

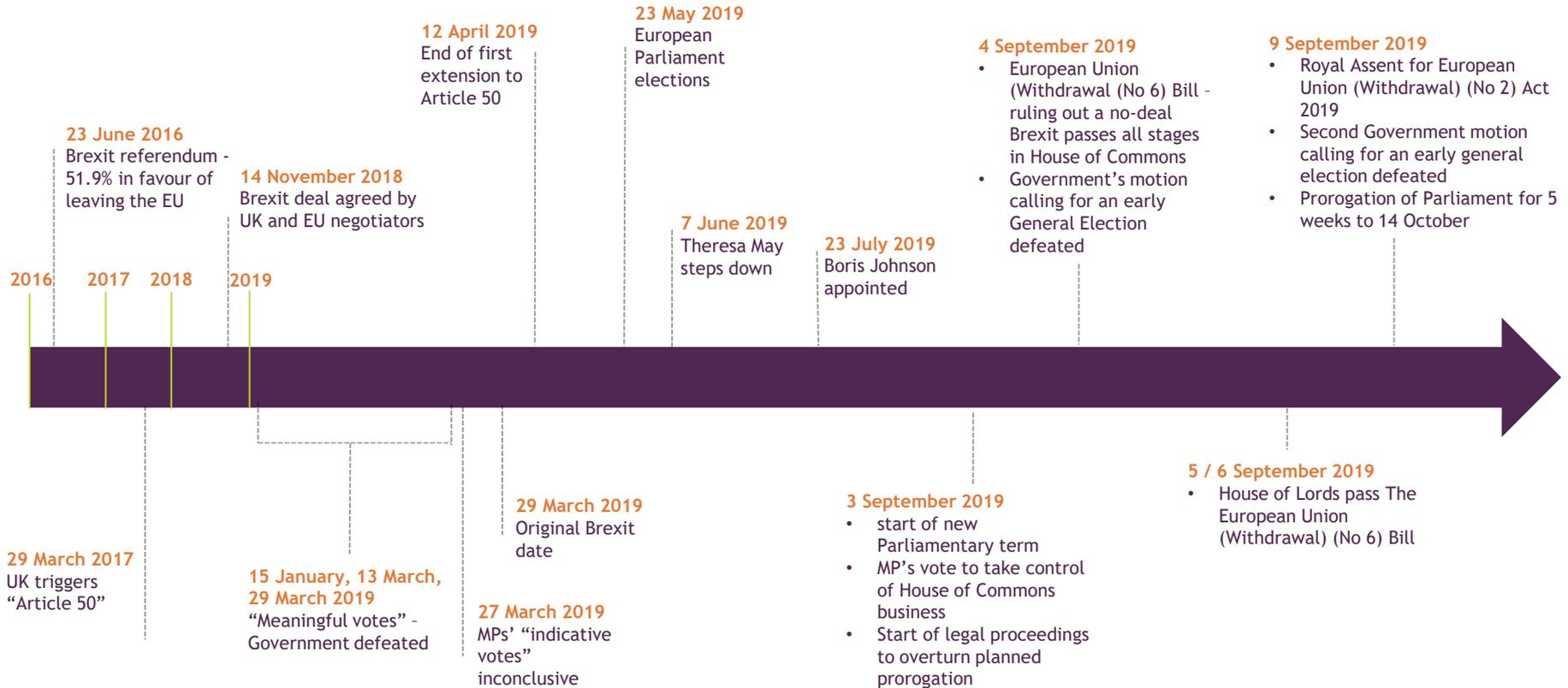


# No-deal Brexit - what does it mean?

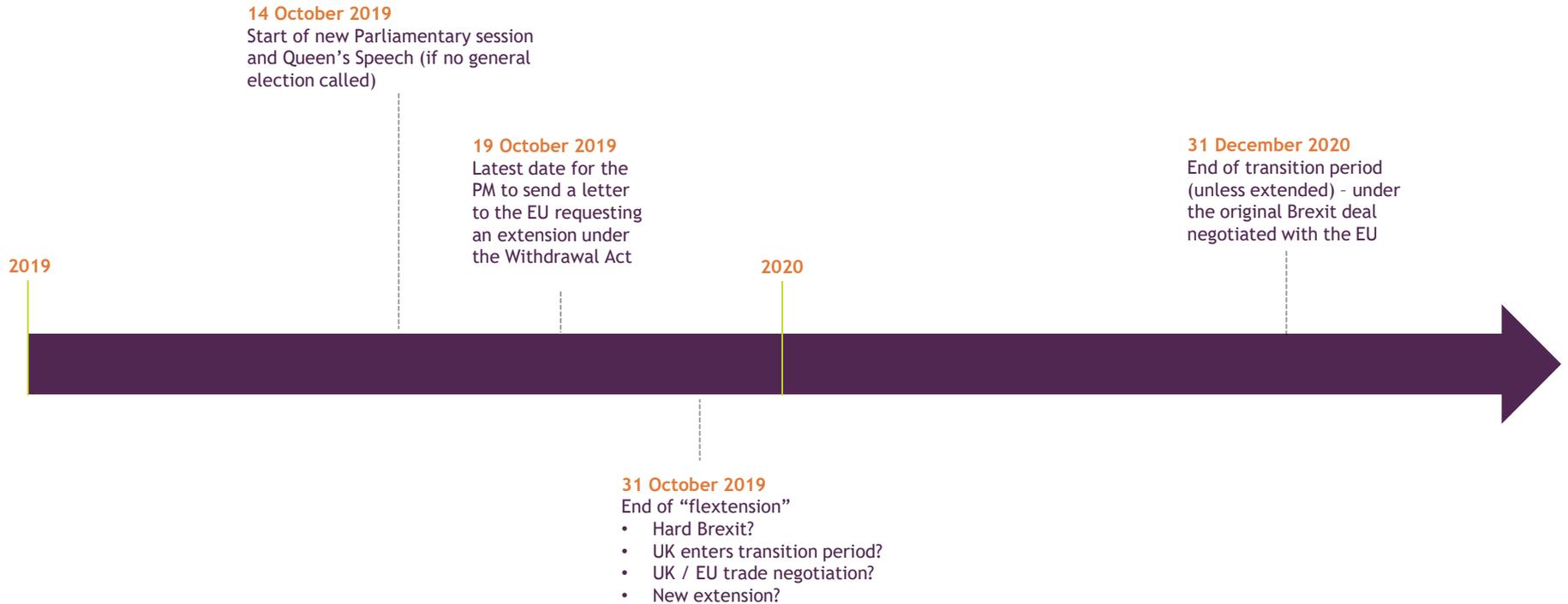
Jeff Twentyman  
19 September 2019

SLAUGHTER AND MAY

# The road to the exit (currently)



# The road to the exit (currently) (cont'd)



# Possible paths from here?

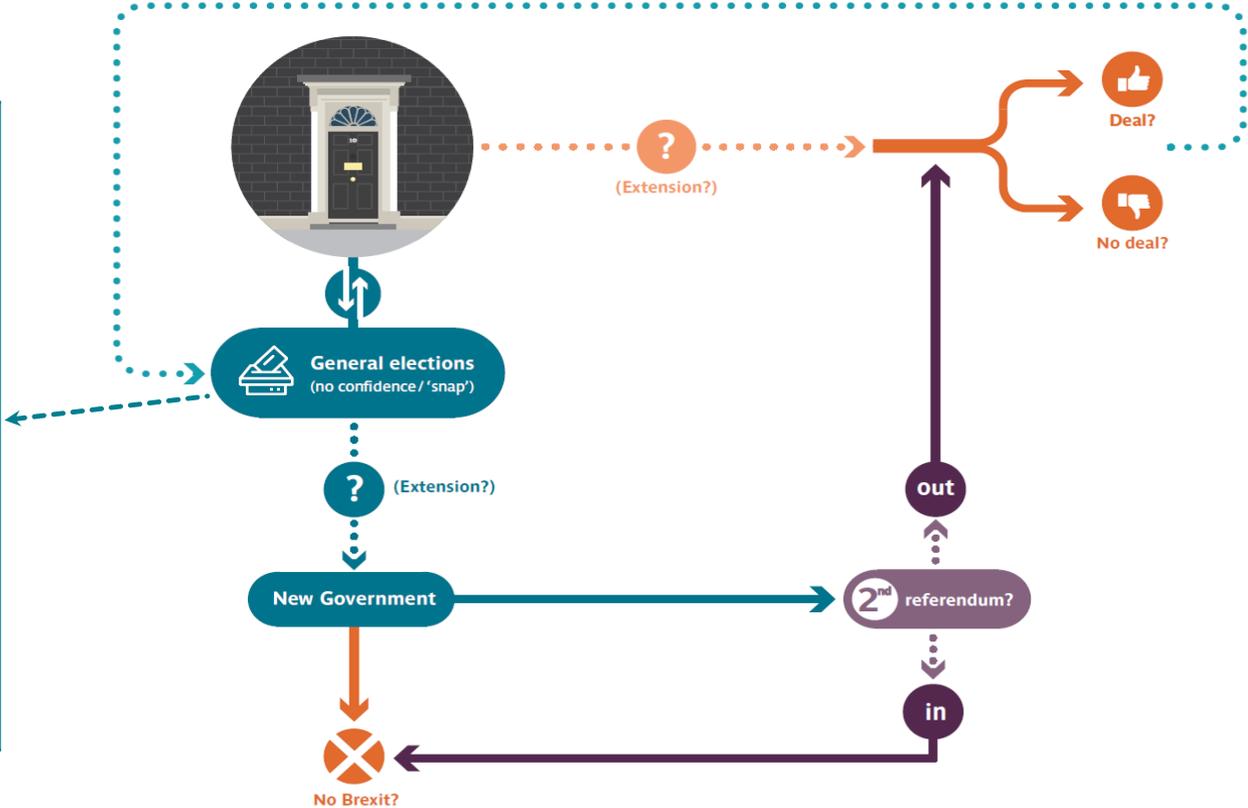
**General Election?**

When?

