



# **BREXIT:**

## **THE STATE OF PLAY**

# PANEL MEMBERS



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Head of Brexit  
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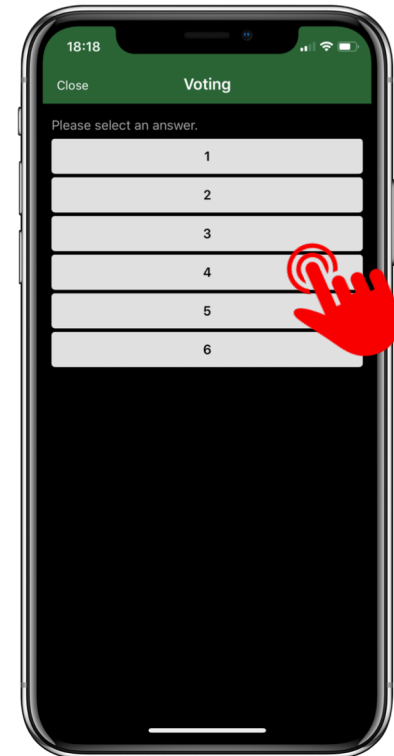
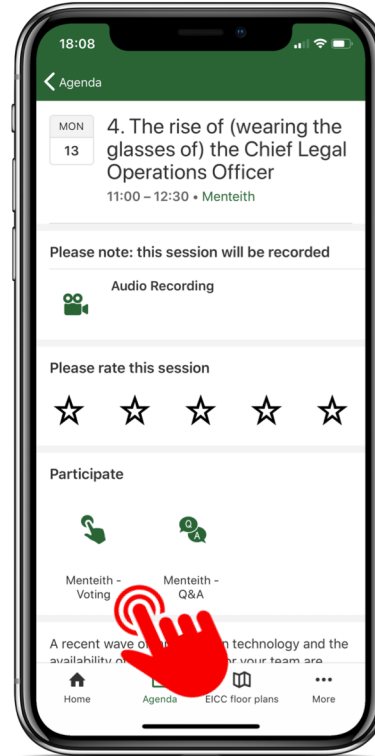
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# Voting

- ▶ Tap on the voting button from the session you are attending to vote
- ▶ Tap on the number corresponding to your choice



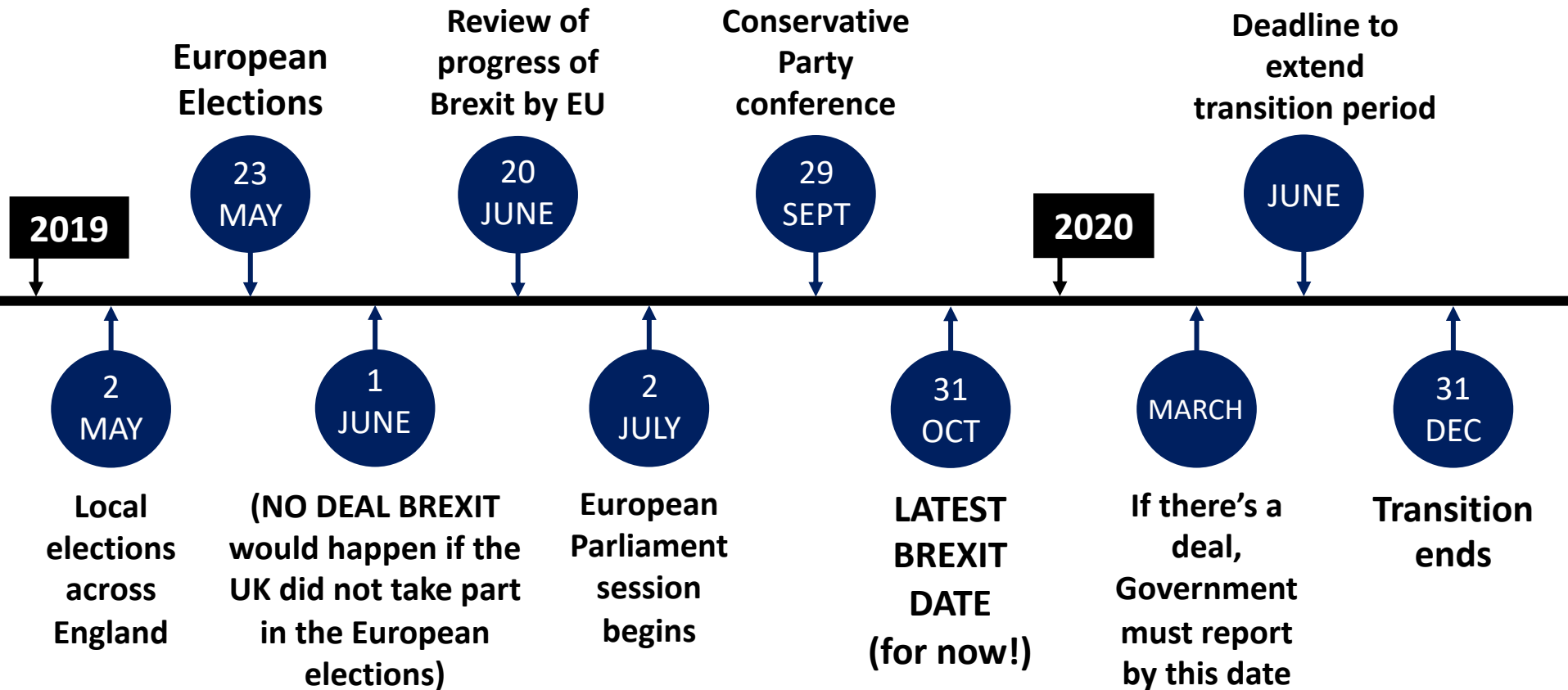
# Who believes their business will suffer as a result of Brexit?

