

BRIEF COMMENT ON THE POTENTIAL IMPACT OF BREXIT FROM A FINANCIAL AND REGULATORY STANDPOINT

The single market in financial services has been at the core of the United Kingdom (UK) and European Union (EU) financial services industry for many years. The news that the UK will leave the EU will no doubt have an impact on the financial players in the UK, their cross-border activities and supervision.

The Lisbon Treaty incorporated into the Treaty on the EU a clause (Article 50) allowing for the exit of a Member State. Under such clause:

- The State which has decided to leave the EU must notify the European Council of its intention and negotiate an agreement setting out the framework for its future relationship with the EU; and
- The formal exit notification has no immediate impact on the legal arrangements between the exiting State and the EU. Its effects will come into force after at least two years, and such period may be extended by mutual agreement if additional time is required to negotiate the terms of the withdrawal.

After the Brexit decision, the UK is now likely to invoke the mechanism under Article 50 of the Treaty on the UE to terminate the UK's membership and begin negotiations with the EU on the institutional and financial provisions of the withdrawal.

However, even when they do start that process, that will not change the laws and regulations that are applicable to the financial markets and cross-border activities of UK credit institutions and investment firms in the short term. Indeed, until the UK eventually exits the EU, it will be required to continue to implement EU legislation as it will continue to be an EU Member State to all intents and purposes and retain all the rights and obligations inherent in such membership. Moreover, while Brexit will have immediate and fundamental political and economic consequences, many of the key changes to the legal regulatory environment will evolve gradually over time.

In this regard, the negotiations between the EU and the UK will need to deal with the legislation on every area affected by EU Law, including, amongst many others, on financial and regulatory matters. Special emphasis is placed on cross-border activities, solvency and supervision.

Furthermore, even though as of today there is no certainty as to the path to be followed and the outcome of the negotiations, once the UK has formally exited there may well be a desire to maintain legislation that mirrors EU requirements in order to make cross border business easier. In this regard, according to UK experts, the UK Government will also be likely to want to try and agree arrangements for mutual recognition of UK legislation or standards, including potentially agreeing something akin to the existing passport for EU banks and investment firms and financial services businesses. On the other hand, it is likely that once the UK has formally left the EU, supervision of UK-based entities will no longer remain with the European financial regulators (i.e. EBA, ECB).

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