



SHEPHERD+ WEDDERBURN

Energy Law Group – Fifth Energy Event, Warsaw, September 2017

# Implications of Brexit for the Internal Energy Market

## Thoughts from a Legal Perspective



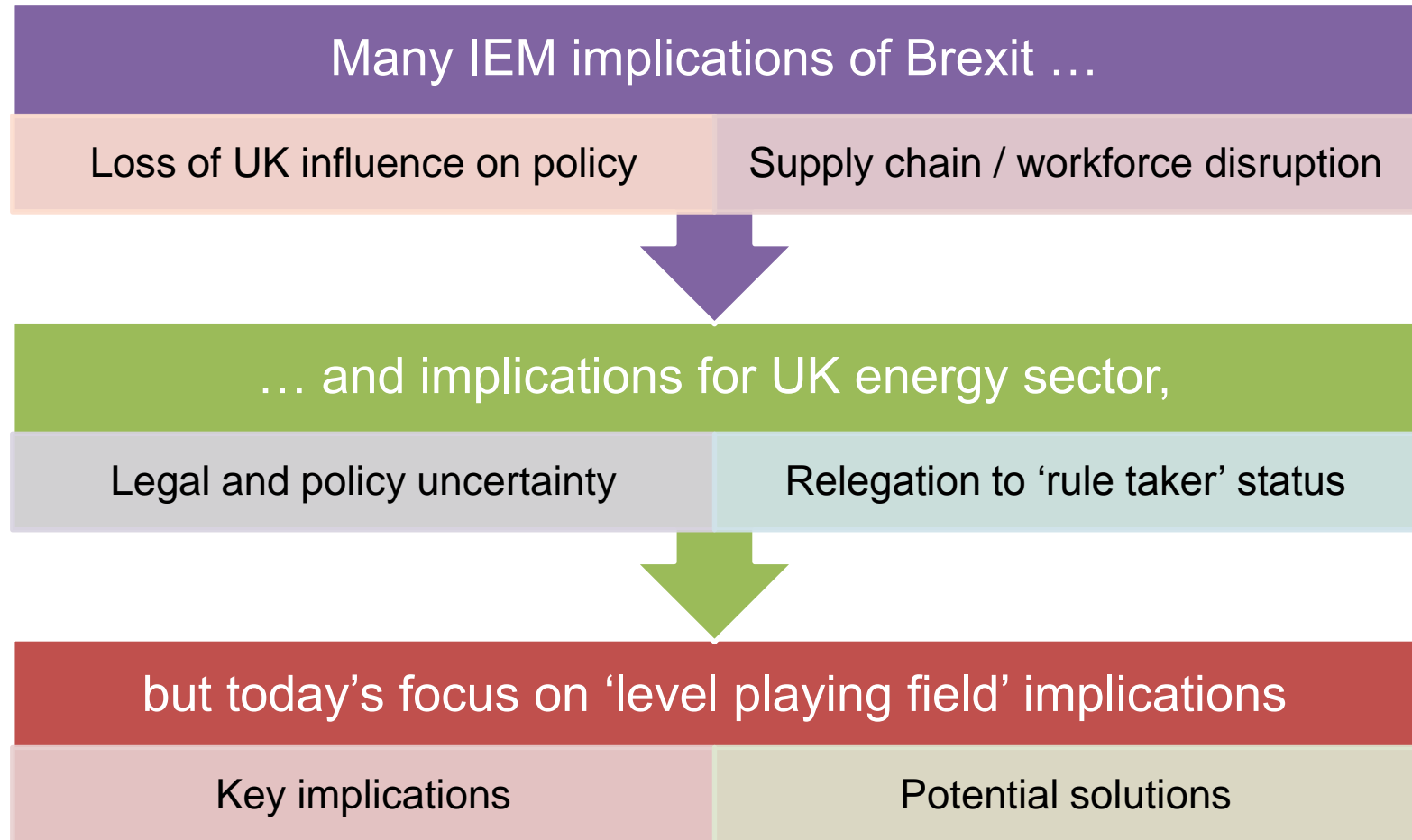
Gordon Downie  
22 September 2017

## Brexit - overview

**What could possibly go wrong?!**



## IEM implications - overview



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## Level playing field implications - overview

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Market  
Principles

Market  
Rules

State Aid

Market  
Integrity

Climate  
Change

# Market principles

Internal Market Directives

Scope for policy divergence

Scope for institutional divergence



# Market rules

Network codes

Market coupling

SEM (Ireland)



# State Aid

Key role re capacity mechanisms etc

Loss of DG Comp oversight

Future aid to UK sector



# Market Integrity

REMIT and MAR

Loss of ACER oversight

Loss of transaction reporting data





# Environment

RES targets

RES support

EU-ETS



## Solutions – the challenge



*“My policy on cake is pro having it and pro eating it.”*

*“Ein Kompromiß, ist die Kunst, einen Kuchen so zu teilen, daß jeder meint, er habe das größte Stück bekommen”*

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## Third country participation in IEM?