1. I believe my business will suffer as a result of Brexit
2. I don't believe my business will suffer as a result of Brexit



- ❑ The EU Withdrawal Agreement
- ❑ Implications for Employers and Supply Chains
- ❑ Brexit Project Teams – working cross-function
- ❑ The Political Outlook
- ❑ Panel Discussion
- ❑ Q&A

# BREXIT TIMELINE



# EU WITHDRAWAL AGREEMENT

- ❑ Citizens' Rights
- ❑ Separation Provisions
- ❑ Transition
- ❑ Financial Provisions
- ❑ Institutional and Final Provisions
- ❑ Protocol

# CITIZENS' RIGHTS



- ❑ Immigration and residency issues
- ❑ Rights of workers
- ❑ Professional qualifications
- ❑ Social security



# SEPARATION PROVISIONS

- ❑ Goods placed on the market
- ❑ Ongoing customs procedures
- ❑ Ongoing VAT and Excise Duty
- ❑ Intellectual Property
- ❑ Judicial cooperation in criminal, civil and commercial matters
- ❑ Data Protection
- ❑ Public procurement
- ❑ Fisheries, international agreements, foreign policy and security

# TRANSITION



# FINANCIAL PROVISIONS

Brexit has cost  
the UK economy  
an estimated  
£66bn in lost  
growth

**£35 - £39 Billion**  
withdrawal payment  
under Withdrawal  
Agreement

B of E has said the  
UK has lost  
**£88million per week**  
since the referendum



**No Deal  
Brexit could  
cost £27  
billion**

# INSTITUTIONAL AND FINAL PROVISIONS

- ❑ Joint Committee comprising EU and UK representatives will be established
- ❑ If no mutual solution is reached within 3 months of written notice to the Joint Committee, the EU or UK may request establishment of an arbitration panel
- ❑ 25 independent persons shall serve as arbitration members
- ❑ The arbitration panel ruling shall be binding on the EU and the UK

# PROTOCOLS

- ❑ Specialised committees will be established to deal with separate protocol areas
- ❑ Northern Ireland – “The Backstop”
- ❑ Cyprus – The Sovereign Base Areas shall be part of the customs territory of the EU.
- ❑ Gibraltar – Establish a coordinating committee with Spain as a forum for discussion

