

## 6. Internationales Symposium Restrukturierung Jahreskonferenz 2017



### **Brexit – Consequences for corporate restructuring in Europe**

Ben Trask



## **Brexit – Consequences for corporate restructuring in Europe**

Scheme of arrangement as a suitable instrument in the future?



# Agenda

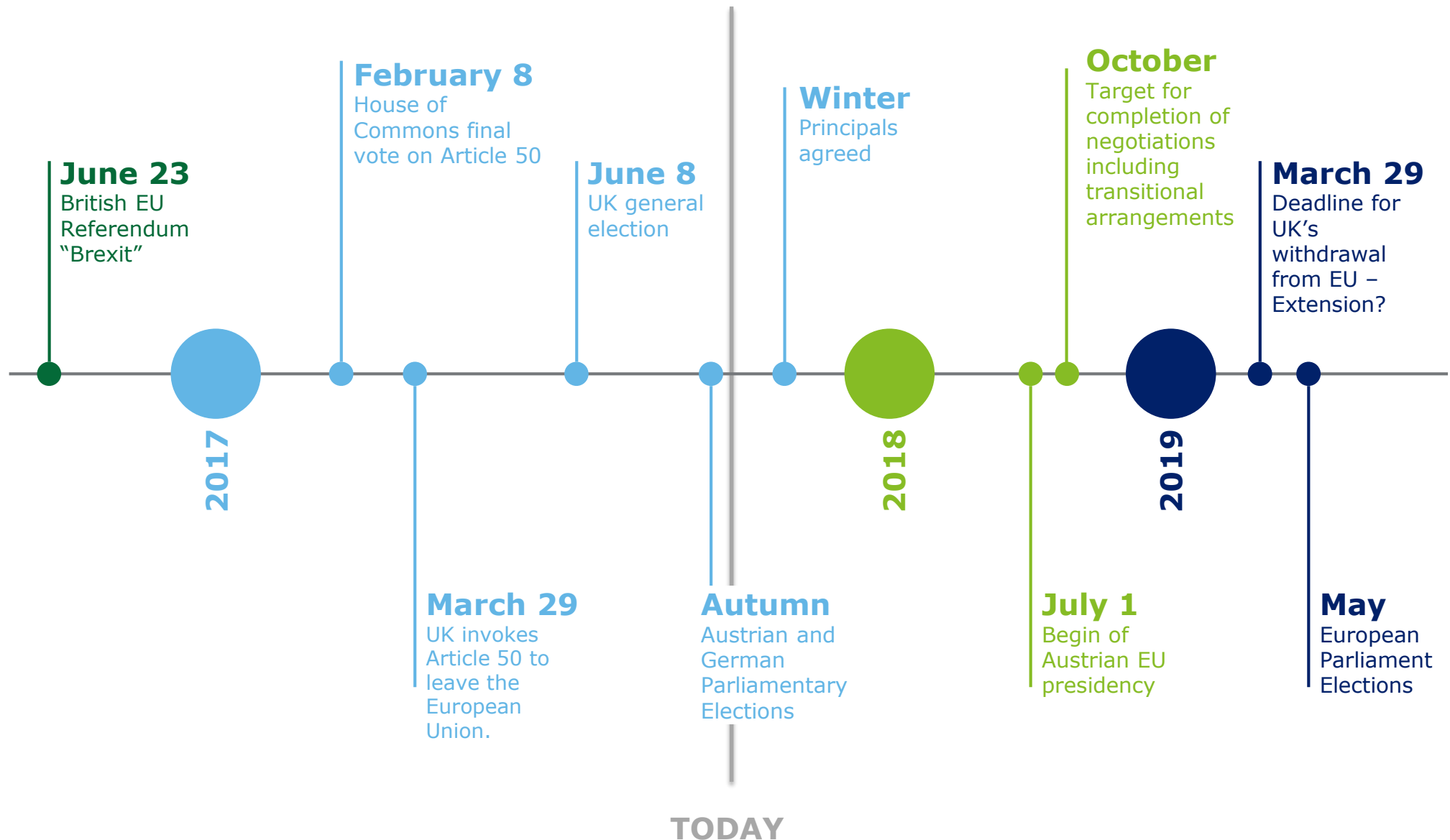
- Brexit - Current state of play
- Potential post Brexit outcome scenarios
- UK restructuring
- The Scheme of arrangement – still suitable for the future ?
- Brexit impact on international restructuring
- EU reactions and recent steps



# **Brexit - Current state of play**

# Current state of play

## Brexit Process – Where do we currently stand?



# Current state of play

## How might Brexit impact Austria

### United Kingdom



124 Austrian companies operate British subsidiaries in the United Kingdom



> 17,000 employees



> €5.0bn revenues



€2.7bn of imports from the UK to Austria



Source: Esri, DeLorme Publishing Company, Inc.  
Projection: World Gall Stereographic

### Austria



176 companies in Austria are subsidiaries of British parents.



