over reliefs currently extended to EU firms so that also apply to UK firms





## **AFME's Brexit work**

**Oliver Moullin**  
Managing Director, Brexit  
AFME

- Withdrawal Agreement contains the ability to jointly extend the transition period once, potentially until end 2022
- Political declaration contains some detail on financial services:
  - Equivalence-based framework, emphasizing autonomy
  - Commitment for “transparency and appropriate consultation in the process of adoption, suspension and withdrawal of equivalence decisions”
  - Pledge to commence equivalence assessments with the objective to have decisions in place by June 2020
  - Structure for close supervisory and regulatory cooperation based on regulatory autonomy, transparency and stability

- Continued focus on the need to clarify solutions for cliff edge risks in a no deal scenario
- GFMA letter to President Draghi and Governor Carney
- We have highlighted no deal risks with EU27 and UK stakeholders, eg the Commission, ECB, BoE, HMT, ESAs, regulators and Member States
- Product committees analysing practical implications of no deal plans

- Engaging with regulators on authorisation requirements
- Responding to “on-shoring” of EU law in the UK and the proposed Temporary Permissions Regime
- Developing position on the EU’s equivalence regime to shape the future economic relationship of the EU and the UK

- The UK Referendum – Challenges for Europe's Capital Markets, March 2016: highlighted the legal and regulatory aspects of the UK referendum
- PwC report, January 2017: set out how banks are adapting to Brexit including highlighting a number of operational challenges
- “Implementing Brexit” report, April 2017: highlighted a number of financial stability issues including contractual continuity and maintaining market functioning
- BCG report, July 2017: highlighted the potential impact on businesses and investors.
- Transitional arrangements, September 2017: highlighted the importance of a transition period
- Contractual continuity paper, September 2017: highlighted contractual continuity and advocated for grandfathering of existing contracts
- Cliff Edge Risks paper, January 2018: highlighted 5 key cliff edge risks including data transfers, contractual continuity, recognition of CCPs, recognition of judgments and recognition of resolution actions
- Repapering FAQs, February 2018: highlighted the impact of repapering on clients to support advocacy on contractual continuity
- Effective flow of personal data post-Brexit, April 2018: highlighted the need for clarity as to the ability for businesses to continue to transfer personal data between the EU and UK post-Brexit
- Contractual continuity paper with ISDA, July 2018: highlighted the challenges with transferring contracts
- Recognition of Resolution Actions, October 2018: highlighted the importance of MREL eligibility of English law governed debt



# Q&A



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

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