# THE POLITICAL DECLARATION

PART I: INITIAL  
PROVISIONS

PART II: ECONOMIC  
PARTNERSHIP

PART III: SECURITY  
PARTNERSHIP

PART IV: INSTITUTIONAL  
AND HORIZONTAL  
ARRANGEMENTS

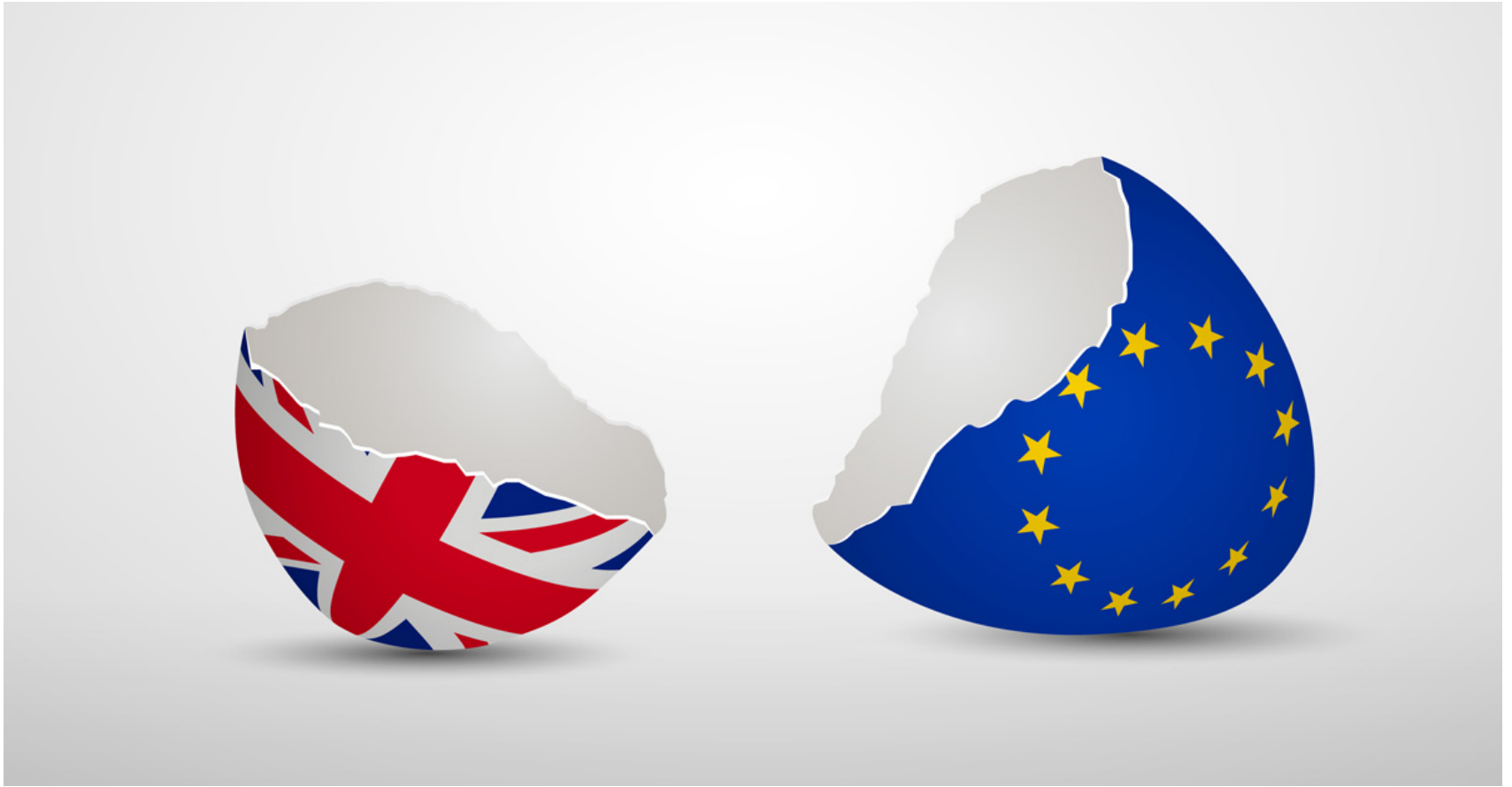
PART I: FORWARD  
PROCESS

*“an **ambitious**, broad, deep and flexible partnership across trade and economic cooperation” and a “broad, **comprehensive** and balanced security partnership”*

*“intent of both Parties to **develop in good faith agreements** giving effect to this relationship and to begin the formal process of negotiations as soon as possible after the UK’s withdrawal from the Union”*

**Determination to reach an agreement to establish “alternative arrangements for ensuring the absence of a hard border on the island of Ireland on a permanent footing”**





# Things to consider

- your customers;
- your supply chain;
- your organisational setup;
- your licences and authorisations;
- your contracts;
- your employees.

# Data Flows - Consider your Data Protection setup





# So what do I do?

- Adequacy decision
- Binding Corporate Rules;
- Model Clauses;
- Other possibilities:
  - Code of Conduct;
  - Certification scheme

# Adequacy 1/3



English 

Search

[Home](#) > [Law](#) > [Law by topic](#) > [Data protection](#) > [Data transfers outside the EU](#) > [Adequacy of the protection of personal data in non-EU countries](#)

## Adequacy of the protection of personal data in non-EU countries

How the EU determines if a non-EU country has an adequate level of data protection.

[https://ec.europa.eu/info/law/law-topic/data-protection/data-transfers-outside-eu/adequacy-protection-personal-data-non-eu-countries\\_en](https://ec.europa.eu/info/law/law-topic/data-protection/data-transfers-outside-eu/adequacy-protection-personal-data-non-eu-countries_en)



# Adequacy 2/3

## Adequacy decisions

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The European Commission has the power to determine, on the basis of article 45 of [Regulation \(EU\) 2016/679](#) [↗](#) whether a country outside the EU offers an adequate level of data protection, whether by its domestic legislation or of the international commitments it has entered into.













The adoption of an adequacy decision involves

- a proposal from the European Commission
- an opinion of the of the European Data Protection Board
- an approval from representatives of EU countries
- the adoption of the decision by the European Commissioners

At any time, the European Parliament and the Council may request the European Commission to maintain, amend or withdraw the adequacy decision on the grounds that its act exceeds the implementing powers provided for in the regulation.

# Adequacy 3/3

The effect of such a decision is that personal data can flow from the EU (and Norway, Liechtenstein and Iceland) to that third country without any further safeguard being necessary. In other words, transfers to the country in question will be assimilated to intra-EU transmissions of data.

The European Commission has so far recognised [Andorra](#) , [Argentina](#) , [Canada](#)  (commercial organisations), [Faroe Islands](#) , [Guernsey](#) , [Israel](#) , [Isle of Man](#) , [Jersey](#) , [New Zealand](#) , [Switzerland](#) , [Uruguay](#)  and the [United States of America](#)  (limited to the [Privacy Shield framework](#)) as providing adequate protection.

Adequacy talks are ongoing with South Korea. The adoption procedure of the adequacy decision concerning Japan was launched on 5 September 2018.

# So what do I do?

- Binding Corporate Rules;
- Model Clauses;
- Other possibilities:
  - Code of Conduct;
  - Certification scheme

# Binding Corporate Rules

## Binding Corporate Rules (BCR)

can be used by multinational organisations when transferring personal information outside the EEA *within their group* of entities.

Organisations must get approval for their BCRs from an EU data protection authority, with one authority acting as the lead.

# Model Clauses

## Model Clauses

EU Commission approved 'standard contractual clauses' can be used within a contract. The clauses contain contractual obligations on the data exporter and the data importer and rights for the individuals whose personal data is transferred. Individuals can directly enforce those rights.

# Just to mention...

1. Codes of Conducts. The code of conduct must be approved by a supervisory authority and include appropriate safeguards to protect the rights of individuals whose personal data is transferred, and which can be directly enforced.
2. Certification schemes. These must be approved by a supervisory authority and include appropriate safeguards to protect the rights of individuals whose personal data is being transferred, and which can be directly enforced.



