

A&L Goodbody

# Brexit: Lessons for the Venture Capital Sector

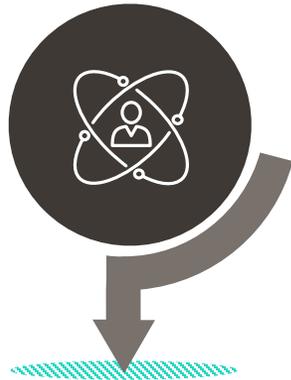
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Dr Vincent Power  
vpower@algoodbody.com

InterTrade, 7 March 2019

# Today's Agenda

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**01**

Brexit Lessons for  
VC Negotiators



**02**

What is Next?

# INTRODUCTION

- Businesses have to plan

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- Businesses have to plan
- Brexit will be uncertain

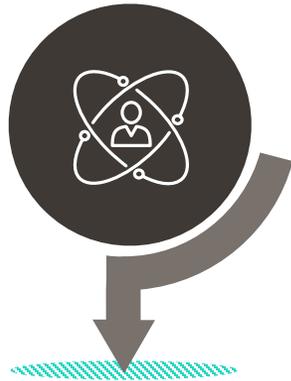
## INTRODUCTION

- Businesses have to plan
- Brexit will be uncertain
- So how do I plan?

## INTRODUCTION

- Businesses have to plan
- Brexit will be uncertain
- So how do I plan?
- Planning for Brexit is tougher than for the euro/GDPR etc because we don't *yet* know what we are planning for...and we will not know even in 22 days' time

# Today's Agenda



**01**

Brexit Lessons for  
VC Negotiators

## First – and Main - Topic

Everyone in Venture Capital  
is negotiating continually  
so what are the lessons you can learn from  
Brexit in terms of negotiating skills?

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# 1. Field Experienced Negotiators

# Field Experienced Negotiators

## Jean Claude Juncker

- 1984 : Minister for Work and Employment in Luxembourg
- 1985 : President of the Council of Ministers (Employment)
- 1989-2009 : Minister for Finance
- 1995-2013 : Prime Minister of Luxembourg
- 2014- : President of the European Commission