   
 Conservatives / Brexit Party  
 = hard Brexit

  
 Liberal Democrats  
 Liberal Democrats = hard remain

 **Labour**  
 Labour = soft remain?



# Boris Johnson's vision?

*"I'd rather be dead in a ditch than go back to Brussels to ask for another extension"*

- September 2019

*"I don't want no deal as the outcome...I don't want to lead with a WTO solution as my number one priority"* - July 2019



Citizens' rights



Financial settlement

?



Separation Issues



Transition Arrangements

?



NI Backstop

?

# The political declaration - the May deal

I. Initial provisions	II. Economic partnership				
Basis for co-operation	Goods	Digital	Public procurement	Energy	Level playing field
Data protection	Services and investment	Capital movements and payments	Mobility	Fishing	<ul style="list-style-type: none"> <li>• State aid</li> <li>• Competition</li> <li>• Social and employment standards</li> <li>• Environmental standards</li> <li>• Climate change</li> <li>• Relevant tax matters</li> </ul>
Participation in Union programmes	Financial services	Intellectual property	Transport <ul style="list-style-type: none"> <li>• air</li> <li>• road</li> <li>• rail</li> <li>• maritime</li> </ul>	Global co-operation	
III. Security partnership	IV. Institutional arrangements			V. Forward process	

# The political declaration - the May deal

*“In this context, the United Kingdom will consider aligning [regulations] with Union rules in relevant areas.”*

*“The future relationship must ensure open and fair competition. Provisions to ensure this should cover state aid, competition, social and employment standards, environmental standards, climate change, and relevant tax matters, building on the level playing field arrangements provided for in the Withdrawal Agreement and commensurate with the overall economic relationship. The Parties should consider the precise nature of commitments in relevant areas, having regard to the scope and depth of the future relationship. These commitments should combine appropriate and relevant Union and international standards, adequate mechanisms to ensure effective implementation domestically, enforcement and dispute settlement as part of the future relationship.”*

*“[future arrangements] should reflect the commitments the United Kingdom is willing to make that respect the integrity of the Union’s legal order, such as with regard to alignment of rules and the mechanisms for disputes and enforcement including the role of the Court of Justice of the European Union”.*

# EU-UK's future relationship?



## Canada +

Traditional trade deal, reduces tariffs - non-tariff barriers remain



No payments to EU



No ECJ jurisdiction



No free movement



No alignment



No level playing field

### But

- Customs checks
- Non-tariff barriers
- Irish border



## Norway +

EEA membership, full access to EU single market, customs union



Payments to EU



ECJ jurisdiction



Free movement

### But

- Brexit in name only (BINO)
- Limited ability to sign non-EEA trade deals
- UK becomes rule-taker

# EU-UK's future relationship?



## WTO

WTO tariffs for UK exports; no tariffs on imports for a limited time



No payments to EU



No ECJ jurisdiction



No free movement



No alignment



No level playing field

### But

- Tariffs on exports to EU
- Customs checks
- Non-tariff barriers
- Irish border
- FTAs with non-EU countries may not be rolled over



## Johnson deal?

“All-Ireland” economy in which food and agricultural products move freely across the Irish border



No payments to EU?



Limited ECJ jurisdiction



Limited free movement



Limited alignment



Limited level playing field

### But

- Divergence between N. Ireland and the rest of the UK / possible border
- Doubts as to whether technological solutions can solve other Irish border issues

# Boris Johnson's Brexit trilemma



**Option A: deal** - Break promise to DUP that N. Ireland will remain in UK customs territory. Border in Irish Sea. Lose DUP support.



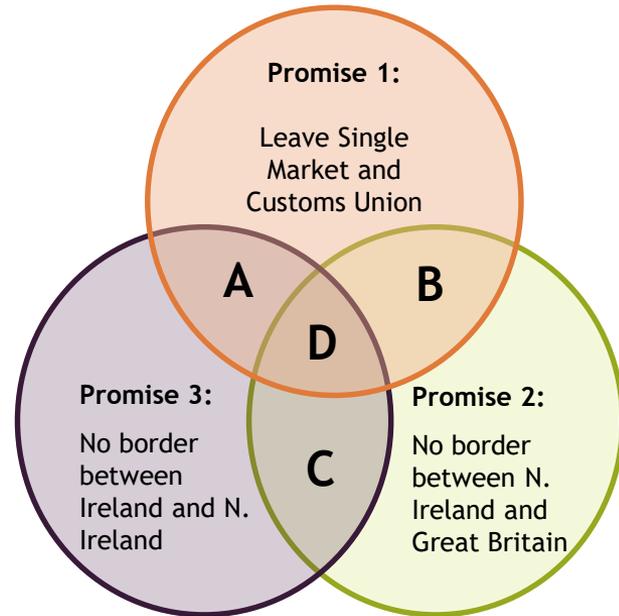
**Option B: no-deal Brexit** - Break promise to Ireland & EU. Violate Good Friday Agreement by introducing Irish border. Economic damage to UK and EU (though Boris may blame the EU).



**Option C: extend** - Break promise to deliver Brexit on Oct 31. Brexit ultras abandon Johnson & government falls.



**Option D: ????** Does not exist. Based on magical thinking, unicorns, and unspecified, non-existent "technologies".



# Irish border and the Good Friday Agreement

- Absence of Withdrawal Agreement and the departure of the UK from EU will lead to two distinct fiscal and regulatory spaces in Ireland. Under WTO rules, the EU and the UK would be obliged to levy on each other's products the tariffs applicable to goods from any other member of the WTO without preferential agreements.
- Twin objectives - protecting the integrity of the internal market while avoiding a hard border.
- EU ready to make technical and financial resources available to Ireland to, *“address any additional challenges”*.
- The backstop provided for by May's Withdrawal Agreement is the only solution identified that safeguards the Good Friday Agreement, ensures compliance with international law and obligations, and preserves the integrity of the internal market.
- EU's position is that the EU and the UK will both have to take temporary unilateral measures to protect trade, consumers and public health, and will have to rely on the UK's commitment to avoiding a hard border while protecting the EU's internal market.

# The Irish backstop

## A guarantee - “if all else failed”

- Part of the draft withdrawal agreement (the “May Deal”) negotiated between Theresa May’s government and the EU.
- Under the May Deal, the UK would enter a “transition period” after Brexit (31 October 2019).
- During this period (which would last until December 2022 at the latest) the UK would remain in the single market and the customs union while the terms the future trade relationship are negotiated.
- The Irish backstop would come into play at the end of the transition period, if the UK and the EU failed to negotiate a future trade deal that prevents a hard border in Ireland.
- Effectively a guarantee that kicks in if UK / EU negotiations fail to come up with a solution that keeps the Irish border open.



### Main features of the backstop

- EU, NI and the rest of the UK form a “single customs territory”.
- NI remains in the EU’s customs union.
- No tariffs on trade between the UK and the EU.
- Alignment for NI but not the rest of the UK.
- Some checks on goods entering NI from the rest of the UK.
- ECJ jurisdiction over NI.

# The Irish backstop

## UK concerns

Two main concerns:

1. The UK would not be able to leave the backstop if the EU thought the UK's solution to avoiding an Irish border was unsatisfactory.
  - Effectively a veto which could lead to the UK remaining indefinitely aligned with the EU.
  - In the words of Geoffrey Cos, Britain's attorney-general, the backstop could “*endure indefinitely*”.
2. Divergence between the regulations in Northern Ireland and the rest of the UK - threat to the Union?

Both the EU and the UK have said they do not want to use the backstop but this was not enough to gain sufficient support for May's Deal among British MPs.



# The Irish backstop

## DUP principles

1. *We want to secure a deal. A no deal outcome is no-one's preferred outcome and is not of itself a final destination.*
2. *...a deal will not be achieved that involves a backstop whether it is UK wide or NI specific. Those who know anything about NI will appreciate that long-term arrangements cannot be secured unless supported by a majority of Unionists and Nationalists.*
3. *...the United Kingdom, including Northern Ireland, must leave the EU Customs Union and the Single Market. The concept that there could ever be customs duties falling due within the internal market of the UK following departure from the EU is one we could never support.*
4. *...we are prepared to be flexible and look at NI specific solutions achieved with the support and consent of the representatives of the people of NI. There are some sectors of the economy in particular where the nature of the supply chains are significantly integrated...we believe, with flexibility on all sides, that solutions can be found that will not on the one hand erect new barriers to trade within the United Kingdom while not damaging the integrity of the EU Single Market.*
5. *...we want to see a refit of some of the structures of the Belfast Agreement to reflect the new emerging relationships - both between NI and the Republic and between the UK and the Republic. [This would] allow the new environment to be managed in a pro-active and democratic manner.*

Arlene Foster, DUP leader, speech to the Dublin Chamber of Commerce on 18 September 2019

# No-deal timeline

## June 2016

Uncertainty about the risk of no-deal has affected the UK since the EU referendum, creating an economy that is not match fit for no-deal.

## November 2019

Some form of emergency negotiations between the UK and EU are inevitable, at the very least to deal with uncertainty around the Irish border.

## 2020

Firms will continue to adjust to the impact of no-deal, but these adjustments will in some instances mean moving supply chains, operations, production and jobs out of the UK.

## 2022 onwards

The barriers to trade between the UK and EU are likely to increase as the UK and EU's regulatory systems diverge.