# Just to mention...

Trade associations or bodies representing a sector can create codes of conduct, in consultation with relevant stakeholders, including the public where feasible. They can amend or extend existing codes to comply with the GDPR requirements. They have to submit the draft code to us for approval.

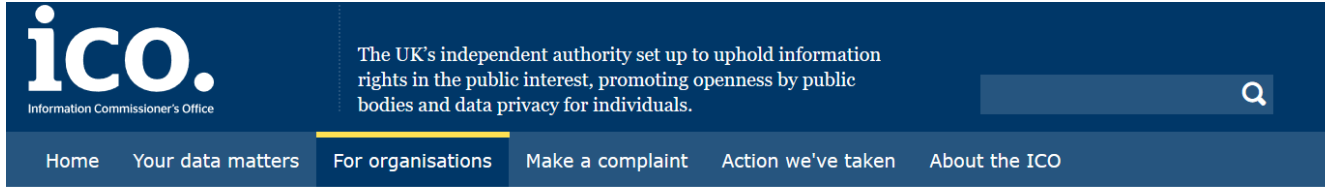
We will assess whether a monitoring body is independent and has expertise in the subject matter/sector. Approved bodies will monitor compliance with the code (except for codes covering public authorities) and help ensure that the code is appropriately robust and trustworthy.

We will:

- check that codes covering UK processing include appropriate safeguards;
- set out the monitoring body accreditation criteria;
- accredit monitoring bodies;
- approve and publish codes; and
- maintain a public register of all approved UK codes.

If a code covers more than one EU country, the relevant supervisory authority will submit it to the European Data Protection Board (EDPB), who will submit their opinion on the code to the European Commission. The Commission may decide that a code is valid across all EU countries.

# Just to mention...




The header of the ICO website. On the left is the ICO logo with the text 'Information Commissioner's Office'. To the right is a navigation menu with links: 'Home', 'Your data matters', 'For organisations' (highlighted), 'Make a complaint', 'Action we've taken', and 'About the ICO'. Above the navigation menu is a search bar with a magnifying glass icon. Below the navigation menu is a descriptive text: 'The UK's independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals.'

[For organisations](#) / [Guide to the General Data Protection Regulation \(GDPR\)](#) / [Accountability and governance](#) /

## Certification



Search this document 

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[What's new](#)

[Key definitions](#)

[What is personal data?](#)

[Principles](#)

[Lawfulness, fairness and transparency](#)

[Purpose limitation](#)

[Data minimisation](#)

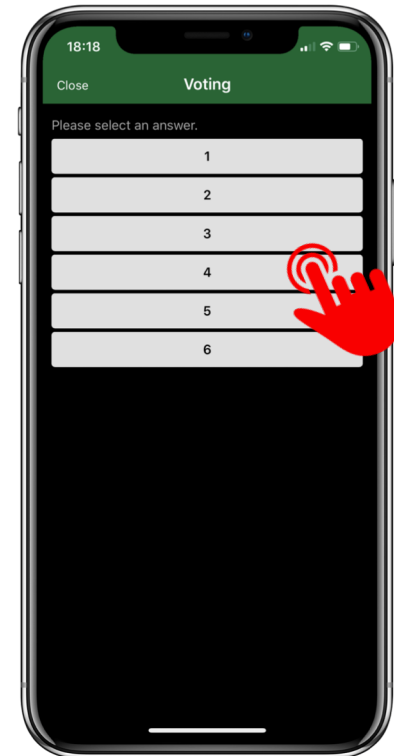
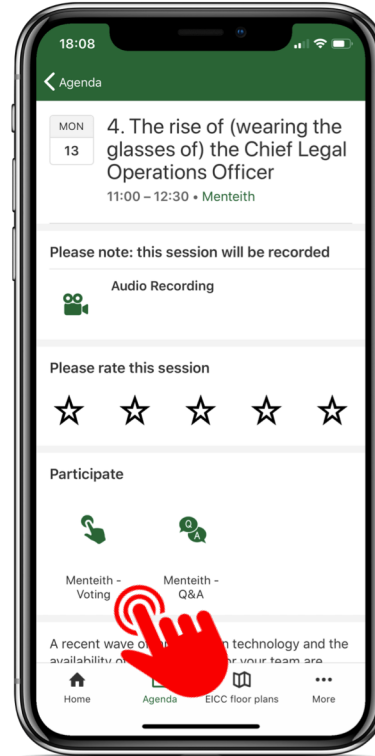
[Accuracy](#)

### At a glance

- Member states, supervisory authorities (such as the ICO), the European Data Protection Board (EDPB) and the Commission will promote certification.
- Certification schemes will be a way to comply with the GDPR and enhance your transparency.
- Certification schemes should reflect the needs of micro, small and medium sized enterprises.
- Certification schemes under GDPR will be approved by the ICO and delivered by approved third party assessors.
- Signing up to a certification scheme is voluntary. However, if there is an approved certification scheme that covers your processing activity, you may wish to consider working towards it. It can help you demonstrate compliance to the regulator, the public and in your business to business relationships.

# Voting

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# Who has established a working party, planning group to deal with Brexit?