> 16,500 employees



> €3.5bn revenues



€4.1bn of exports from Austria to UK

# Current state of play

## Important trading partners

### Development balance of trade

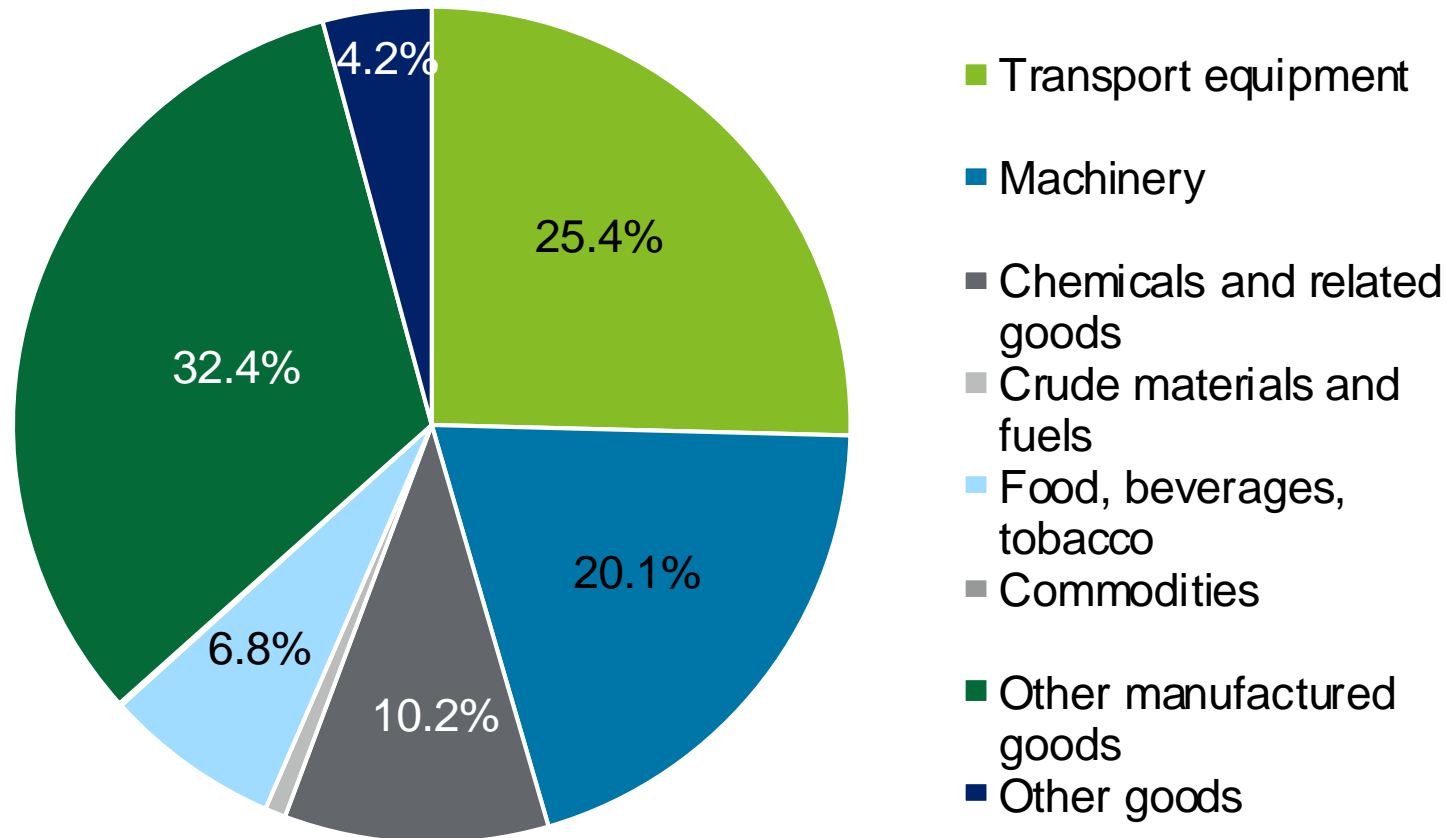


Source: WKO

# Current state of play

## Austrian physical exports to the UK

### Austrian exports