# Impact of no-deal Brexit

## Short-term



Impact on trade immediate



Sterling likely to fall further



Traders from Northern Ireland crossing Irish border would face increased burdens



Disruption to supply chains



Some shortages of food within a fortnight



Potential recession



Industrial and retail stockpiles will run down in months

## Long-term



No-deal would not bring Brexit process to an end



Longer-term impacts depend on terms of future relationship



WTO terms would slow UK economic growth significantly



Long-term negotiation process to resolve arrangements for economic rights of UK citizens abroad



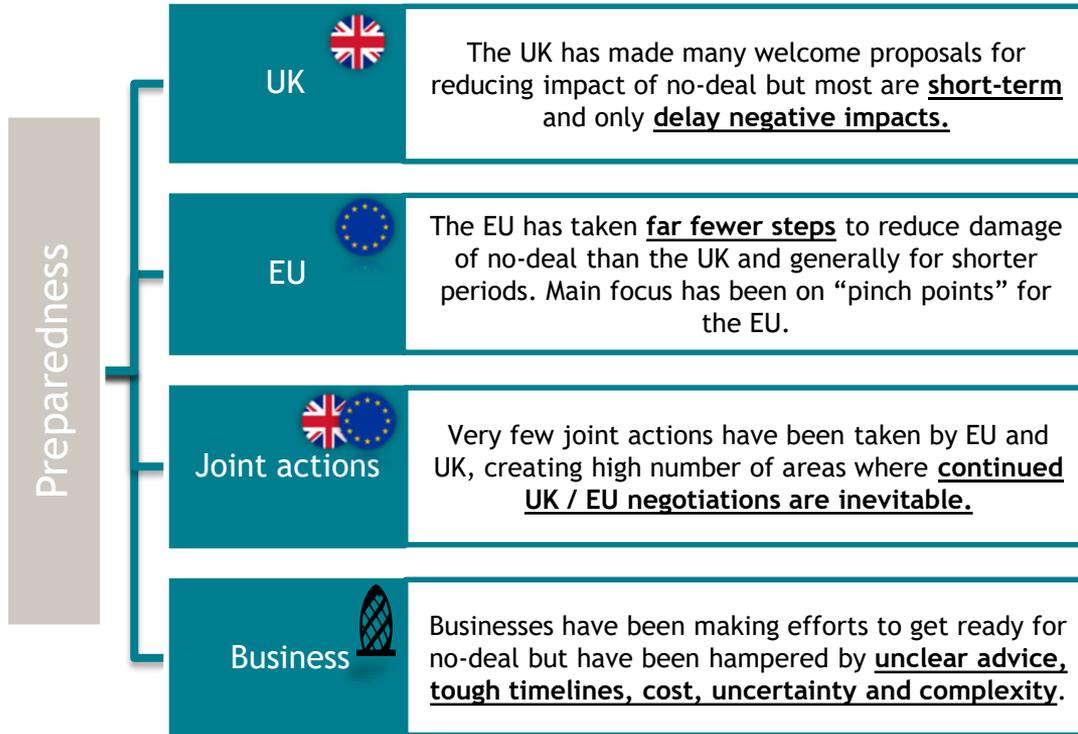
Bespoke future security arrangement would take significant time to negotiate

# No-deal preparedness



# Preparedness

## Overview



# EU's no-deal preparedness programme

## Overview

- **25 March 2019** - Commission declared that no-deal preparations were complete.
- **June 2019** - Commission reported it had:
  - tabled **19** legislative programmes;
  - adopted **63** non-legislative acts; and
  - published **100** preparedness notices.
- Programme is one of damage limitation focusing on areas most at risk from a no-deal Brexit.

### Areas most at risk from no-deal Brexit according to the Commission

- Financial sector
- Transport and travel
- Customs and export of goods
- Climate policy
- Agriculture and fisheries
- Social security coordination
- ERASMUS and PEACE programmes
- Cooperation in the export of dual-use items
- International trade in services
- Foreign direct investment

# EU's no-deal preparedness programme

## Overview (cont'd)

- Measures mostly temporary (9-12 months) - a future EU-UK relationship agreement expected to provide long-term arrangements.
- If no-deal occurs, a precursor to any relationship negotiations will be:
  - protecting citizens who have used their right to free movement before Brexit;
  - honouring the financial obligations the UK has as a Member State; and
  - preserving the letter and spirit of the Good Friday Agreement and peace in Ireland, as well as the integrity of the internal market.

# UK's no-deal preparedness programme

## Overview

- Treasury has allocated **£6 billion** to prepare for negative impact of no-deal between 2016 and 2019 / 2020.
- The Government originally proposed **10 bills** to manage the domestic impact of no-deal. It has passed bills on taxation, healthcare and road haulage. The remaining bills, including the Agriculture Bill, Financial Services Bill, Immigration Bill, Trade Bill, Fisheries Bill, do not have to be passed by the no-deal date.
- Powers under the EU Withdrawal Act 2018 used to pass hundreds of statutory instruments by March 2019 resulting in **10,000+ new pages of law** - most are uncontroversial. The Government is expecting to pass the remainder and some additional ones by the end of October.
- Advice has not been communicated, understood or implemented well.
- Plans delay rather than remove negative impacts, prioritising short-term stability and temporary measures, creating a gaps in the long-term that feed uncertainty.

### Key areas of risk according to Michael Gove (9 September 2019)

 Flow at border

 Business readiness

 Animals

 People

 Security

 Northern Ireland

 Economy

 Data

# UK's no-deal preparedness programme

Michael Gove

*"There is now much clearer accountability for no-deal planning at the top level of government in a way there wasn't before"*

*"combined with a more united cabinet, that means decisions are being made more quickly and excessive internal secrecy is starting to reduce"*



Whitehall watchers



# UK's no-deal preparedness programme

## Operation Yellowhammer

- Contingency planning is known as Operation Yellowhammer: the Government's response to the most severe anticipated short-term disruption from a no-deal Brexit.
- Details of Operation Yellowhammer were published on 12 September 2019. The plans outline a series of “reasonable worst case assumptions” regarding the impact of a no-deal Brexit.
- Covers **12 areas** of risk including food and water supplies, healthcare services, trade in goods and transport systems.
- Suggests riots on the streets, food price rises and reduced medical supplies are possible consequences of leaving the EU without a deal.
- **30 central government bodies** and **42 local “resilience forums”**; the **Scottish and Welsh governments** and the **Northern Ireland Civil Service** are all at the heart of this operation.
- A key part of contingency plans has been **24 / 7 operational centres**, to co-ordinate responses to issues as they arise.
- The 6-month extension has given more time to prepare for Brexit, e.g., the Customs Declarations Service was not ready in March / April but is expected to be partially ready by October. In other cases, many departments need to re-do work, e.g. ferry contracts need to go through the procurement process again.
- **17,000 staff** deployed on no-deal in October, **300 Brexit projects** and **700 milestones**.



# UK's no-deal preparedness programme assumptions

## Operation Yellowhammer



### Gibraltar

Due to imposition of border checks, disruption in supply of goods, medicines, trans-frontier shipment of waste and delays of 4+ hours for a least a few months.

### Haulage

Between 50-85% of HGVs travelling via the short Channel Straits may not be ready for French customs. The lack of trader readiness combined with limited space could reduce flow rate to 40-60% of current level within one day. Worst effects could last for 3 months.

### Goods

France will impose EU mandatory controls on UK goods on Day 1.

### Food

Certain types of fresh food supply will decrease. This will not cause an overall food shortage but a reduction in availability and choice, and increased prices.

### Citizenship

UK nationals will lose EU citizenship and can expect to lose associated rights and access to services over time or be required to access them on a different basis. The impact will vary depending on how Member States implement the legislation.

### Riots

Protests and counter-protests expected to take place across the UK absorbing significant police time.

### Medicine

The reliance of medicines and medical products' supply chains on the short Channel Straits crossing makes them particularly vulnerable to severe extended delays, with 75% of medicines arriving via this route.

### Travel

UK citizens travelling to and from the EU may be subject to increased immigration checks at EU border posts, leading to passenger delays.

### Financial Services

Some cross-border UK financial services will be disrupted.

### Water

Public water services are likely to remain largely unaffected due to actions being taken by water companies. The most significant risk is failure of chemical supply chain but this risk is low.

### Energy

Demand for energy will be met and there will be no disruption to electricity or gas interconnectors. However, there could be significant longer term price increases after a rapid SEM split.

### Fishing

Up to 282 EU and EEA fishing vessels could enter illegally or already be fishing in UK waters leading to anger and frustration among UK fishermen.

# UK's no-deal preparedness programme

## Operation Kingfisher

- Designed to identify which companies are most likely to need state support in the event of no-deal
- Government insiders liken Kingfisher to a 'giant spreadsheet' which ranks businesses most at risk from no-deal because of the impact on margins, costs, supply chains and workforce shortages, but stress that any intervention would be on a case-by-case basis.
- Further details of Operation Kingfisher have been kept confidential by the Government.



# Get ready for Brexit campaign

## The Government's campaign

**Businesses,  
get ready  
for Brexit**

 Prepare for Brexit at  
[gov.uk/brexit](https://gov.uk/brexit)



# Get ready for Brexit campaign

## Other campaigns



HM Government

BREXIT 31 OCTOBER

### Get ready for scurvy

Prepare for Brexit at [gov.uk/brexit](http://gov.uk/brexit)

This poster features the HM Government logo and a 'BREXIT 31 OCTOBER' banner. The main headline is 'Get ready for scurvy' in large, bold letters. Below it is a red arrow pointing right, followed by the text 'Prepare for Brexit at gov.uk/brexit'.



HM Government

BREXIT 31 OCTOBER

### Get ready for lower wages

Prepare for Brexit at [gov.uk/brexit](http://gov.uk/brexit)

This poster features the HM Government logo and a 'BREXIT 31 OCTOBER' banner. The main headline is 'Get ready for lower wages' in large, bold letters. Below it is a red arrow pointing right, followed by the text 'Prepare for Brexit at gov.uk/brexit'.