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**“Full participation in the internal market should therefore be possible for participants from all Third Countries which agree to the rules and principles of the Internal Electricity Market, including neutral judicial oversight”**

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## Pre-publication draft of IEM Directive (November 2016)

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### **“Article 69 - Third Country participation**

*Third countries may participate in the internal electricity market with the same rights and obligations for governments, national regulators, transmission system operators, regional operational centres, distribution system operators, market operators, generators, aggregators, consumers and other parties, provided that they have concluded agreements with the Union whereby they have adopted and are applying at least:*

*(a) the main rights and obligations set out in this [Directive] and the delegated and implementing acts adopted pursuant to it;*

*(b) the main rights and obligations set out in the [Electricity Regulation];*

*(c) the rules on energy state aid control pursuant to Article 107 to 109 TFEU;*

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## Pre-publication draft of IEM Directive (November 2016)

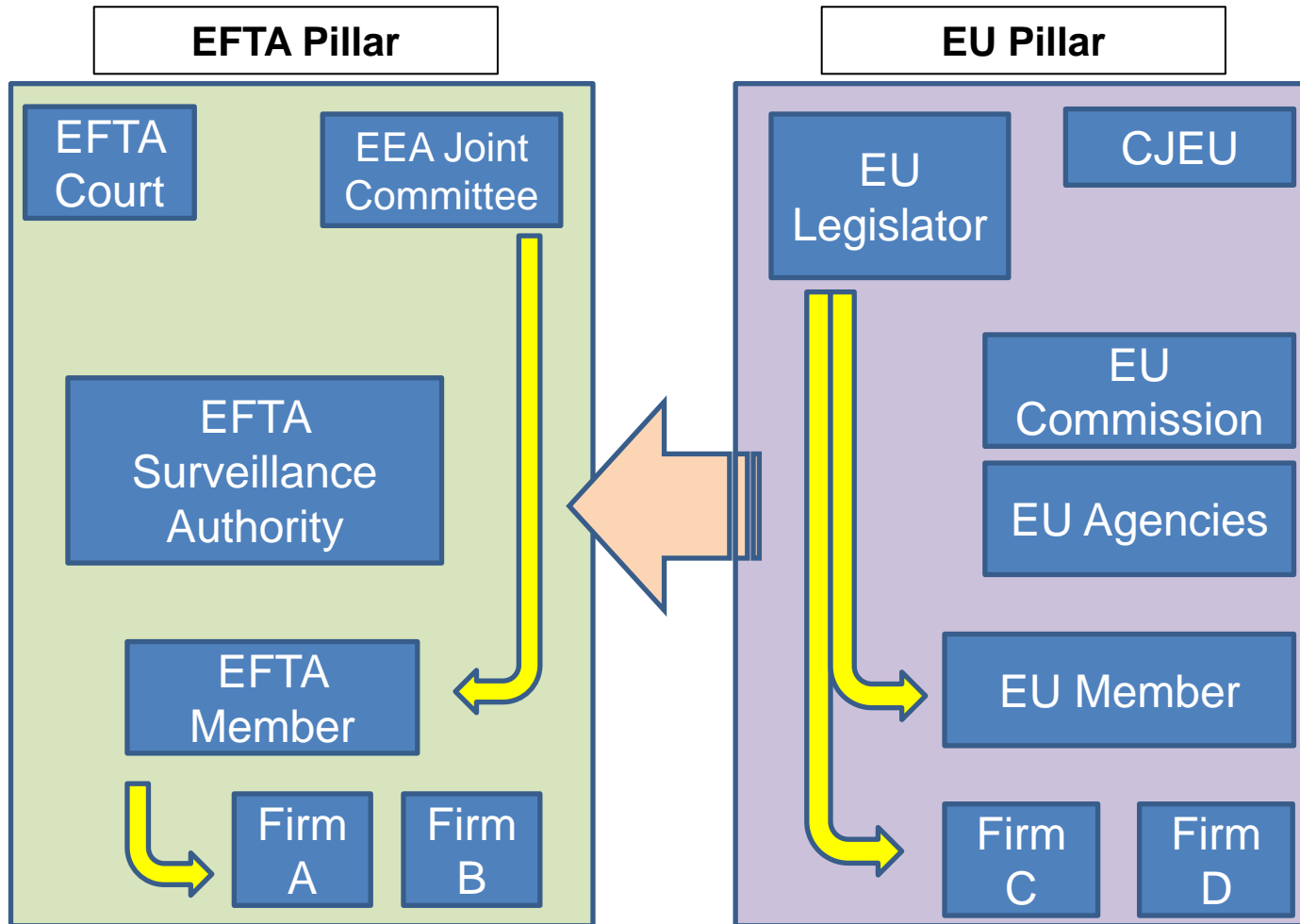
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*(d) the rules on coordinated supervision of market integrity and transparency as set out in Regulation 1227/2001 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency, including market implementing acts adopted pursuant to it.*

*(e) environmental rules with relevance for the power sector; and*

*(f) rules on administrative enforcement and judicial oversight over the internal market cooperation with the EU, conferring enforcement and judicial control of the rules of this [Directive] and the delegated and implementing acts adopted under it either to the Commission and the European Court of Justice **or to a specific non-domestic enforcement body and a neutral non-domestic court or arbitration body which is independent from the respective third country**.*

# Enforcement and oversight - the EEA model



**Thanks for  
Your Attention!**