



# **Future of EU and UK financial services post Brexit**

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## Article 50, European Union (Withdrawal) Act 2018 and Draft Agreement on the withdrawal of the United Kingdom from the European Union and the European Atomic Energy Community November 2018

- Article 50 which is a very **crude provision for exiting** was triggered on 29 March 2017. The two year process for leaving the EU expires 29 March 2019 – Brexit Day. A transitional period ...

Article 50 of the Lisbon Treaty reads as follows:

- 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.(...)
  - 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 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 TFEU.
  - 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 If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49.
- In October 2016 Teresa May promised a “Great Repeal Bill” (**Ctrl+Alt+Del analogy**) which became law on 26 June 2018: [the European Union \(Withdrawal\) Act 2018](#)
  - [November 14, 2018 - https://www.gov.uk/government/publications/progress-on-the-uks-exit-from-and-future-relationship-with-the-european-union](https://www.gov.uk/government/publications/progress-on-the-uks-exit-from-and-future-relationship-with-the-european-union)

# Degrees of integration in Europe

**CUSTOMS UNION:** abolition of internal duties and establishment of a common external tariff.  
Achieved by 1 July 1968. Legal Basis: EEC Treaty 1957

**Red lines:** The “Irish backstop” is an insurance policy in UK-EU Brexit negotiations to ensure that the Irish border remains open whatever the outcome

## **COMMON MARKET/INTERNAL MARKET**

- Removal of barriers to trade, direct and indirect, technical and non-technical & establishment of rules. Legal Basis: EEC Treaty 1957. Revamping of the common market with the Single European Act 1987 which defined **the internal market/single market** defined as : “an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured” A heterodox opinion on free movement...

**MONETARY UNION:** establishment of a single currency (euro) and transfer of monetary policy powers to the ECB. Legal Basis: Maastricht Treaty 1992 (TFEU)

**Banking Union** – SSM, SRM and European Deposit Insurance Scheme (EDIS)  
Legal basis Art 127.6 of TFEU, Article 114 TFEU

**Capital Markets Union/ Financial Union** - Thomsen, 2018, fragmentation, risk share

**ECONOMIC UNION (economic policy coordination) (with some obligations for the UK)** Responsibility remains at the national level. Negative integration (prohibitions of excessive government deficits etc) and positive integration. Italy...

## **POLITICAL UNION?**

# Deal/no deal?

- ***DEAL? The 'Models' and cherry picking***
  - *Norway (EEA and EFTA)* - Single market but not customs union\*
    - EEA members don't participate in other EU policies: agriculture, fisheries etc
  - *Turkey* - Tailored made customs union covering industrial goods but not agricultural
  - *CANADA/Comprehensive Economic and Trade Agreement CETA)*
    - Preferential access to EU Single Market but not all goods are covered and the services sector is only partially covered.
  - *Switzerland - EFTA* - Bilateral agreements
  - *Canada Plus or new FTA* –
  - **Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community - 14 November 2018**  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/756378/14\\_November\\_Outline\\_Political\\_Declaration\\_on\\_the\\_Future\\_Relationship.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/756378/14_November_Outline_Political_Declaration_on_the_Future_Relationship.pdf)
  - *Sectorial solution on financial services*
- ***NO DEAL?***
  - Singapore? Unilateral free trade approach coupled with low taxation
    - While this approach appeals to those 'Brexiters' whose ideology favours no trade restrictions, less welcome by Labour Brexit voters and left-wing critics of the EU
  - A no deal would signify reliance on WTO rules

# Impact on financial services in EU and UK

- **Tectonic plates are shifting**

- Misalignment between current **equivalence** framework and the one which should be in the best interests of the EU/UK. UK will be governed by the **third country regime** requiring authorization or additional requirements
- Brexit coincides with new challenges to the **regulatory perimeter** (in addition to cross border and shadows) the FinTech/RegTech/ sandbox/AI which complicate the pursuit of Financial stability and MS.
- **Supervisory cooperation** weakened across the Atlantic. **Host and home country supervision of branches and subsidiaries likely to be discussed and possibly redesigned**. From cross border resolution to AML/cyberspace attacks
- Private sector preparedness but ... Contentious issues: OTC derivatives and CCPs. **Interconnectedness**
- **Minsky moment**