HM Government\*

Get ready for "severe impact on the economy, employers and the finances of households across the country"

Cabinet Minister Nicky Morgan MP on a No Deal Brexit

\*actually Led By Donkeys x

Visit [NoDealBrexit.info](http://NoDealBrexit.info)

This billboard features a photograph of two men talking. The text is overlaid on a dark background. It includes the HM Government logo, a quote about the impact of a No Deal Brexit, a reference to Cabinet Minister Nicky Morgan, and a satirical comment '\*actually Led By Donkeys x'. The website 'NoDealBrexit.info' is also mentioned.



HM Government\*

Get ready for "potential consumer panic and food shortages"

Official government No Deal Brexit analysis

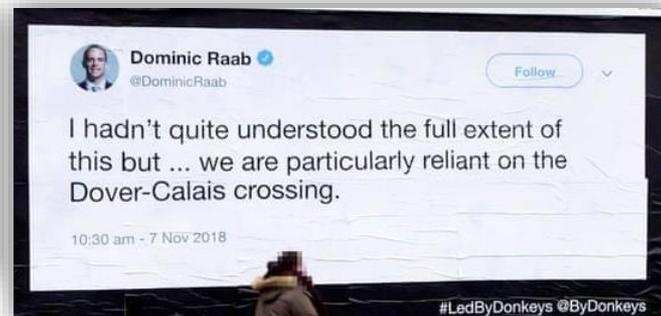
\*actually Led By Donkeys x

Visit [NoDealBrexit.info](http://NoDealBrexit.info)

This billboard features a photograph of a man standing in a supermarket aisle. The text is overlaid on a light background. It includes the HM Government logo, a quote about potential consumer panic and food shortages, a reference to an official government analysis, and the satirical comment '\*actually Led By Donkeys x'. The website 'NoDealBrexit.info' is also mentioned.

# UK's no-deal preparedness programme

## Led By Donkeys no-deal Brexit billboards



# Industry views

## Overview

Industry Views

FDF has called upon the Government to relax competition laws to allow businesses to coordinate regarding supplies in the event of a no-deal Brexit.  
*Food and Drink Federation*

"Shoppers could pay up to a third more for everyday food items in the event of a no-deal Brexit"  
*British Retail Consortium*

"Any delays caused by red tape will have a serious impact on over 1/3 of our food imports"  
*British Retail Consortium*

"Over 75% of food that the UK imports comes from the EU and without reaching an agreement on trade, most of these goods will be subject to new tariffs, as a result the average cost of food imported by retailers from the EU would increase by 22%"  
*British Retail Consortium*

"The Government's technical notices demonstrate the facts of a no-deal Brexit:

- reduced availability and higher prices of food and medicine;
- increased delays and red tape at borders; and
- A VAT bombshell for consumers and business."

*British Retail Consortium*

"The problem for government is that many of the decisive questions are in the hands of the Europeans... For instance, we don't know how vigorously the French will patrol their side of the border."  
*Freight Transport Association*

3 / 4 of UK automotive firms warn of no-deal Brexit catastrophe according to industry survey. Half already hit by uncertainty, with 1 in 5 having lost business and 1/3 cancelling or postponing UK investment decisions  
*British Automotive Industry*

"..a lot of the pieces of the jigsaw [relating to no-deal Brexit] are still missing. We're still very pessimistic about what will happen on no-deal, day one"  
*Deputy Head James Hookham, Freight Transport Association*

There are concerns generally about the public stockpiling but pharmaceuticals is one of the sectors which is most at risk, "if everybody [stockpiles] it will create a shortage and that becomes more self-perpetuating"  
*Royal Pharmaceutical Society*

Inventories are plentiful and they envisage no problems continuing to import fuel due to access to dedicated ports and terminals. However "panic buying for petrol is not dissimilar to a run on a bank...There might be plenty of fuel to meet demand, but if everyone tries to get it at once it will cause problems, [even if] they would be logistical rather than a genuine shortage."  
*British Automotive Industry*

# Deep dive

# Deep drive: contents

- UK economy
- Business and trade
- Transactional / contract considerations
- International trade
- US / UK trade deal



# UK economy

# UK economy

## Current status

- Sterling has fallen about 7% over the last few months, although there has been some recovery since the recent no-deal bill passed.
- Businesses are putting future investments on hold - one report suggested 70% of small businesses and 30% of Northern businesses have put future investment on hold.
- Consumer confidence and employment holding up.
- Costs / profits negatively affected by stockpiling and preparation for no-deal.
- UK likely to enter no-deal with a growth rate near to zero.
- 44% of all UK exports go to the EU and 53% of all UK imports come from the EU, with 30% of UK food coming from the EU.

*"No backstop is no deal".*

*Leo Varadkar, Prime Minister of Ireland*

*"Sterling volatility, as you would know, is at emerging market levels and has decoupled from other advanced economy pairs for obvious reasons".*  
*Mark Carney, governor of the Bank of England*

*"There is no such thing as a clean break Brexit".. Boris Johnson faces a "herculean" task to get a comprehensive trade deal, and it would be worse if there was no divorce package."*

*Leo Varadkar, Prime Minister of Ireland*

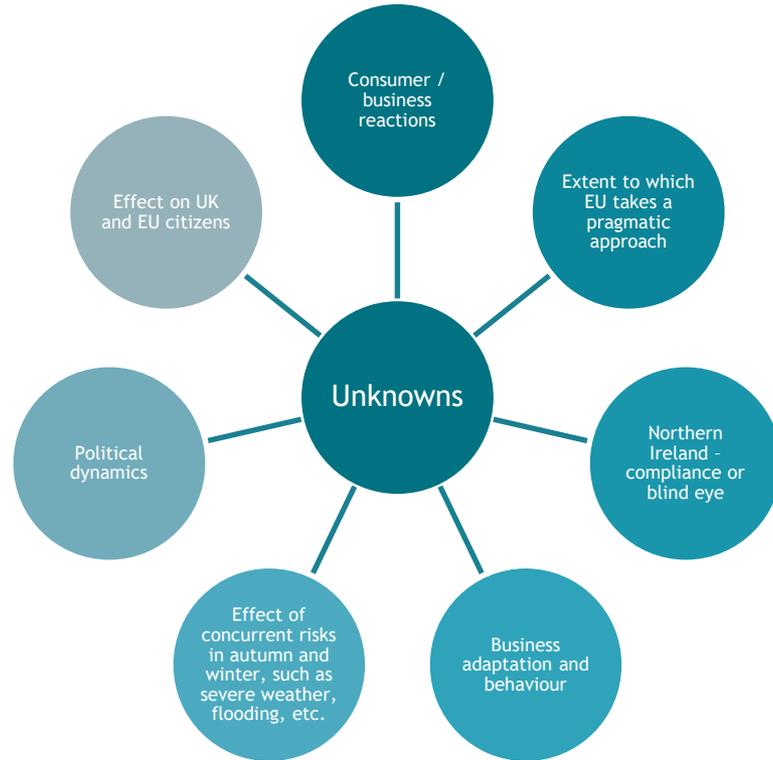
*"It's impossible for small business owners to invest for the future when we don't know what the future holds".*

*Mike Cherry, FSB national chairman*

# UK economy

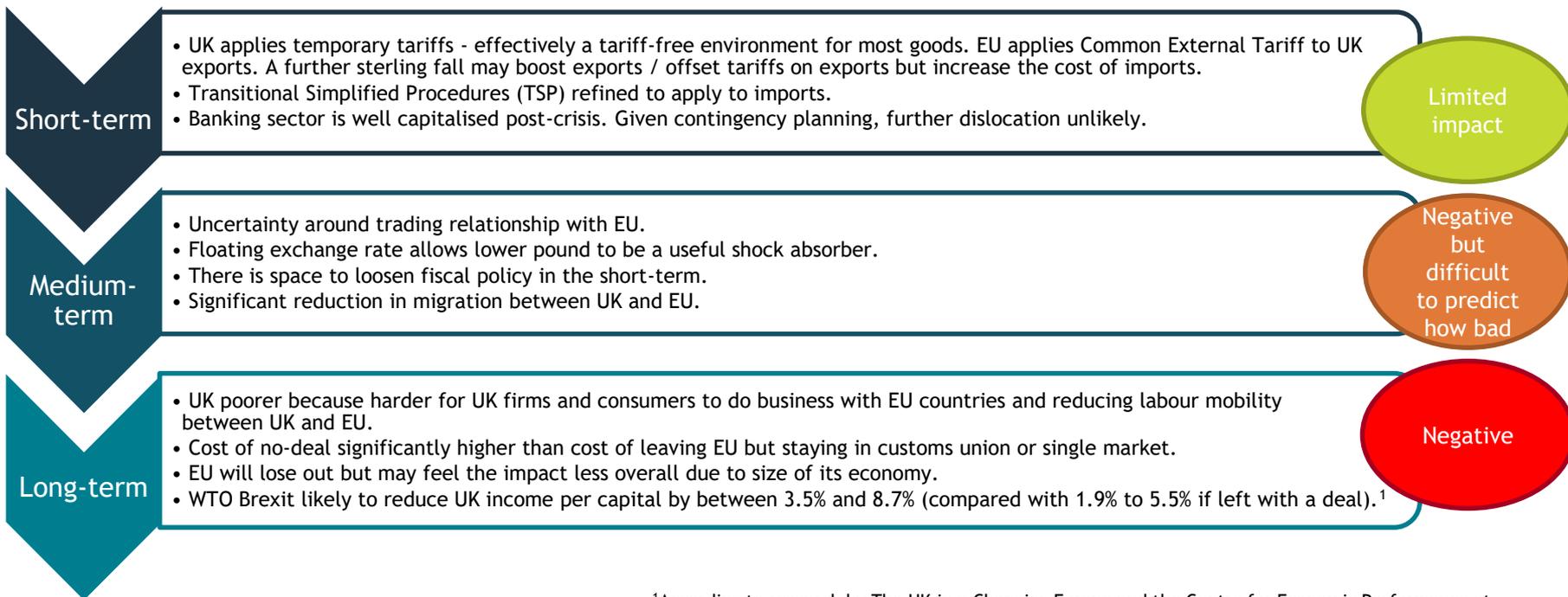
## Unknowns

- A July 2019 Bank of England survey of UK firms found that 50% considered Brexit to be one of their top three drivers of uncertainty.
- A no-deal Brexit means no transition period, with the full weight of the Brexit effect being felt from Day 1.