1. I have established a working party, planning group to deal with Brexit,
2. I haven't established a working party, planning group to deal with Brexit

# The In-House Lawyer as Business Leader

## A Brexit Case Study

# Introduction

- Brexit as law
- Brexit as opportunity
- Brexit and BT
- The 3 A's
  - Assembly
  - Accountability
  - Agency

# 1. Assembly

*Build the right team and edit as needed*





## 2. Accountability

*Give ownership, communicate clear expectations and be available*



# 3. Agency

*Mind (and fill) the gaps, be flexible*

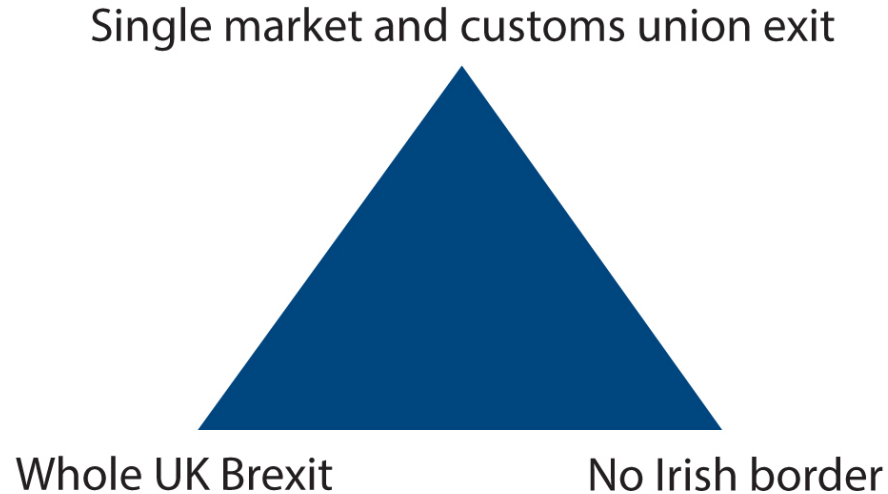


# Conclusions

- Look out for unlikely opportunities
- Seize and build on them to develop skills and networks
- Don't be afraid to leave the law behind (and come back)



## Chart 1: The Irish trilemma



Source: 'Theresa May's Irish Trilemma', John Springford, CER, March 2018



- Veterinarian and Phyto sanitarian authorities (SPS – BIP)
- Security authorities

**Customs in cooperation with**

- Market Surveillance Authorities

**Security & Safety controls  
AT THE BORDER**

- Pre-arrival declarations security controls ('bomb in the box')
- Live animals
- Products of animal origin
- Animal by-products not intended for human consumption
- Personal consignments of products of animal origin
- Plastic kitchenware from China and Hong Kong
- Fresh fruit and vegetables
- High risk food and feed of non-animal origin
- Okra, curry leaves from India
- Unauthorised GM rice in rice products from China
- Food and feed from Fukushima
- Guar gum from India
- Plant health
- Pelts of certain animal species originating from countries using leghold traps
- Invasive alien species

**Financial Controls  
At customs office of import**

- Risk based controls on the basis of customs declarations for all goods placed under a customs procedure (Union Customs Code)
- Classification of goods
- **Origin/Proof of status free circulation**
- ~~Customs duties~~
- VAT
- Excise

**Market Surveillance  
At customs office of import**

- For industrial products
- Checks based on risk assessment, suspension of release for free circulation, decision by market surveillance authorities, refusal, or authorisation to release
- Ensure that only compliant products are placed on the Union market (Regulation (EC) no 765/2008)
- 68 legal instruments harmonising EU rules on non-food products (e.g. type approval of motor vehicles, ozone layer depleting substances, EU Ecolabel, and CE Marking for safety of toys, pyrotechnic articles, explosives for civil uses, personal protective equipment, medical devices).
- Specific rules for medicinal products for human and veterinary use

**Customs Union**

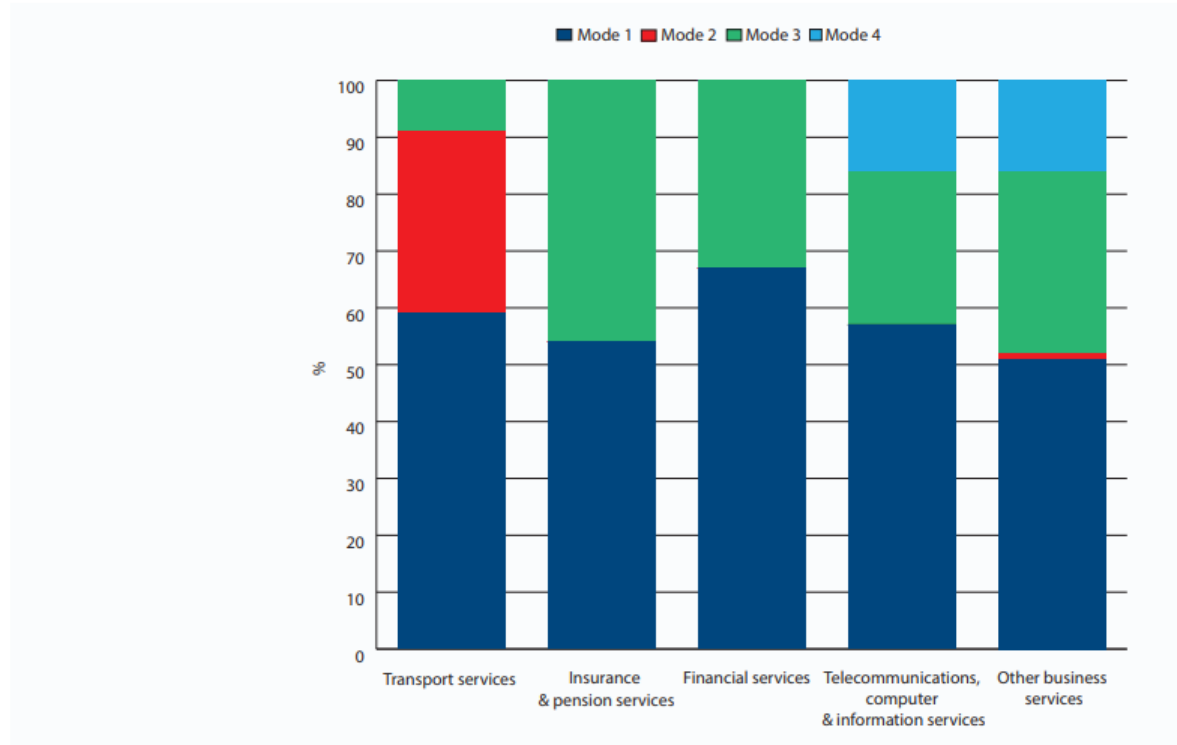
Table 1: Relative liberalisation of services supply by mode under single market and FTA provisions						
	Cross-border supply of service (mode 1)		Commercial presence (mode 3)		Temporary movement of natural persons (mode 4)	
	Single Market	FTA	Single Market	FTA	Single Market	FTA
Banking and other financial services (excluding insurance)	Green	Red	Green	Amber	Green	Red
Insurance services	Green	Red	Green	Amber	Green	Red
Legal services	Green	Red	Green	Amber	Green	Red
Accounting and book-keeping services (excluding auditing)	Green	Amber	Green	Green	Green	Red