- **The City of London**

- **Wholesale financial services hub**. According to Oliver Wyman (2016) “only” 25% of financial services revenues (2016) was international and wholesale business related to the EU...
- But **cascading effect – avoiding ‘cliff edge’ sudden exit and ‘hiatus risk’**. E.g. if UK CCPs are not recognized under EMIR at the point of UK’s exit from the EU. (ISDA Report of October 2018 and FPC statement of 3 October 2018). <https://www.cftc.gov/PressRoom/SpeechesTestimony/commentsgiancarlo101618>
- <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=SWD:2017:0246:FIN>

# OUTLINE OF THE POLITICAL DECLARATION SETTING OUT THE FRAMEWORK FOR THE FUTURE RELATIONSHIP BETWEEN THE EUROPEAN UNION AND THE UNITED KINGDOM

[http://europa.eu/rapid/press-release\\_IP-18-6424\\_en.htm](http://europa.eu/rapid/press-release_IP-18-6424_en.htm)

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/756378/14\\_November\\_Outline\\_Political\\_Declaration\\_on\\_the\\_Future\\_Relationship.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/756378/14_November_Outline_Political_Declaration_on_the_Future_Relationship.pdf)

- Part II – Economic Partnership
- Financial Services
  - Commitments to preserving financial stability, market integrity, investor protection and fair competition, while respecting the Parties’ regulatory and decision-making autonomy, and their ability to take equivalence decisions in their own interest. This is without prejudice to the Parties' ability to adopt or maintain any measure where necessary for prudential reasons.
  - Commencement of equivalence assessments by both Parties as soon as possible after the United Kingdom’s withdrawal from the Union, endeavouring to conclude these assessments before the end of June 2020.
  - Close and structured cooperation on regulatory and supervisory matters, grounded in the economic partnership and based on the principles of regulatory autonomy, transparency and stability, recognising this is in the Parties’ mutual interest.