# Field Experienced Negotiators

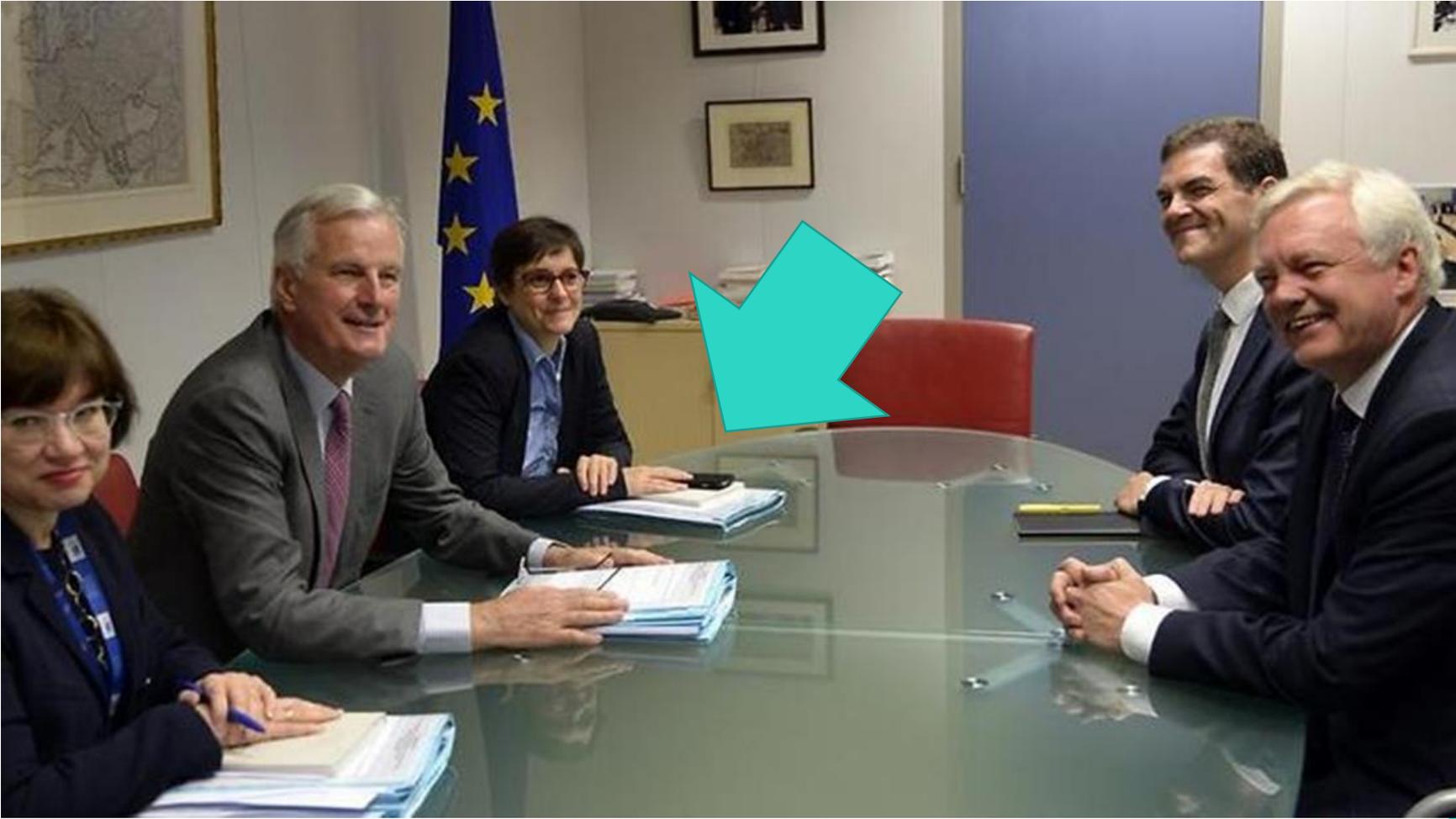
## Michel Barnier's Ministerial CV before the Brexit Negotiations

- Minister for the Environment
- Minister for European Affairs
- Minister of Agriculture and Fisheries
- European Commissioner for Regional Policy
- European Commissioner for Internal Market and Service

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## 2. Be Prepared

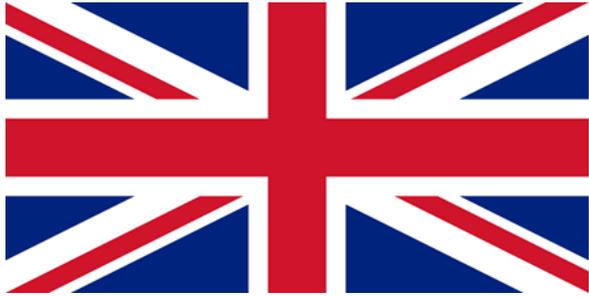




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# 3. Don't Assume the Outcome

# Who is Likely to Win? Taking Stock



1 Side

1 Institution

1 Language

Experienced in Leaving Negotiations

# Who is Likely to Win? Taking Stock



1 Side  
1 Institution  
1 Language  
Experienced in Leaving Negotiations



27 Sides & Several Factions  
Several Institutions  
24 Official Languages  
No Member State has ever left  
Enormous Diversity

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# 4. Get the Timing Right

# Timing

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- 2016-2017 Timeline
- Summer Time Migration Crisis
- Immediately after a General Election
- A Thursday
- Late June

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# 5. Have a Clear Vision of what you Want



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# 6. Second Mover Advantage

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The early worm is often  
eaten by the bird....

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# 7. Your Word is Your Bond: Be Consistent

# ■ Remain Consistent throughout the Negotiations

- UK has been giddy
- UK has sought to vary deals
- Remain true to your word!