# Impact of no-deal on UK economy

## Impact timeline



# Business and trade



# Business and trade

## Overview

- The Government's March 2019 communications campaign to prepare business for no-deal was far from successful.
- While the Government published hundreds of pieces of advice or statements, the reaction of industry was to “wait and see”.
- Many who did prepare have found themselves at a disadvantage to those who did not, persuading them to prepare again, e.g. stockpiling, is difficult, particularly in the run up to Christmas, which is often the busiest time of year.
- Following a no-deal Brexit, SMEs may face major **cash flow issues** if licensing and paperwork issues prevent them from trading with the EU, even for a short time.
- However, the Government's **TSPs**, non-enforcement and automatic allocation of Economic Operator Registration and Identification (**EORI**) numbers are likely to assist with mitigating disruption of imports to the UK.
- Government has also setup **150 “pop-up” export readiness centres** across the 10 countries that process the most UK-bound road freight and distributed multi-language handbooks.
- EU's approach to enforcement will be critical to the to the smooth flow of exports from the UK to the EU.
- Remains to be seen whether the EU's approach and preparations will align with their stated priority of protecting EU trade.

### Operation Yellowhammer - effect of no-deal Brexit on business

- Public and business readiness for a no-deal will remain at a low level, and decrease to lower levels, because the absence of a clear decision on the form of EU exit does not provide a concrete situation for third parties to prepare for.
- Preparedness reduced by “EU Exit fatigue”.
- Business readiness will not be uniform - in general larger businesses across sectors are more likely to have better contingency plans than SMEs.
- Business readiness will be compounded by seasonal effects, impacting on factors such as warehouse availability.

# Business and trade: financial services

## Overview

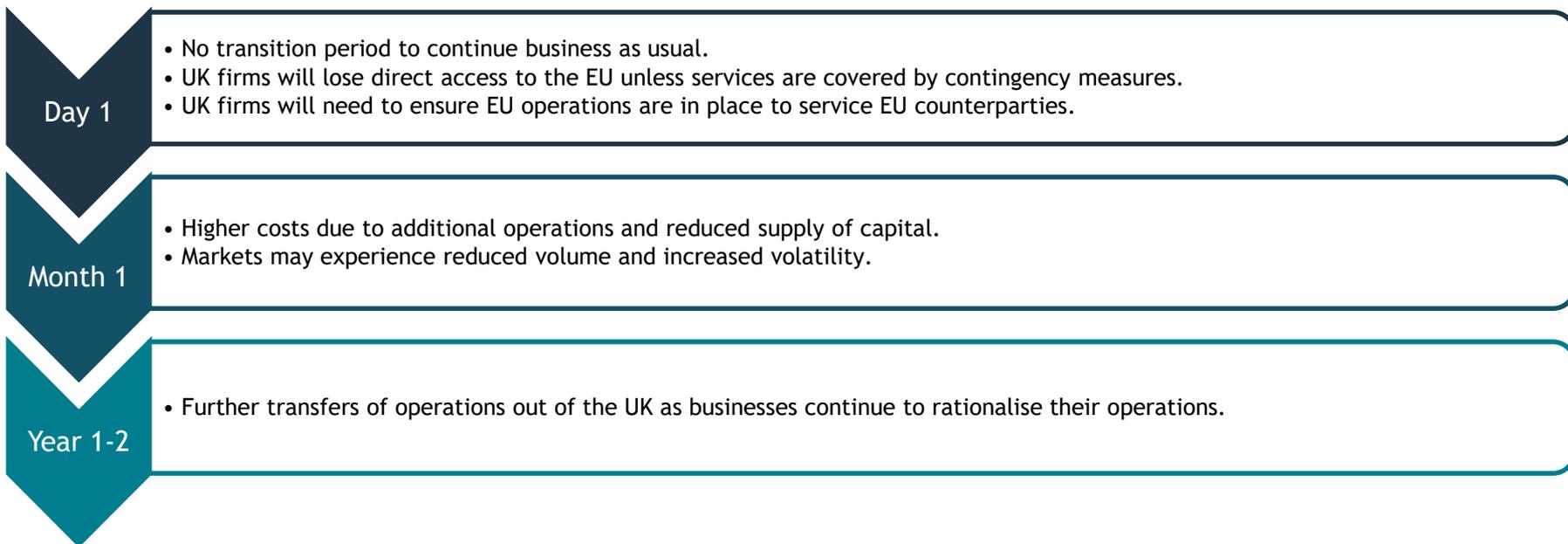
- One of the UK's largest and most important sectors, accounting for 6.9% of total output in 2018.
- Supports 2 million + jobs; is the UK's largest tax payer and export industry.
- Around 10% of UK financial services revenue comes directly from the EU.
- The industry has spent £4 billion on no-deal planning so far.
- As of June 2019, there were 7,000 planned job moves, and financial services firms had plans to move £1 trillion in assets out of the UK; investment banks have already moved nearly 1,000 jobs to Europe; and 275 financial institutions have moved or are in the process of moving at least part of their operations.
- The transfer of some operations to the continent is likely to accelerate under a no-deal Brexit.
- Potential opportunities to introduce business-friendly policies post-Brexit but risk of losing equivalence recognition.
- Loss of transition period will mean no time to establish equivalence or mutual recognition pre-third country status – may accelerate shift to EU locations.

### Operation Yellowhammer - effect of no-deal Brexit on business

- Some cross-border UK financial services will be disrupted.

# Business and trade: financial services

## Impact timeline



# Business and trade: financial services

## Preparedness

### Main steps taken

#### UK

- Temporary Permissions Regime (TRP) created to allow branches of EEA firms to continue operating in the UK while they apply for local authorisation.
- Financial Services Contracts Regime enables EEA firms to wind down UK operations in an orderly manner.
- Legislation enables UK businesses to continue to use clearing services provided by EU-based clearing houses.
- Legislation enables EU asset managers to continue operating and marketing existing funds in the UK.

#### EU

- Temporary and conditional equivalence recognition of UK's regulatory framework for central counterparties and central security depositories.
- European Payments Council will allow the UK to remain a member of the Single Euro Payments Area.
- Legislation at the Member State level to manage no-deal risks.

#### Joint-action

- MoU covering supervision of rating agencies and trade repositories, supervisory co-operation, enforcement and information exchange.
- Agreed to allow EU asset managers to delegate management of their assets to the UK.

# Business and trade: financial services

## Key concerns

- Reduction in competition and increased costs as it becomes more expensive for firms to provide services across two separate markets.
- Over time, EU may rescind equivalence recognition or impose punitive regulations.
- Currency volatility will impact transaction valuations and provisions in transactional documents, such as liability caps.
- Reciprocal equivalence recognition needed for EEA and UK derivatives trading venues so counterparties in either market can satisfy their derivatives trading obligations under EMIR and MiFIR.
- ESMA EU share trading obligation will apply to shares issued by firms incorporated in the EU, and there is no equivalence recognition for UK trading venues.
- TRP firms still required to comply with UK derivatives trading obligation of the “onshored” MiFIR, even though these firms are trading from offices outside the UK with non-UK counterparties.
- Sanction regimes may diverge over time.
- No-deal Brexit preparedness should be an important due diligence item in financial services transactions, with buyers looking at, among other things, whether the right entities are in place to do business in both markets and whether doing business in both markets will continue to be profitable in a no-deal Brexit scenario