## From Passporting to Equivalence – Regime for branches and subsidiaries

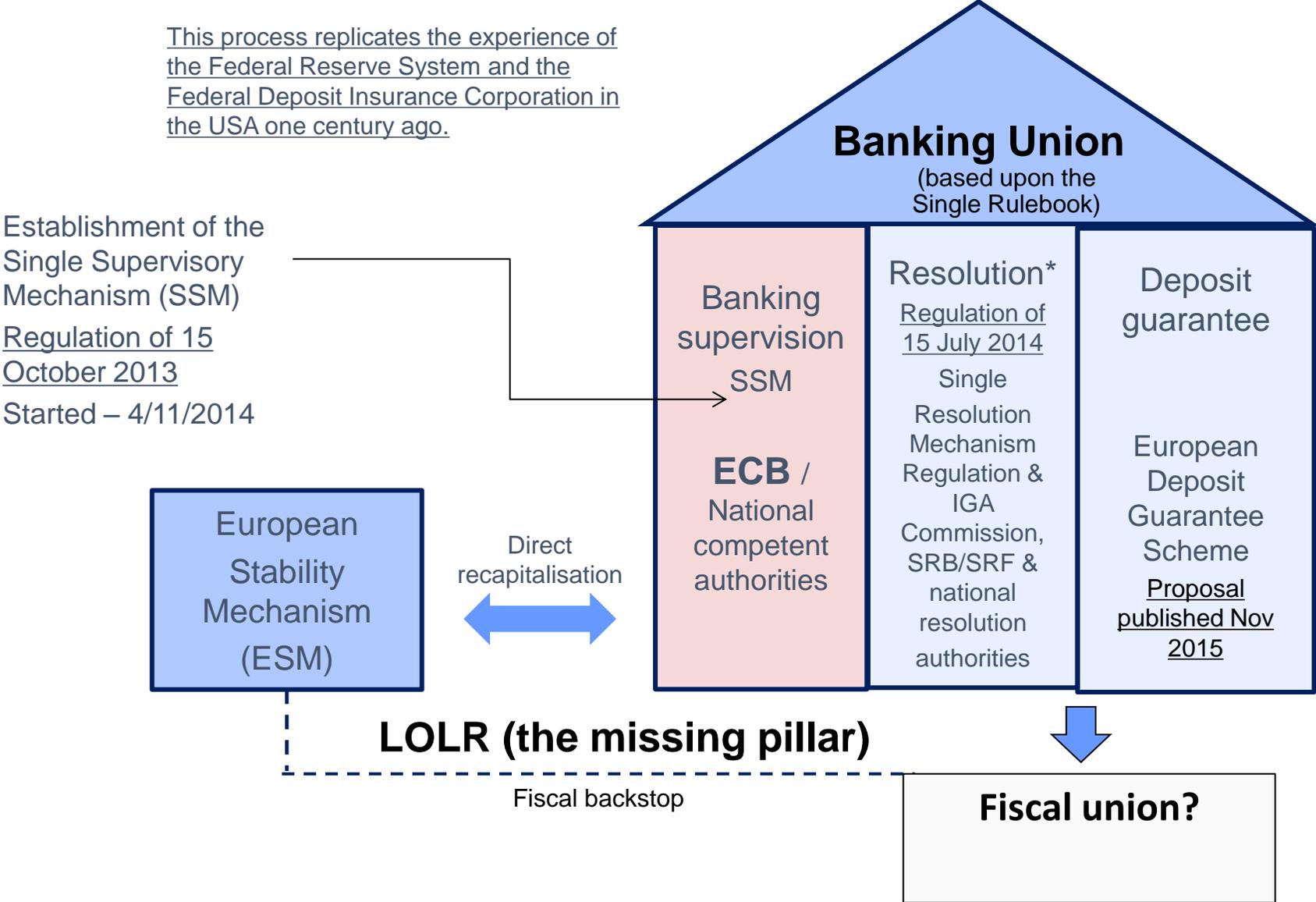
- Passporting – Single market (EU/EEA)
- Equivalence regimes
  - **WTO equivalence** - form of recognition. Regulatory frameworks aligned/comparable to allow a certification, license or registration granted in one country to be accepted as valid/equivalent.
  - **Current EU equivalence regime/s.** *A third country is one which is not a member of the EU or EEA.* It generally implies market access (it can also grant regulatory relief) and is limited to some areas: wholesale cross-border investment services under MiFID II /MiFIR; access to trading venues for derivatives etc. It is temporary, complex, political, unilateral, determined by the Commission and subject to unilateral withdrawal. It is at times also based on the principle of reciprocal treatment. **Regime for third country branches** operating in the UK and for the treatment of EU banks interacting with third country entities
  - **Proposed EU Equivalence plus** - EU enhanced equivalence model (as Juncker said **the UK is not an ordinary 3<sup>rd</sup> country**) with a broader scope (e.g. banking: lending, deposit-taking, payments), and greater reliability, transparency, flexibility, and consistency in which both initial determination and withdrawal protect consumers and confidence (Art 33 of proposed EBA regulation 2017 - ESAs to assist the Commission in preparing equivalence decisions; annual monitoring of third countries and develop administrative model arrangements). Super-equivalence...
- Treatment of third parties

# Reliance on WTO rules

- All WTO Members are signatories to the GATS and have assumed commitments (to varying degrees) in individual service sectors including financial services.
- GATS Obligations are:
  - General – apply to all members
    - Most-Favoured Nation Treatment (prohibition against preferential treatment)
    - Transparency (publications of measures, etc.)
  - Member-specific
    - Market Access
    - National Treatment
- WTO Members have individual services schedules specifying their horizontal commitments (all sectors) and sector-specific commitments.
- The EU has made commitments in accordance with the Understanding on Commitments in Financial Services (FSU). The UK's services commitments are until Brexit day that of the EU and contained in the EU schedule
- **Commitments co-exist with FSB, Basel and others.**
- The **GATS Annex on Financial Services** specifies provisions applicable to trade in financial services providing exceptions such as services supplied in the exercise of governmental authority and prudential measures. ("**Prudential carve out**")

# Completion of Banking Union

This process replicates the experience of the Federal Reserve System and the Federal Deposit Insurance Corporation in the USA one century ago.



# Capital Markets Union – A new narrative