to UK by product group

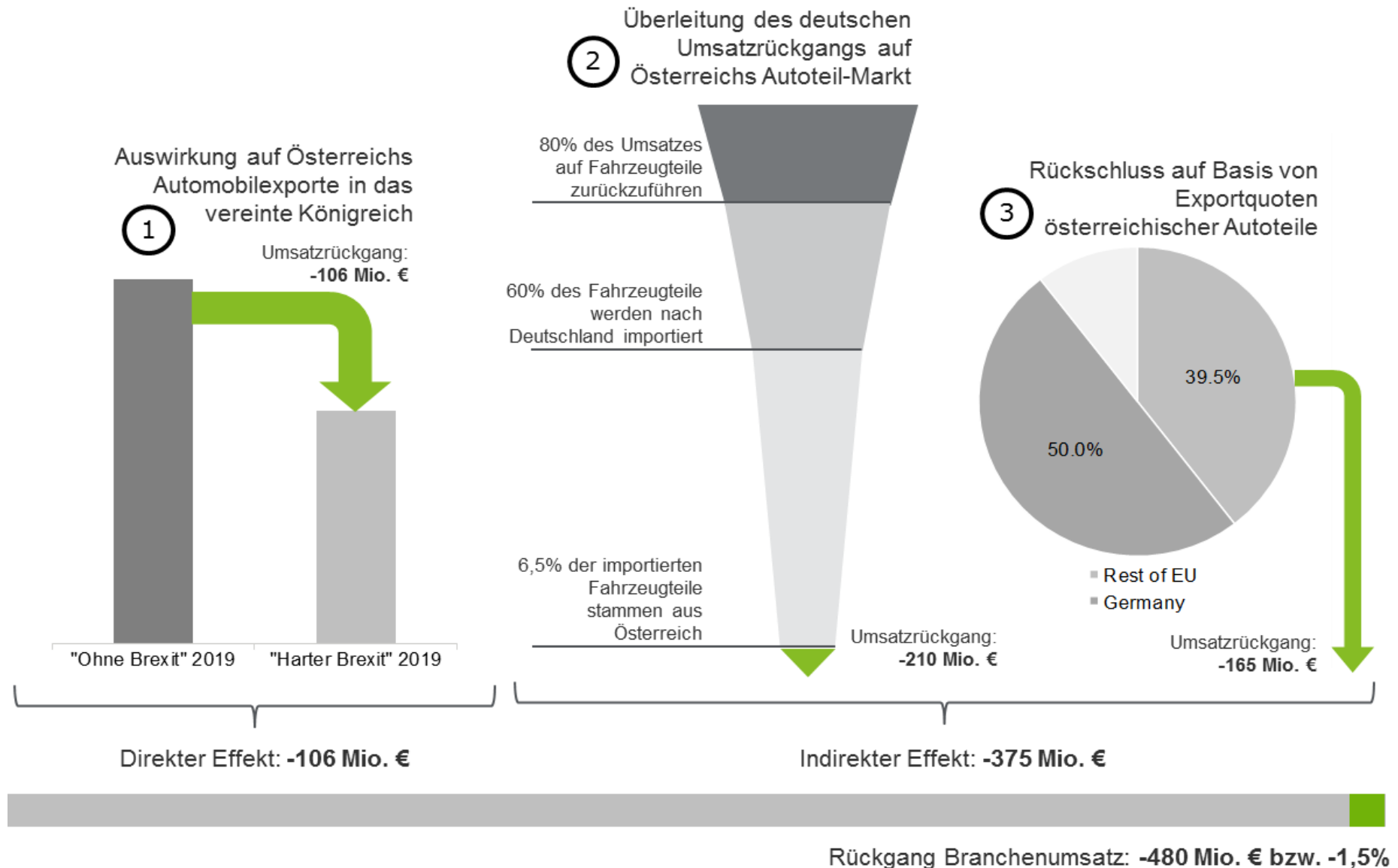


Source: WKO, Eurostat



# Current state of play

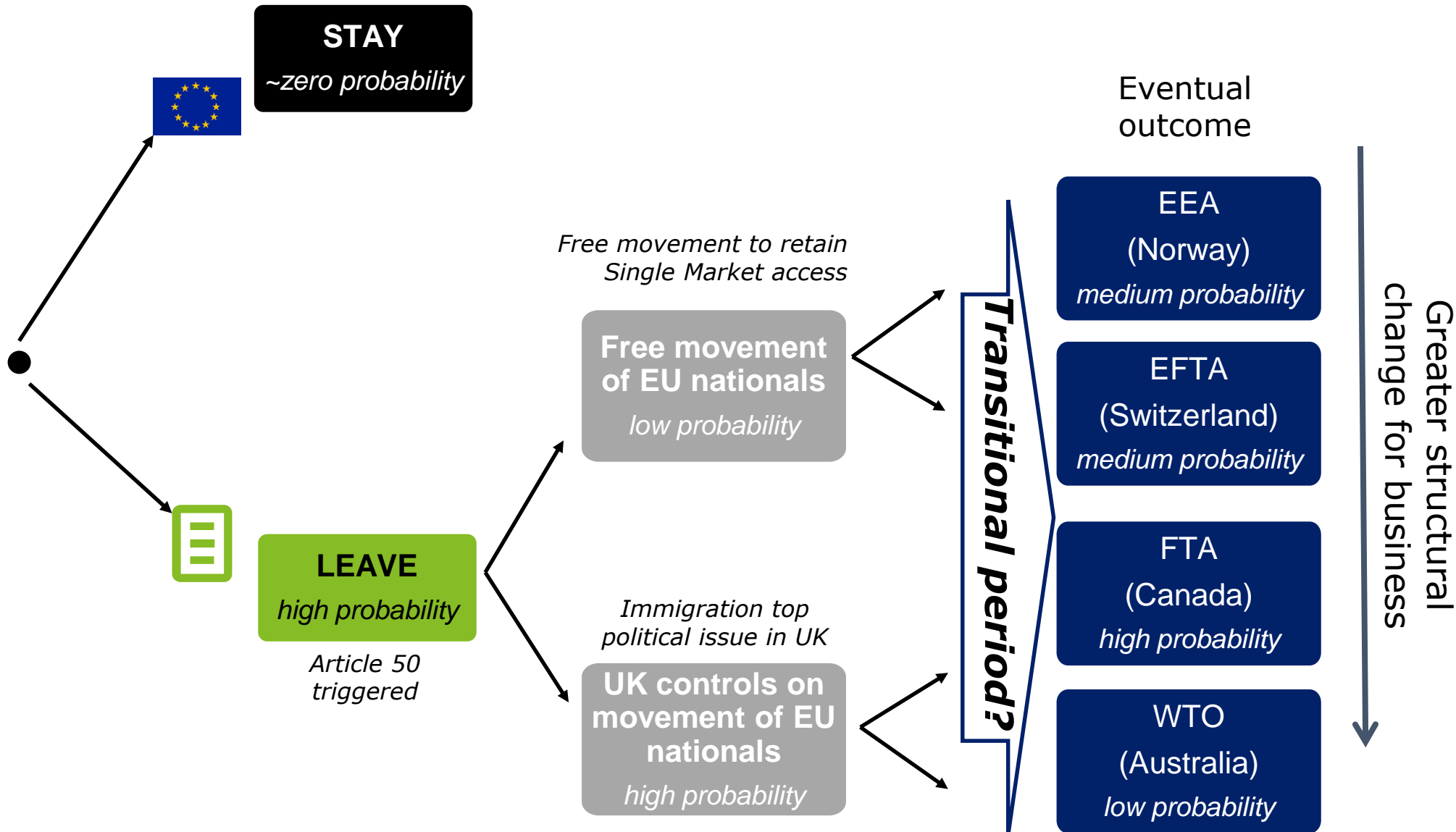
## Impact on the Auto industry



# Potential post Brexit outcome scenarios

# Potential post Brexit outcome scenarios

There are currently five macro outcomes towards which the UK Government can push



# UK Restructuring

# UK Restructuring

The UK is currently the European, if not global, hub for cross border and complex restructuring

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## ***UK currently center of global restructuring industry – why?***