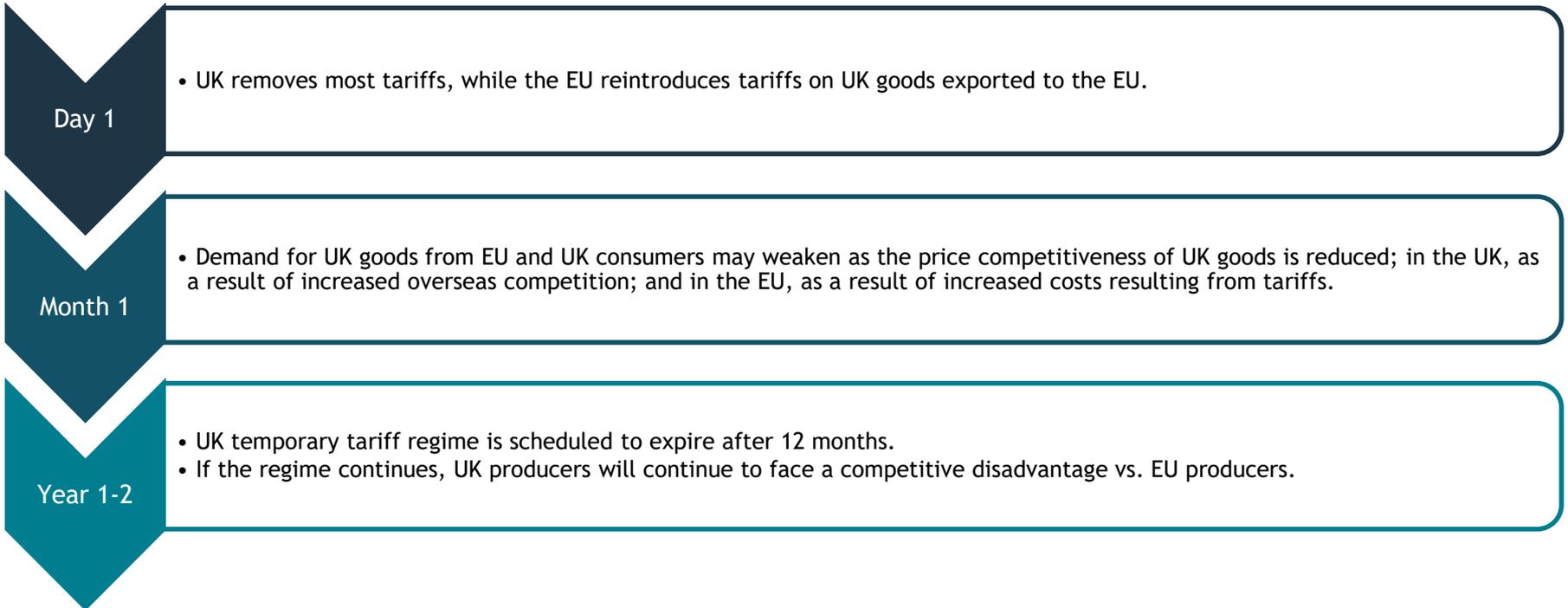
# Business and trade: tariffs

## Overview

- Currently, trade in goods between the UK and the rest of the EU is tariff free.
- Tariffs increase costs (direct costs and administrative burden) and cause delays, disrupting supply chains and affecting consumers.
- UK plans to impose no tariffs on most EU and rest of world imports, resulting in some sectors losing protection from rest of world imports.
- Vast majority of UK exports to the EU will face tariffs, reducing their competitiveness.
- Average EU tariff rate is around 1.5%; however, rates vary by sector – for example, the tariffs on cars and car parts are 10% and 4.5%, respectively; tariffs on chemicals are 5.5-6.5%; and the average tariff on dairy products is more than 35%.
- UK exporters to the EU will also face non-tariff barriers such as different product certification processes, environmental and safety checks, quotas and, over time, diverging phytosanitary measures and standards.
- CBI estimates that if UK firms were to face half of the non-tariff barrier costs US exporters currently face when exporting to the EU, these would be equivalent to an additional tariff of 6.5% on UK exports to the EU.

# Business and trade: tariffs

## Impact timeline



# Business and trade: tariffs

## Preparedness

### Main steps taken

#### UK

- No-deal tariffs will result in 87% of total imports to the UK (from the EU and elsewhere) becoming tariff-free.

#### EU

- Third country most favoured nation tariffs will apply to UK exports to the EU.

#### Joint-action

- UK and EU have agreed in principle that EU Tariff Rate Quotas (TRQ) should be split proportionally between the UK and EU; however, other WTO members are not yet satisfied with this approach.

# Business and trade: tariffs

## Key concerns

- Parts that cross the UK / EU border multiple times during manufacturing may incur a tariff more than once, further increasing costs.
- Asymmetric approach as the UK removes most tariffs while the EU reintroduces a large number of tariffs; live debate in UK Government.
- Many international trade agreements made at the EU level have not been rolled over (including those with Turkey, Japan and Canada), meaning that the UK exporters will face less favourable trade terms with these countries; and the UK's approach to tariffs undermines incentives to roll-over.
- Businesses are finding it difficult to make pricing decisions due to uncertainty.
- UK's tariff relief is temporary but it will be very hard to increase tariffs once lowered.
- Status of goods in transit on Day 1 is unclear.
- Buyers of UK based companies will need to due-diligence competitiveness of UK exports to the EU in a do-deal Brexit, the impact of greater price competition in the UK and the impact of tariffs at any point in the supply-chain.
- Careful thought should be given to financial modelling assumptions.
- Purchasers and suppliers whose contracts allocate to them the risk of price increases may seek to terminate contracts or execute force majeure or frustration provisions, impacting costs and revenue.

# Transactional / contract considerations

# Contract / commercial considerations

## Transactions / M&A - key risks / recommendations

From a legal perspective, documentation unlikely to be impacted significantly (e.g., no mass adoption of Brexit material adverse change provisions). Issues to consider include:

- **Merger control issues:** where Commission has reviewed a merger and issued a decision prior to Brexit date, CMA will have no jurisdiction. But if subject to CMA review and Commission have not given a decision, then CMA will have jurisdiction which could result in conflicting decisions between CMA and the Commission. Therefore, early engagement with the CMA is crucial.
- **Currency:** volatility may impact valuations but also provisions in transaction documents such as liability caps, funding commitments and fee levels.
- **Jurisdiction:** advice should be taken on jurisdiction clauses to ensure choice of court restrictions and resulting judgments are enforceable in a no-deal scenario.

# Contract/commercial considerations

## Contracts - key risks / recommendations

Businesses should review their material commercial contracts of all types to determine whether impacted by changes in laws / regulations and / or the adverse economic implications of Brexit. For example:

- **Does Brexit impact commercial deal?** A deterioration in the economic environment, exchange rate movements and / or the imposition of tariffs or other costs could impact pricing and / or viability of the commercial deal and / or counterparty risk.
- **Could the contract become terminable?** Contracts may become too costly for customer / supplier, resulting in desire to terminate. Force Majeure and frustration provisions could be triggered.
- **What are the implications of delayed performance?** Being outside the customs union will cause delays in supply of goods. Allocation of liability for such delays in the supply chain will need to be considered. Mitigants such as the Authorised Economic Operator scheme should be considered.
- **Does contract apply as intended post-Brexit?** Some provisions of contracts may no longer apply as intended, such as geographical restrictions or exclusivity provisions referring to the EU.

# International trade agreements



# International trade agreements

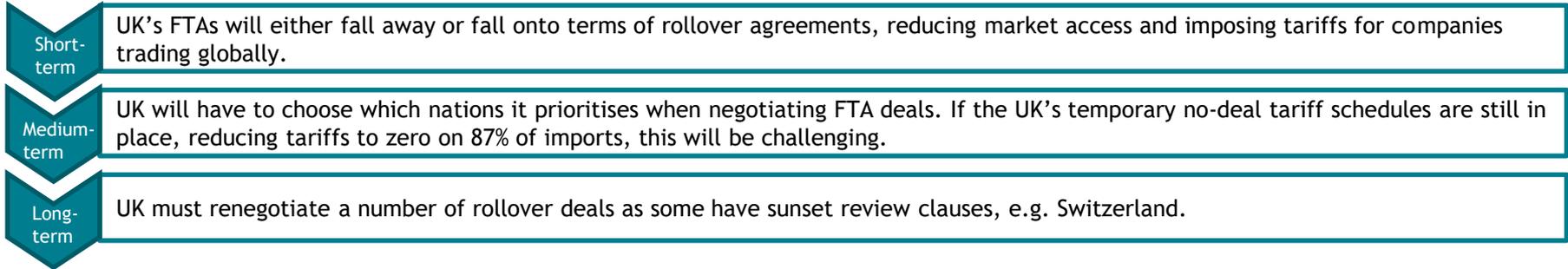
## Overview and FTAs

- The UK is party to 1,261 international agreements with third party countries as a member of the EU, including around 40 Free Trade Agreements (FTAs).

### FTAs

- In a no-deal scenario, the UK will automatically lose access to the FTAs negotiated by the EU.
- A lack of continuity in some FTAs could force UK companies to stop exports to certain markets altogether, due to the exorbitant tariffs they would be subject to, e.g. 10% tariff on finished vehicles exported to Turkey and a 49% tariff on scotch whisky exported to Morocco.

Only 13 of 36 FTAs have been rolled over to date.



# International trade agreements

## FTA preparedness

### Main steps taken

#### UK

- Ongoing work to rollover EU FTAs into standalone deals, including those with Andean countries, the CARIFORUM trade bloc, Central America and the Southern Africa Trade bloc. Only 13 out of 36 FTAs have been rolled over so far, and most of these are considered to be incomplete.
- Some countries have made it clear they will not be prepared to rollover EU terms, e.g. Canada.
- Guidance on changes to terms of trade with EU third countries.
- Department for International Trade briefings for companies and business organisations - although paused currently.

#### EU

- Brexit preparedness notice states EU preferential trade agreements with third countries will no longer apply to UK.
- UK inputs into EU products will no longer be counted as EU originating content for purposes of benefitting from zero tariffs in FTAs with third countries.

#### Joint-action

- None

#### Businesses

- Some have paused exports to nations where FTAs at risk of falling away.
- Some have rerouted supply chains to account for lack of continuity.

# International trade agreements

## WTO

- As the UK leaves the EU it will become a fully independent member of the WTO.
- UK's membership of the WTO's Government Procurement Agreement (GPA) is due to its EU member status, and accession to the GPA needs to be completed by the UK in its own right.

Day 1

UK ceases to be party to the GPA. UK firms not able to bid for public procurement contracts in countries where they rely on GPA terms for access to tenders, such as the US.

Month 1

Gap in the UK's membership of the GPA will last until the next calendar month, when the UK will continue its participation as before with access to the \$1.7 trillion procurement market provided by 47 GPA members.

Month 1 onwards

Third countries may challenge the UK and EU's disaggregated TRQs at the WTO, generating long-term uncertainty for UK producers.

# International trade agreements

## Other international agreements

- No-deal will also have an impact on more specific agreements gained through EU membership that facilitate trade outside of FTAs and make it easier for UK companies to sell to global markets.
- Secretary for State says there are around 1,000 EU treaties relevant to Brexit. Only 400 have a direct impact and a very low number will create material issues from Day 1.

Day 1

UK will immediately no longer be a party to any international agreement struck as a result of EU membership, unless rollovers or updated provisions kick-in.