*Red: constrained Amber: notable constraints Green: few constraints*

Source: Brexit and services: 'How deep can the UK-EU relationship go?', Sam Lowe, Centre for European Reform, December 2018

Chart 2:  
Percentage of  
UK services  
supplied to the  
EU by mode

Source:  
Author's  
calculations,  
ONS Pink Book,  
Eurostat (Foreign  
Affiliates Trade  
Statistics), 2015.

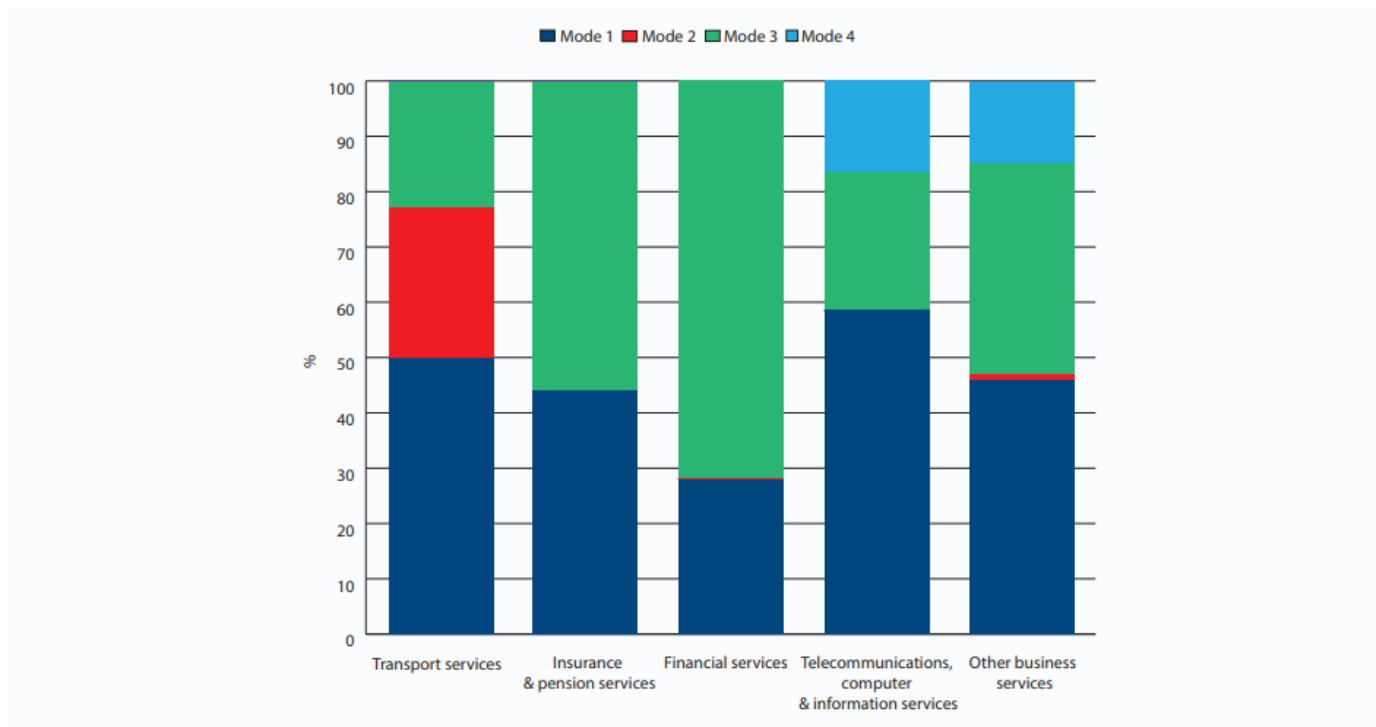


Source: 'Brexit and services: How deep can the UK-EU relationship go?', Sam Lowe, Centre for European Reform, December 2018



Chart 3:  
Percentage of  
UK services  
supplied to  
the rest of the  
world by mode