- Remain Consistent throughout the Negotiations
- 4 December 2017
- 8 December 2017
- March 2018
- November 2018
- 29 January 2019

- Clichés only get you so far....
- “Brexit means Brexit”
- “Strong and Stable”
- “Red, White and Blue Brexit”
- “Deeper Partnership”
- “Regulatory Alignment”
- Fudges work occasionally but not as a mainstay strategy
- Etc etc

- Remain Consistent (where possible) throughout the Negotiations



- July 2016 – October 2016 Tory Party Conference – March 2017 Article 50 triggering – September 2017 Florence – December 2017 Brussels 1 and 2 – November 2018 Draft Withdrawal Agreement/Nebulous Moments – 29 January 2019 – Last Week – Next Week?

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# 8. Remember you are being Watched

- You are always being watched and find friends



- You are always being watched



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# 9. Lock Down Your Valuables: Cover all Angles

# Once bitten, twice shy

## ARTICLE 8

### Access to networks, information systems and databases

Unless otherwise provided in this Agreement, at the end of the transition period the United Kingdom shall cease to be entitled to access any network, any information system and any database established on the basis of Union law. The United Kingdom shall take appropriate measures to ensure that it does not access a network, information system or database which it is no longer entitled to access.

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# 10. Keep Your Big Guns in Reserve

- Keep the Big Guns in Reserve



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# 11. Compliment your Opponent where it is Tactically Useful

- Compliment your Opponent where it is Tactically Useful



Mrs May is a tough negotiator

- Compliment your Opponent where it is Tactically Useful



I hope the Daily Mail picks this up...I don't want any more changes

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# 12. Be Friendly where Possible





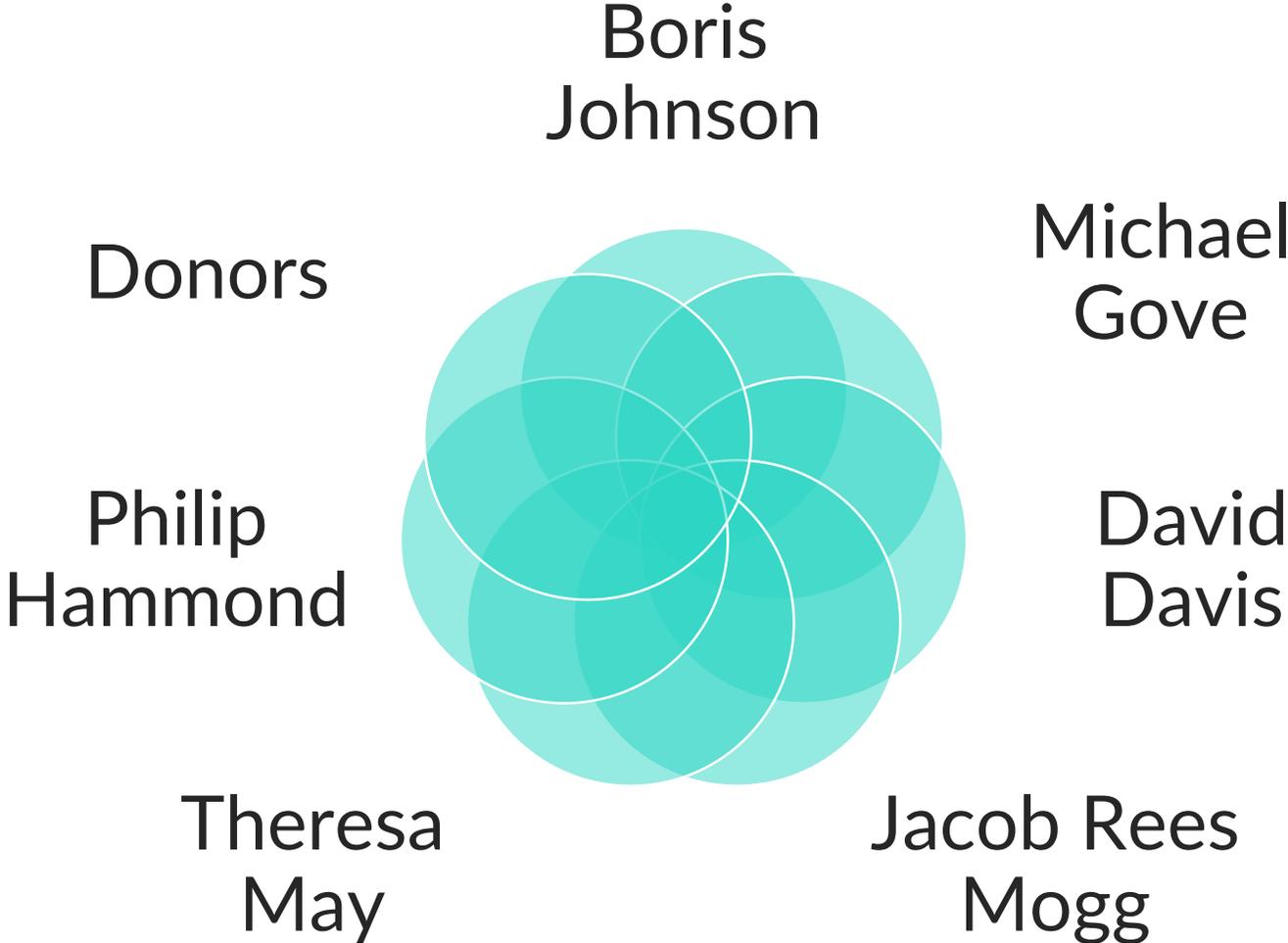
- Do Not Insult Someone whom you may Need One Day
- **David Davis**
  - > refers to Guy Verhofstadt stating "Get thee behind me, Satan!"
  - > calls Michel Barnier "silly" over his stance on Brexit negotiations
- **Nigel Farage** warned Jean-Claude Juncker that his “bloody rude” behaviour and attempt to “bully the Brits” could force Britain to walk away from Brexit talks within months