- History – commonwealth / common law
- Language – everything is in English
- Predictable legal system - Commercial, experienced and pragmatic judges
- Effective statutory and common law framework for restructuring – the Scheme
- Availability of professionals – greater concentration of lawyers and accountants in the square mile than any other place on earth (good or bad? – discuss!)
- Location of financiers – (currently) financial capital of Europe
- Membership of the EU – automatic recognition of UK judgements across EU

**Brexit  
Impact**

None

Low

Medium

High



# **The Scheme of Arrangement**

# The Scheme of Arrangement

## What is a Scheme?

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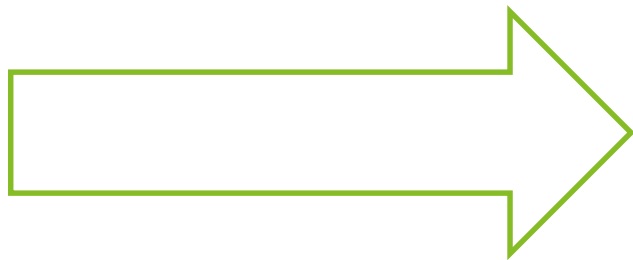
- Arrangement / compromise between a company and its members or creditors (or any class of them).
- Very flexible tool – all commercial terms are determined and agreed by the parties in the Scheme docs
- **Not** an insolvency process => No moratorium
- Very well established - been on statutes since 1800s. Currently Part 26, Companies Act 2006
- Many other commonwealth countries (and former) have similar or the same mechanism available
- Scheme approved by a majority of creditors in number representing 75% in value (of each class)
- Sanctioned by the court at a formal court hearing (after hearing to convene meetings)
- Binding on all creditors (whether / not they vote in favor of it)
- Quick process – 5-10 weeks between restructuring terms being agreed and Scheme becoming effective

# The Scheme of arrangement

## Still suitable in the future?

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- Uncertainty over Brexit (law enforcement & applicable law)
- UK restructuring facing increased competition
- Changing landscape of fiscal policy - quantitative easing & low interest rates
- UK has been at the forefront of encouraging improving standards and regulations
- Moratorium, cram-down & more effective minority creditor protection in work/ under consideration
- A brand new restructuring process replacing the scheme of arrangement?



Schemes: very useful tool in a restructuring professional's armory, but not a perfect solution and not always the right solution...  
The UK Scheme will likely be around in one form or another in another 100 years time

# **Brexit impact on international restructuring**

# Brexit impact on international restructuring

Implications for existing transactions & potential impact of future legislative changes

- No impact on the law
- Existing EU law continues to apply
- Separate insolvency regimes in each EU Member State
- EU Regulation on insolvency proceedings  
EC1346/2000 - EU-wide effect on cross border
- COMI
- Forum shopping





# EU continental reactions and recent steps

A number of other EU countries are looking to implement their own procedures similar to the UK Scheme

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## ❖ Austria

- Current status: Law on Reorganizations inflexible, time consuming, difficult to utilize in practice. Proceedings take place under bankruptcy provisions (AIA)
- Purpose: Modernization by furthering efficiency. Avoiding insolvency while going concern is at risk. Enhancing depth and liquidity of Austrian capital markets. Attracting creditors to lend, companies to restructure
- Reference to the UK Scheme of Arrangement
- Legislative agenda for 2017: New court-approved out-of-court restructuring solution
- Austrian Ministry of Justice: The new Law is currently under consideration by a working group within the Austrian Ministry of Justice)

## ❖ Netherlands: New draft bill January 2017

## ❖ Spain



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## Short-Profile

Ben Trask joined Deloitte Austria in 2014 to help develop the FAS practice & grow the restructuring business across the CEE region. Ben has 16 years restructuring, insolvency & turnaround experience, leading a number of successful national & international restructuring engagements in that time. He joined Deloitte UK in 2007 having previously worked for KPMG in London and Bermuda.

## Highlights of recent experience

- Financial restructuring of a CEE DIY retailer (EUR1bn debt)
- Financial restructuring of Dubai World (EUR50bn)
- Operational improvement of a FTSE listed services business
- Crisis management and stabilization of a FTSE listed property manager (EUR0.5bn debt)
- Managed wind-down of the UK's largest care-home operator
- Advising European financial institution on strategic options, wind-down strategy & operations (€5bn CEE loan portfolio)

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