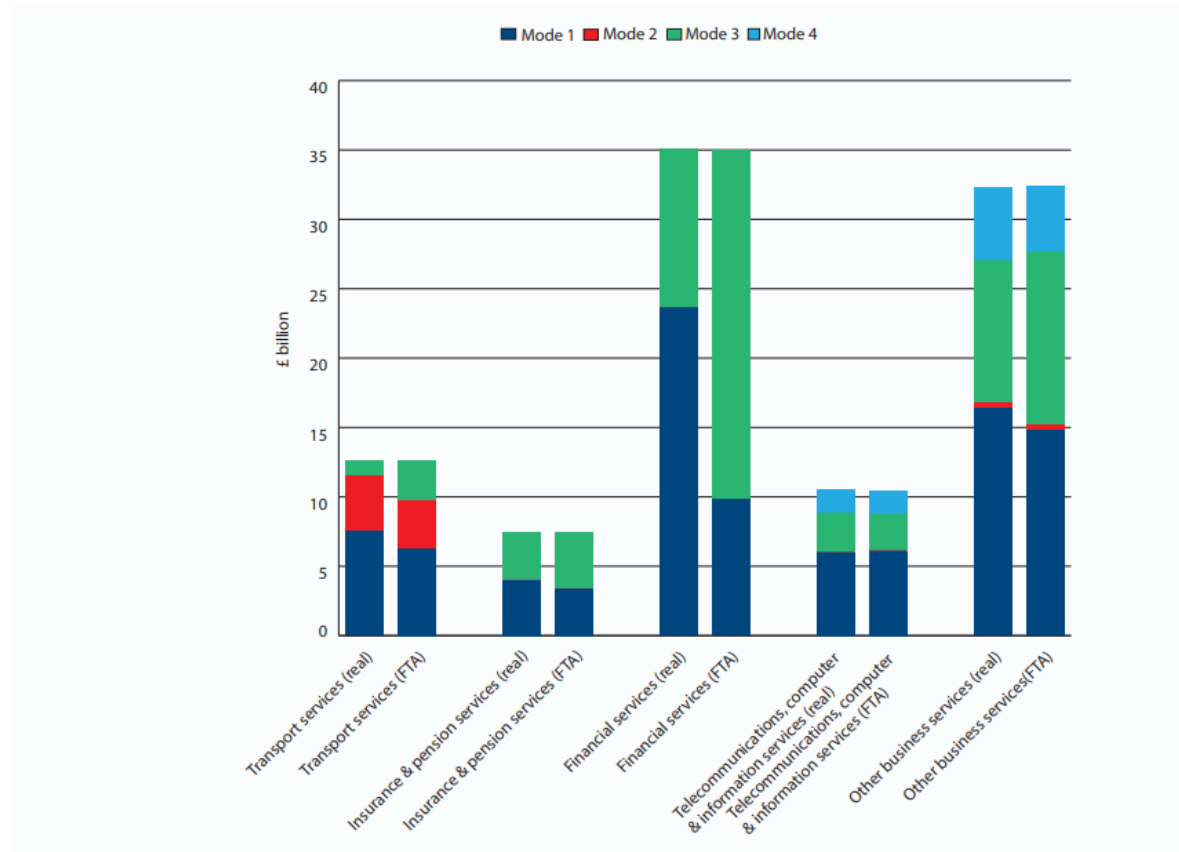
Source:  
Author's  
calculations,  
ONS Pink Book,  
Eurostat (Foreign  
Affiliates Trade  
Statistics), 2015.



Source: 'Brexit and services: How deep can the UK-EU relationship go?', Sam Lowe, Centre for European Reform, December 2018

**Chart 5:**  
**Estimated value of UK services supplied to the EU by mode under an FTA**

*Source:*  
 Author's calculations, ONS Pink Book, Eurostat (Foreign Affiliates Trade Statistics), 2015.



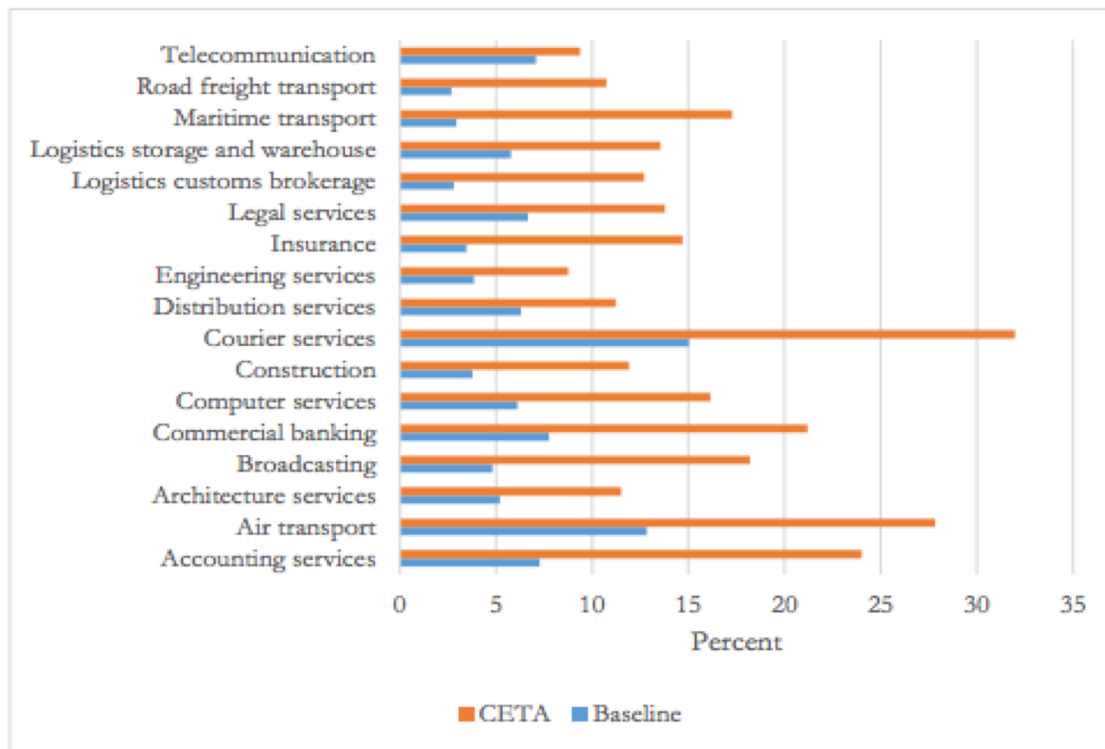
Source: 'Brexit and services: How deep can the UK-EU relationship go?', Sam Lowe, Centre for European Reform, December 2018