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# 13. Get Your Team Aligned

# What can we learn as lawyers from the Brexit Negotiations?

Get your team aligned



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# 14. Plot and Re-Plot where everyone is on the Negotiation

Know not only where your enemies are but also where your “side” is on every issue



Know not only where your enemies are but also where your “side” is on every issue



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**15. Read the Small Print (notice the capital letters!)**

# What can we learn as lawyers from the Brexit Negotiations?

- Pay Attention to the Drafting – notice the “Internal Market” and the “internal market”

45. The United Kingdom respects Ireland's ongoing membership of the European Union and all of the corresponding rights and obligations that entails, in particular Ireland's place in the Internal Market and the Customs Union. The United Kingdom also recalls its commitment to preserving the integrity of its internal market and Northern Ireland's place within it, as the United Kingdom leaves the European Union's Internal Market and Customs Union.

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# 16. Take Advice



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# 17. There must be Enough in the Outcome for Everyone



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# 18. Watch out for the Small Signs

# What can We Learn as Lawyers from the Brexit Negotiations?

■ Watch the Other Side and *understand* the other side – what do they need and what are they saying?



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**19. Understand the bonds that link  
some of your interests on the  
other side of the table....**

# Armistice Day in Paris on 11 November 2018



# Armistice Day in Paris on 11 November 2018

Notice President Macron's Right Hand



# Armistice Day in Paris on 11 November 2018

“To think...we’re the married couple!”



Understand the relationships on the other side of the table



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**20. Your enemy's friends are your enemies but your enemy's enemies are your friends?**

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# 21. Control even your own side of the table

# French and German Reaction to Brexit



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## **22. Understand the Other Side of the Table – You have to Win Them over, not Yourselfes**

# Today's Agenda



**02**

What is Next?