Month 1

Not clear how many third countries would temporarily rollover agreements while negotiations to secure permanent agreements are ongoing, but the worst-case scenario is a reduction in protections, extra delays at borders and a decrease in air connectivity across the globe.

Month 6 onwards

Expectation is that the UK should, over time, be able to resume its relations globally on a stable legal basis, but some relationships may be permanently less preferential.

# International trade agreements

## Other international agreements - preparedness

### Main steps taken

#### UK

- Agreement with the US to update their standards of compliance for the EU-US Privacy Shield agreement to allow continued transfer of personal data to and from the UK after Brexit.
- Aviation agreement with the US to provide continuity for air services across the Atlantic.
- Agreements with Switzerland on direct insurance and taxation.
- Agreement with the US on prudential measures for insurance and reinsurance.
- 13 air services agreements, including agreements with the US, Canada, Israel and Switzerland.
- Sectoral mutual recognition agreements with Australia (wine) and New Zealand (sanitary measures for live animals).
- International motor vehicle carriage agreement with Belarus.
- International road transport agreements with Switzerland, Norway, Serbia, Ukraine and Kazakhstan.
- Nuclear co-operation and safeguard agreements with the US, Canada and Australia.
- Accession to the Common Transit Convention.

#### Joint-action

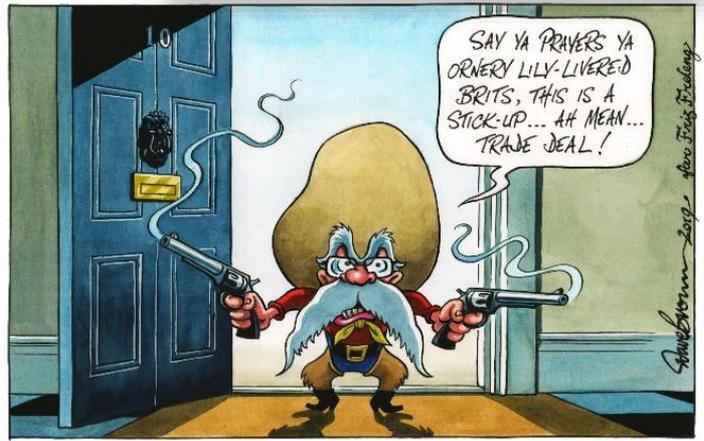
- UK and Spain have undertaken negotiations regarding Gibraltar.

# US / UK trade deal



# US / UK trade deal

## Overview



# US / UK trade deal

## Overview and UK negotiating powers / constraints

- UK trades much more with the EU than the US but US / UK trade deal has generated a great deal of attention, particularly amongst Eurosceptics.
- UK cannot formally negotiate a trade deal with the US until it leaves the EU.
- MPs will want a say in any deal; however, negotiating trade agreements is a royal prerogative power.
- Parliament can refuse to pass legislation to ratify a treaty or pass a no confidence motion but using these powers is unpalatable; by the time they come into play, trade negotiations have concluded.

# US / UK trade deal

## US negotiating powers / constraints

- President has exclusive constitutional authority to negotiate treaties.
- However, a trade deal with the UK would require congressional approval.
- Trade Promotion Authority (TPA)<sup>1</sup> provides the President with the power to pass legislation implementing a trade agreement in an expedited manner.
- Nonetheless, the TPA places constraints on the President, requiring him to comply with specific objectives, and notification and consultation requirements.
- In February 2019, the United States Trade Representative (USTR) set out its specific negotiating objectives in relation to a US / UK trade deal.

# US / UK trade deal

## US negotiating objectives

- Below are some of the objectives that could, to varying degrees, be problematic:
  - *“Establish rules that further encourage the adoption of international standards and strengthen implementation of the obligation to base SPS<sup>1</sup> measures on science if the measure is more restrictive than the applicable international standard.”*
  - *“Establish state-of-the-art rules to ensure that the UK does not impose measures that restrict cross-border data flows and does not require the use or installation of local computing facilities.”*
  - *“Prevent the undermining of market access for U.S. products through the improper use of the UK’s system for protecting or recognizing geographical indications, including any failure to ensure transparency and procedural fairness, or adequately protect generic terms for common use”.*
  - *“Establish fair, transparent, predictable, and non-discriminatory rules to govern government procurement in the UK, including rules mirroring existing U.S. government procurement practices”.*
  - *“Specialized sectoral disciplines, including rules to help level the playing field for U.S. delivery services suppliers in the UK”.*

# US / UK trade deal

## US negotiating objectives (cont'd)

- Silent on the issue of Investor-state Dispute Settlement.
- The large number of EU geographical indications are viewed as a protectionist and an incorrect application of intellectual property protection.
- US authorities have become concerned with the application of antitrust law by the Commission, for instance the targeting of large US technology businesses.
- Alignment with the US could create divergence from the EU, making a future relations with the EU more problematic.



# US / UK trade deal

## UK public concern

- Food standards and animal welfare.
- Impact on the NHS
  - Prevention of any future roll-back of outsourcing.
  - Increased drug prices / market access.
- Dilution of IP protections such as geographical indications.
- Degradation of:
  - workers' rights;
  - environmental protections;
  - public-health policies; and
  - data protection.
- Investor-state Dispute Settlement as a mechanism to challenge public policy.
- An unbalanced deal.



# Appendix 1 - further detail

# Appendix 1 - further detail: contents

- Competition policy
- Data protection
- Intellectual property
- Taxation
- EU no-deal preparedness programme



# Competition policy

# Competition policy

## Overview

- An effective competition policy is essential to ensuring productivity, innovation and economic growth.
- Substance of competition policy is likely to remain unchanged in the short-term.
- Uncertainty and added complexity for companies considering or undertaking a transaction and those subject to an investigation on Day 1.
- Increased burden on the CMA.
- Longer-term: duplicative processes, increased bureaucracy and divergence of policy.

# Competition policy

## Impact timeline



# Competition policy

## Preparedness

### Main steps taken

- UK
- EU Block Exemption Regulations transposed into UK law.
  - EU state aid rules transposed into UK law.
  - CMA will recognise Commission decisions made before Day 1.
  - CMA may conduct parallel investigations where a Commission investigation remains open on Day 1.
  - CMA funding increased and additional staff recruited.

- EU
- Confirmed that UK firms affecting EU competition will still be subject to EU competition law.

- Joint-action
- None.

# Competition policy

## Key concerns

- Level of cooperation between respective competition authorities is yet to be determined - opportunities exist for division of labour and reduction of duplicative processes.
- Where a transaction is subject to a Commission merger review on Day 1, the CMA may begin a parallel review, creating the possibility of conflicting decisions between the CMA and the Commission and increasing uncertainty.
- State aid which has been notified to the Commission will need to be re-notified to the CMA where a decision has not been made by the Commission on Day 1.
- Remains to be seen whether the CMA has sufficient resources.

# Competition policy

## Level playing field provisions

- The EU is concerned that “level playing field” provisions should prevail in the economic relationship between the UK and the rest of the EU post-Brexit.
- Level playing field rules are essentially baseline rules on environmental standards, labour regulations and state aid that aim to prevent the UK pursuing low tax, low regulation policies in order to compete with the EU.
- Since Boris Johnson has taken over as PM, the EU has been increasingly concerned about a bare-bones free trade agreement with no level playing field provisions.
- The Government has repeatedly stated it wants to distance itself from EU regulations and, therefore, the EU is keen to ensure the single market is protected from the UK scrapping regulations. This will likely be at the forefront of the EU’s agenda as negotiations continue.

# Data protection



# Data protection

## Overview

So why important?

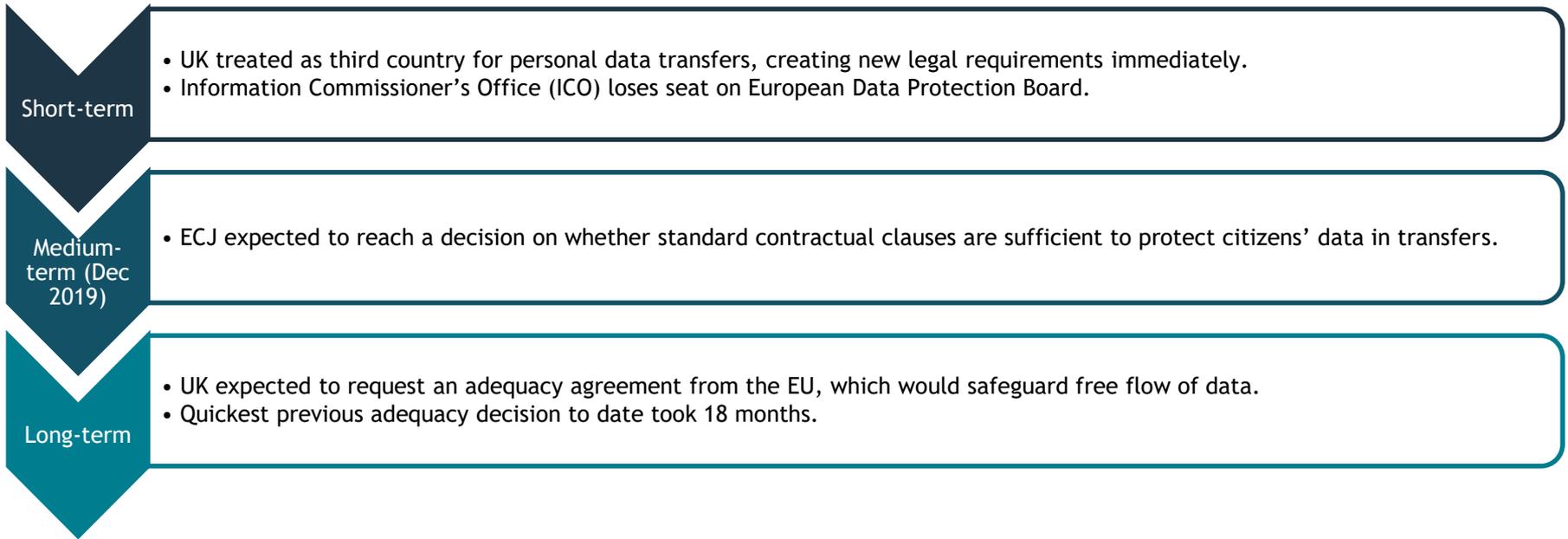
- Cross-border data flows are the life-blood of the modern economy, especially in sectors like manufacturing, logistics, financial services and IT.
- The UK is an international leaders in data flows, which have increased 28 times between 2005 and 2015.
- UK currently has largest data centre market in Europe, worth over £73 billion to the economy - over 75% of UK data transfers are with EU countries.

