

ALJB Brexit – Politics & Practicalities

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Brexit - Political landscape

The UK is due to leave the EU on 31st October ... with or without a deal.

Possible Scenarios	No Deal	Renegotiated Deal	General Election	Referendum	Revoke Article 50
Considerations	<p>New Prime Minister promises an October exit, regardless of deal.</p> <p>Can Parliamentary objections to 'no deal' be overcome?</p>	<p>Will Parliament pass a Withdrawal Agreement (in October), to facilitate a Transition Period?</p>	<p>If Parliament remains stuck, will the Government risk a General Election?</p>	<p>What would be the question?</p> <p>Would there be a clear answer?</p>	<p>Could Parliament compel Government to revoke Article 50?</p>
Result	No Deal (Hard Brexit)	Transition period & negotiation	Uncertain (more delay)	Uncertain (more delay)	No Brexit

A UK political confrontation is possible in October, between a new Prime Minister (promising Brexit in October), and a UK Parliament which has voted to oppose leaving the EU without a deal..

Politics could result in very short lead times for implementing any Result

Brexit

“Every operational risk imaginable”

New and expanded EU legal entities

- *Set up risks*: new facilities, physical and cyber security, regulatory authorisations, systems and processes, governance
- *Third-party risks*: new supplier relationships, interfaces

Legal risks - “repapering” financial contracts

Switching swap portfolios from London to EU subsidiaries:

- Do clients want to move? or to wait?
- Contract novation: Lead times, Legal uncertainties? How to get clients to respond?

Regulatory uncertainties

If there is no deal:

- EU’s equivalence recognition for UK will be temporary / time
- Member States taking different approaches where they have jurisdiction

Supervisory uncertainties

- Approval for internal capital models
- Timetable flexibility for business transfers from UK
- Booking models: capital and liquidity fragmentation
- New EU Intermediate Parent Undertaking (IPU)

Brexit

“Every operational risk imaginable”

Data protection & transfers

Lack of a GDPR adequacy decision for UK (if a no deal exit) impacts personal client data movements:

- between counterparties
- between dealers and clients

People risks

- Hiring and training new personnel
- Relocations: key person risks (leave?)
- EU/UK nationals could lose rights to live and work across border
- Smaller recruiting pools in new locations, visa problems with transfers
- Increased stress

Trade reporting risks

- Will authorities share trade data, as they do today?
- Trade data repositories will also have operational risks

What market access can be achieved through equivalence provisions? Has the EU granted access to other 3rd countries?

Sector	Business Activity	Market Access through equivalence	Involvement of EU ESAs	Equivalence Decision adopted
Banking	Wholesale & Retail Banking (CRD IV / CRR)	No EU-wide access available (National Regimes only)	Y (EBA)	Y on prudential capital treatments (also relevant for intercompany trades)
	Investment Services (Mifid II / MIFIR)	EU-wide access to professional clients, venues and eligible counterparties	Y (ESMA)	Y - limited to derivative trading venues (US) and exchanges (US, Australia, HK, Switzerland)
Insurance	Direct Insurance (IDD)	No access available	N/A	N/A
	Insurance Intermediation (IDD)	No access available	N/A	N/A
	Re-insurance services (Solvency II)	EU-wide access available for re-insurance services only (Germany and Poland have a more-restrictive national regime)	Y (EIOPA)	Y, limited to Bermuda, Japan and Switzerland
Asset Management	UCITS funds (UCITS V Directive)	No EU-wide access available for third country funds - <i>Delegation permitted if supervisory cooperation is in place</i>	N/A	N/A
	Alternative Investment Funds (AIFMD)	EU-wide access available for third-country funds - <i>Delegation permitted if supervisory cooperation is in place</i>	Y (ESMA)	None to Date
Market Infrastructure	Clearing and trade repositories (EMIR)	EU-wide access for equivalent CCPs / CSDs	Y (ESMA)	Y - with the exception of Trade Repositories
	Payment Services (PSD2)	No access available	N/A	N/A
Other	Benchmark Regulation (BMR)	Limited - benchmarks can be recongnized post decision	Y (ESMA)	None to Date

Should the UK leave the EU without a deal, it is unlikely that equivalence decisions will be adopted by the EU beyond what already granted to other third countries.

On the other hand, should the Withdrawal Agreement be ratified, the non legally binding text of the political declaration points at a timely deliberation (by Jun 2020) on equivalence in areas where equivalence regimes are available, opening up the possibility for the UK to get more access than other third countries have been permitted to under the regimes.

What actions have EU27 Member States undertaken to mitigate 'No-Deal' cliff-edge risks? (2/2)

Top 10 Countries*	Indicated intention to address cliff-edge risks?	Legislation changes required?	Legislation changes implemented?
Belgium	✓	✓	✗
Finland	✓	✓	✗
France	✓	✓	✓
Germany	✓	✓	✗
Italy	✓	✗*	✗*
Ireland	✗	✓	✗
Norway	✓	✓	✗
Spain	✓	✗*	✗*
Sweden	✓	✓	✗
The Netherlands	✓	✓	✓
Luxembourg	✓	✓	✓

What EU trade deals with 3rd countries contain provisions for FS and the implications for market access?