Table 2: Estimated impact on UK services exports to EU (mode 1, 2 and 4) under an FTA					
	Transport services	Insurance & pension services	Financial services	Telecommunication, computer & information services	Other business services
Total UK exports to the EU (£bn, 2015)	11.5	4.0	23.6	7.6	22.2
Total UK exports to the EU under an FTA (£bn, 2015)	9.7	3.3	9.8	7.9	20.0
Total change (£bn, 2015)	-1.8	-0.7	-13.8	0.2	-2.2
Percentage change	-15%	-19%	-59%	3%	-10%

Source: Author's calculations, ONS Pink Book.

Source: 'Brexit and services: How deep can the UK-EU relationship go?', Sam Lowe, Centre for European Reform, December 2018

Figure 6: AVEs facing Northern Ireland exporters, baseline and CETA scenario.



Source: EU Exit and Impacts on Northern Ireland's Services Trade, Evidence from Services Trade Restrictiveness Indices, Ben Shepherd, Developing Trade Consultants, 2019

Table 3: Commitments made by the EU/UK to Japan re: the movement of natural persons

	EU baseline commitment	UK commitment
<b>Business visitors for establishment purposes</b>	Able to work in an EU country for 90 days in any six month period	Able to work in the UK for 90 days in any 12 month period
<b>Intra-corporate transferees</b>	Able to work in an EU country for up to three years, with the possibility of extension	Unbound by EU commitment
<b>Contractual services provider</b>	Able to work in the EU for up to 12 months in a given 24 month period (subject to possible discretionary extension)	Able to work in the UK for a maximum of six months in any 12 month period
<b>Independent professional</b>	Able to work in the EU for up to 12 months in a given 24 month period (subject to possible discretionary extension)	Able to work in the UK for a maximum of six months in any 12 month period

Source: Source: Author's summation, *Agreement between the European Union and Japan for an economic partnership*

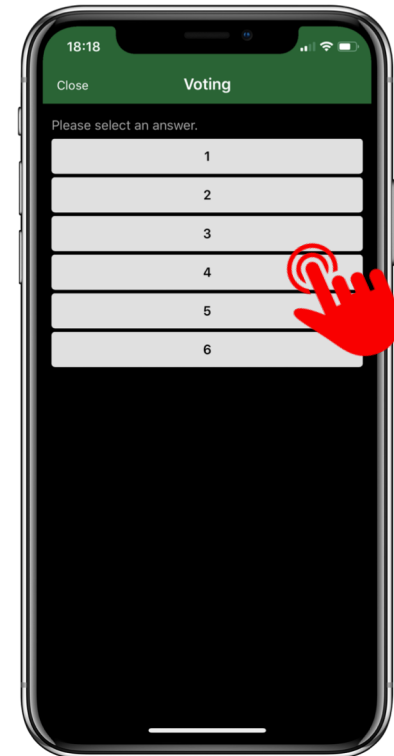
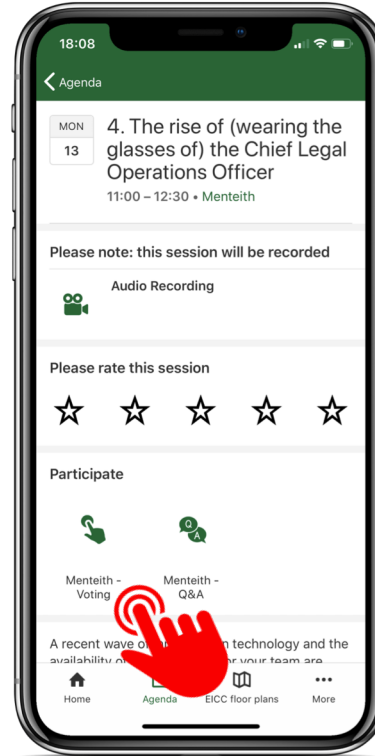
# PANEL DISCUSSION





# Voting

- ▶ Tap on the voting button from the session you are attending to vote
- ▶ Tap on the number corresponding to your choice





# Who still believes that the UK will exit the EU?

1. I still believe the UK will exit the EU
2. I don't believe the UK will exit the EU