# Brexit will be Different!

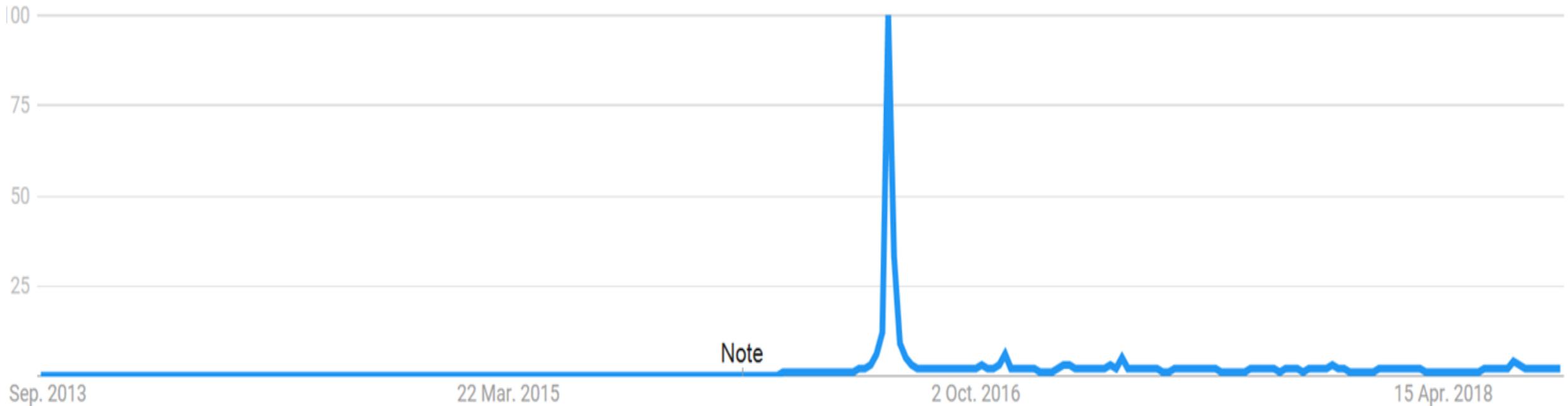
- “Brexit” will be a different world
- Anyone under 50 years old has no idea of the EU without the UK
- Many “Remainers” are saying that little will change
- But “Brexiters” want change
- Even if the UK copies many EU laws into UK law, there will still be differences (e.g., due to time lags and the absence of the Court of Justice of the European Union in the UK context)
- Post-Brexit UK copying EU law would be like non-Economic and Monetary Union States operating the euro but not being part of EMU
- EU law will be “foreign law” in the UK post-Brexit with the same standing as any other foreign law