Current EU trade deals access for financial services (in addition to equivalence)

EU Trade Deal	Regulatory Cooperation	Access for Banking	Access for Investment Firms	Access for Insurance firms	Access for Trading Venues
<i>Canada</i>	<ul style="list-style-type: none"> Provisions on arbitrations apply An informatory committee is established under the agreement to supervise the implementation of the treaty 	<ul style="list-style-type: none"> Limited to advisory services Ancillary services to permissible services (including data transfers) 	<ul style="list-style-type: none"> Investment advice Portfolio management (excluding custodian / trustee and execution services) 	<ul style="list-style-type: none"> Limited Direct Insurance (transport of goods) Reinsurance Ancillary services of permissible services Intermediation of permissible services 	<ul style="list-style-type: none"> None (Equivalence only)
<i>Japan</i>	<ul style="list-style-type: none"> Treaty has provisions on cooperation in international forums and on achieving mutual compatibility of rules for FS In formulating new rules, parties should have considerations on the impacts to respective markets A joint forum is established for regulatory cooperation 	<ul style="list-style-type: none"> CRD activities (deposit / lending) Mifid services (Issuance and Underwriting, Trading and Execution, Advisory, Clearing) 	<ul style="list-style-type: none"> Portfolio Management 	<ul style="list-style-type: none"> Limited Direct Insurance (life / non life) Reinsurance Ancillary services of permissible services Intermediation of permissible services 	<ul style="list-style-type: none"> Settlement and Clearing services Provision allowing reciprocal access to payment and clearing systems (Art 8.61)

Sources:

- Canada Trade deal text: <http://ec.europa.eu/trade/policy/in-focus/ceta/ceta-chapter-by-chapter/>
- Japan Trade deal text: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1684>

The Temporary Permissions Regime ('TPR')

In a no deal Brexit scenario, passporting arrangements for firms and investment funds between the EU and the UK, which previously allowed for reciprocal market access, would no longer be available.

The TPR intends to:

- Reduce risk and disruption from abrupt loss of passporting
- Allow funds and managers to continue to:
 - Retain contractual rights
 - Fulfil obligations
 - Manage existing business

The TPR should allow relevant EEA-domiciled investment funds to continue to be marketed in the UK to new and existing investors

The Temporary Permissions Regime ('TPR')

What does the TPR come into effect?

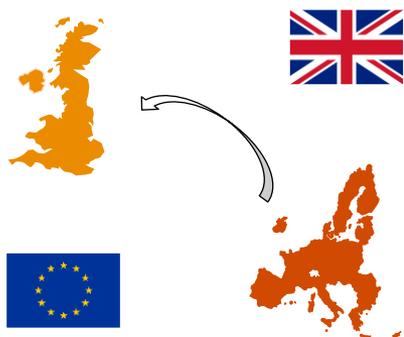
- The TPR is a contingency plan that will only come into effect on the 31 October 2019 if the UK and the EU do not enter into the implementation period (i.e. in a 'no deal' scenario).
- Online application via the FCA's Connect system
- Opened on 7 January 2019 and due to close prior to exit day
- If notification not made during this period, TPR cannot be used

- It will vary from fund to fund, but it will last a maximum of 3 years.

- During the TPR, investment funds and managers will be given a 3 month application period or a 'landing slot' within which to submit a notification for recognition in the UK.

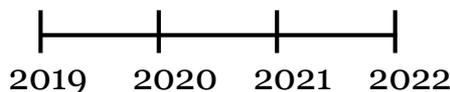
Solicitation of UK clients

Regulatory options in case of No deal Brexit



- Based on MiFID passporting rights **today** UK clients can be actively solicited from Luxembourg (e.g. phone call)
- With loss of passporting in Unorderly Brexit, these **passporting rights cease**

Phase 1: TPR



Objective:

- Temporary Permission Regime for EEA passporting firms to allow continued operations in the UK post-BREXIT
- **Valid: 3 years**

Regulatory environment:

- UK code of conduct rules will apply (same as if authorised within UK)

Notification:

- Need to notify the FCA of this intention prior to 29 March 2018 via FCA website
- **Inform CSSF**

Phase 2: Post TPR

With the end of the TPR, 3 options apply:

Option 1: Cease UK business

- Due to cost and complexity of undertaking, termination of business activities to UK

Option 2: Overseas Persons Exemption

- Existing UK exemption framework allowing firms established outside of the UK to provide limited services in the UK
- Much more restricted market access than passporting regime

Option 3: UK establishment

- Establishment of local subsidiary or branch (subject to UK laws) to continue servicing UK-based clients
- Considerations of FCA: (i) scope of business, (ii) operational structure, (iii) capital allocation, (iv) asset transfer, etc.

Prepare for No Deal and have Day 2 in mind

No Deal Readiness

Key activities

- Review of your Base Case Brexit TOM and project progress for the key functions:
 - Product
 - Portfolio Management
 - Trading execution
 - Marketing
 along the dimensions: Client, People, Data, Technology, Contract & Policies
- Identify key risks / issues of Base Case TOM and project as well as must-haves for Day 1

No Deal - Heatmap for Key Functions

No Deal - Risk and Issues Catalogue

Outputs



Day 2 Preparation

For No Deal and/or end of transition

- Day 1: Re-prioritise / re-scope actions and planning incl. must-haves to optimise readiness for Day 1 and reduce risk exposure
- Day 2: Preparation and planning for Day 2 to deploy strategic Brexit TOM (changes and enhancements to tactical Day 1 solution) as well as closing out de-prioritised actions and low risk items

Day 1 - Action Plan

Day 2 - Roadmap



Wrap-up

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