Key Issues

- EU GDPR restricts transfer of personal data to countries outside the EEA which have not been determined by the European Commission to ensure an adequate level of protection for personal data.
- The UK cannot apply for an adequacy determination until after Brexit.
- UK will, therefore, be treated as a third country for transfers following a no-deal Brexit.

# Data protection

## Impact timeline



# Data protection

## Key risks / recommendations

Main risks of a no-deal Brexit that remain unmitigated are:

- the lack of an adequacy decision from the EU in favour of the UK;
- the UK's inability to participate in the EU's "One Stop Shop" enforcement mechanism following Brexit; and
- the added complexity for organisations acting across the UK-EU markets of dealing with two near-identical but separate data protection regimes, each with extra-territorial effect.

Businesses, particularly those operating in both the UK and Europe, should considering taking the following self-help steps now:

- map their data flows (or update any work already done) and put standard contractual clauses in place with European counterparties for data flows from the EU to the UK, unless other safeguards (such as BCRs) can be relied on;
- identify a new lead supervisory authority within the EU, where the business has previously looked to the ICO;
- consider whether necessary under the GDPR / UK GDPR to appoint a new representative in the EU / UK; and
- review contracts and clauses covering data protection.

# Intellectual property



# Intellectual property

## Key risks

Policies for filing and renewals in Europe will need to be reviewed and adapted.

- Certain rights under EU law do not have equivalents under UK law and registrations may not cover the UK.
- UK Government has released a series of technical guidance notes concerning what will happen to current EUTMs and design rights, patents, copyrights and exhausted intellectual property rights. Rights in all registered EUTMs will vest into new equivalent UK-only rights but this will not be an automatic process so businesses will need to work through this.

# Intellectual property

## Protection of existing IP rights

- In a no-deal Brexit, the main areas of concern for IP owners are the potential loss of pan-European rights, notably EU trade marks and designs in the UK and loss of protection in other areas due to cross-border mechanisms ceasing to apply or a lack of reciprocal recognition by the EU of UK rights.
- UK IPO has passed secondary legislation to address the impact in some of these issues along with business guidance to expand on the previous no-deal notices issued in 2018.
- There are areas where the UK cannot unilaterally mitigate these impacts.
- In summary:
  - EU trade marks and Community registered designs existing at exit day will have continuity of protection in the UK.
  - The IPO will grant comparable rights for the UK automatically and free of charge.
  - Owners of pending European applications can apply for an equivalent UK application but must do so within 9 months to preserve the original filing date. This will involve paying another set of application fees.

# Intellectual property

## Enforcement of IP rights

- IP owners will lose the ability to enforce EU- trade marks and designs across the EU, including the UK and to get relief for the EU and the UK together. Separate actions to enforce UK rights will be required.
- A number of cross-border mechanisms relating to certain copyright and database rights will cease to apply. Notably, there will be no obligation for EEA states to provide sui generis database rights to UK nationals; these database rights may be unenforceable in the EEA.
- In a no-deal scenario, the Government has stated that in the short-term IP protected goods placed on the EEA market with consent after the UK has left the EU will continue to be exhausted in the UK. There is uncertainty as to whether the EU will recognise EEA exhaustion for UK goods. Businesses may need consent to export to the EEA IP protected goods that have been legitimately put on the market in the UK.

# Intellectual property

## Other issues

- **EU domain names**: UK companies and individuals will no longer be eligible to register .eu domain names or renew existing ones registered before the UK's withdrawal. Plans are that if an existing UK registrant is unable to satisfy the eligibility criteria (i.e. they must have a legally established entity in the EEA) within a two month grace period, the .eu domain names will be withdrawn and become inoperable.
- **Customs enforcement procedures**: rights owners will no longer be able to submit an application to UK customs authorities requesting that EU Member States take action in relation to suspected infringing goods. Two applications will be required (UK and EU), and it is unclear whether EU applications previously granted by UK customs will still be valid in the EU27.
- **Patents will be largely unaffected**: European patents are granted outside of the EU regime and will continue to be granted and enforced in the same way. Unclear whether it will be possible for the UK to remain within the Unified Patent Court and unitary patent system.

# Taxation



# Taxation

## Overview

- Some intra-group payments between UK and EU entities will become subject to withholding tax, increasing tax burden and impacting cash flow.
- EU will become a third country for UK VAT purposes and UK VAT registered businesses importing goods to the UK will be able to account for import VAT on their VAT return, rather than paying import VAT on or soon after the time that the goods arrive at the UK border.
- Low Value Consignment Relief will no longer apply, and any parcels entering the UK that have been sent by overseas businesses will be liable for VAT.
- UK businesses will continue to be able to zero-rate sales of goods to EU consumers but will be required to pay import VAT when goods arrive in the EU.
- UK businesses will continue to be able to zero-rate sales of goods to EU businesses and will be required to pay import VAT when goods arrive in the EU, although Member States may have differing rules.
- UK businesses selling their own goods in an EU Member State to customers in that country will continue to be required to register for VAT in the EU Member State where sales are made.
- For UK businesses supplying services into the EU, the main VAT “place of supply” rules will remain the same.
- In theory, the UK will have more freedom to formulate VAT policy; however, in practice, the UK is still likely to be influenced by European law.

# Taxation

## Impact timeline

Day 1

- Some intra-group transfers will become subject to withholding tax.
- UK VAT registered businesses importing goods to the UK will need to account for import VAT on their VAT return.
- UK businesses exporting goods to the EU will have to pay import VAT at the border.
- Low Value Consignment Relief will no longer apply.

Month 1

- Temporary measures by individual Member States grandfathering existing tax treatment of intra-group transfers may expire, impacting costs and cash flow.

Year 1-2

- The UK will need to renegotiate new double tax agreements with Member States to avoid withholding tax related to intra-group transfers.

# Taxation

## Preparedness

### Main steps taken

#### UK

- Guidance on where EU tax directives concerning intra-group payments are mirrored in UK law - ensuring that there will not be withholding tax on payments from the UK to EU.
- Guidance on changes to VAT arrangements in a no-deal scenario.

#### EU

- Some Member States have confirmed they will grandfather the current treatment of intra group payments to the UK.

#### Joint-action

- None.

# Taxation

## Key concerns

- Buyers of UK based companies will need to consider withholding tax where a UK company has group companies in the EU.
- Companies should consider the additional administrative burden of paying import VAT at the EU border.

# EU no-deal preparedness programme

# EU no-deal preparedness programme

## Citizens' rights guarantees

- Commission has invited Member States to take a, “...generous approach to the rights of UK citizens in the EU, provided that this approach is reciprocated by the UK”.
- EU27 have in principle agreed to temporarily continue the current rights of UK citizens living in their territories if the UK reciprocates, although they have not all adopted legislation or other measures to guarantee this.
- Most Member States have planned or adopted temporary legislation providing a grace period for UK nationals to regularise their status under national immigration laws. Grace period set by Member State and ranges from 3 months in Germany to 21 months in Spain. Several Member States have explicitly stated the legislation must be conditional on UK reciprocity.

# EU no-deal preparedness programme

## EU budget shortfall

- UK and UK beneficiaries will not be able to apply for new funding and will no longer be eligible to receive funding or will face termination of current participation in EU programmes. Payments would therefore be suspended and only made when an agreement reached between the EU and UK.
- To minimise disruption, the EU adopted on 4 September 2019 a contingency regulation for the EU budget that maintains the eligibility of the UK and UK beneficiaries until 2020, provided the UK accepts and fulfils the conditions of the 2019 Contingency Regulation, pays its budget contributions for 2020, and allows the required audits and controls to take place.

# EU no-deal preparedness programme

## Other areas

### Transport

- Measures relating to air, road and rail transport allow for continuation of safe basic connectivity between EU and UK for limited period of time, provided UK maintains adequate level of safety standards and gives reciprocal treatment to EU companies and operators.
- Regulation ensuring basic road freight and road passenger connectivity was extended on 4 September 2019 until 31 July 2020.
- Basic air connectivity regulation was extended on 4 September 2019 to 24 October 2020.

# EU no-deal preparedness programme

## Other areas

### Fishing

- The EU Regulation on Sustainable Management of External Fleets has been amended to create a legal framework for EU and UK fishermen to maintain access to each other's waters in 2019.
- On 4 September 2019, the Commission proposed extending the above approach for 2020.
- EU27 fishermen and operators entitled to receive compensation for the temporary cessation of fishing activities because of Brexit under the European Maritime and Fisheries Fund.

# EU no-deal preparedness programme

## Other areas

### Agriculture, animal and plant health

- On 9 April 2019 EU's Standing Committee on Plants, Animals, Food and Feed approved UK's listed status application, meaning EU will recognise UK standards on animal health and biosecurity. However, there will still be sanitary checks at the border and trade tariffs.

### Data

- EU does not intend to implement special contingency measures for data flows in the case of a no-deal Brexit. The Commission said in its November 2018 Contingency Action Plan that the GDPR for data exchange with third countries will cover the immediate needs of data transfers to the UK in a no-deal scenario.

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