# Protectionism in Britain?

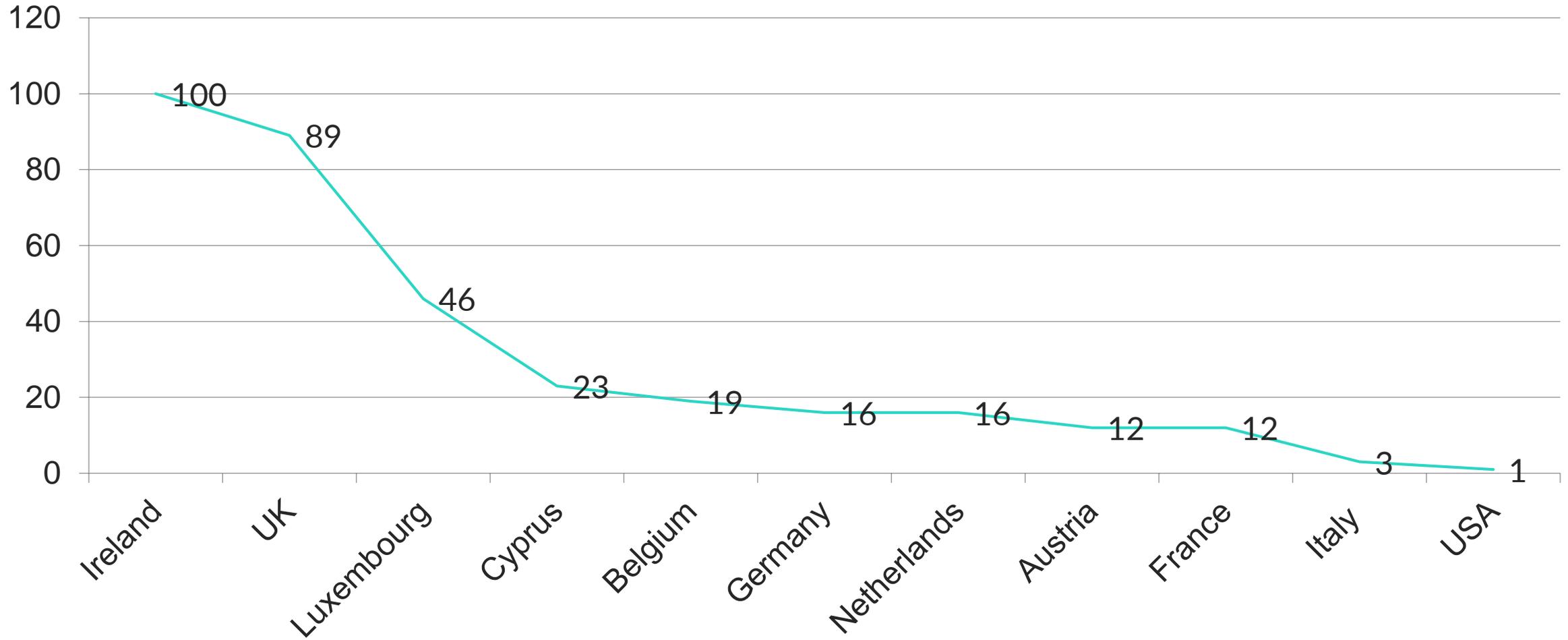
- While the UK has not been a protectionist economy in recent years, this could change
- Is Brexit not a “Britain First” philosophy?
- In the absence of EU public procurement procedures, could UK companies benefit from a protectionist approach?
- Are there already signs of this occurring?

# Yesterday's Story?

- Google Searches in the UK about Brexit: 5 Sep 2013 – 4 Sep 2018



# Fascination with Brexit over the last Year: Is Ireland worrying more than the UK?



- When will the uncertainty and volatility end? It won't, it will ease but not end
- Uncertainty, volatility and unpredictability are the only certainties
- The EU has always been uncertain – from 25 March 1957 until now...just think of what it was like on the day the six Member States signed the EEC Treaty...

# Predictions

1. Spectrum Brexit
2. Probably a skinny and incomplete deal
3. Deal very late in the process – don't rule out last minute and injury-time negotiations
4. Perpetual Negotiations
5. UK Attitudes towards the EU will Harden Post-Brexit
6. EU Needs a “Hard Border” more than the UK
7. Other Non-Brexit Issues will Emerge in the UK

- Brexit is extremely important
- But there is a risk that businesses can be too distracted by the day-to-day developments in Brexit
- Need to see the “Big Picture” and to “Concentrate on the Day Job”
- Ignore the “millimetre” negotiations and concentrate on the “milestones”

# May's Amazing Maze

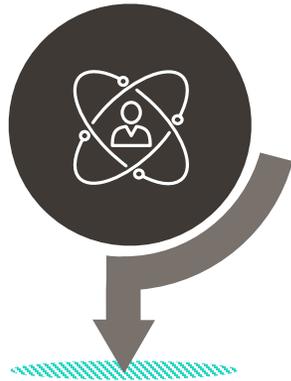
# Options

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- 1 An agreed exit on time with bells and whistles
- 2 An agreed exit after an extension
- 3 No deal exit but cushioned on all sides to some extent
- 4 An extension and a second referendum
- 5 No Deal Crash Out

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# Judge Konrad Schiemann



# IRELAND POST-BREXIT

- IRELAND v UK GDP Per Capita (US\$)

Year	Ireland	UK	UK v Ireland: Difference in Percentage Terms
1973	2427.17	3426.28	+41%
2017			

# IRELAND POST-BREXIT

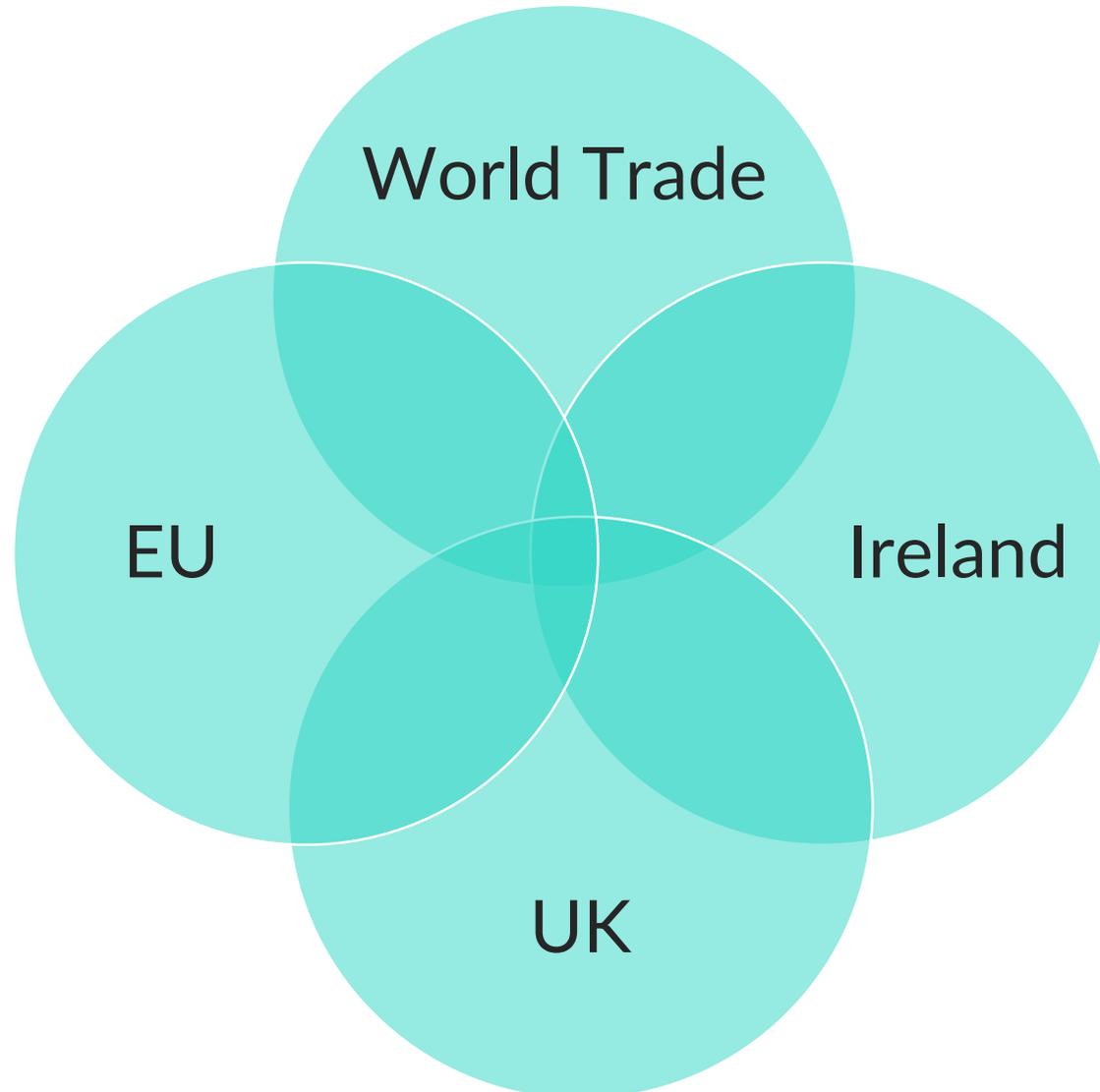
- IRELAND v UK GDP Per Capita (US\$)

Year	Ireland	UK	UK v Ireland: Difference in Percentage Terms
1973	2427.17	3426.28	+41%
2017	69,330.69	39,720.44	-39%

# FINAL WORD

- **THE FUTURE**

# FINAL WORD



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