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Issue 9: Lex et Brexit — The Cliff Edge and New Proposals for EU Intermediate Holding Companies

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"What's the model? Have your cake and eat it."

These were the handwritten notes of a Conservative Party aide captured by a sharp-eyed photographer as the aide left a meeting at the UK Department for Exiting the EU. The note also suggested that the UK will try for a "Canada plus" type arrangement and that getting special treatment for UK financial service providers would be "difficult". As a statement of government policy, this note tells us only a little more than the UK Prime Minister's famous line of "Brexit means Brexit". Conversely, European Union ("**EU**") leaders have begun to warn this week that any special deal to allow the continuation of passporting is unlikely and some may even resist granting a transitional period. In short, then, a relatively rapid move towards a "hard" Brexit seems a reasonably likely outcome of the Brexit negotiations.

In this issue of Lex et Brexit, we examine the potential "cliff edge" effect of Brexit, whereby the UK drops out of the EU without any kind of replacement arrangement. In particular, in the absence of an agreement to make existing rights under EU financial services law permanent for UK firms, we look at the potential implications of a sudden withdrawal of those rights (such as passporting) at the date of Brexit. We then explore why a transitional agreement is needed, before considering what it might look like and highlighting the potential obstacles to such an agreement.

We then examine a European Commission proposal to introduce a new requirement to establish an intermediate EU holding company (an "**EU IHC**") where two or more banking institutions established in the EU have the same ultimate parent in a third country (a "**Foreign Bank**"). The proposal mirrors an existing U.S. requirement for non-U.S. banking organizations to form U.S. IHCs. We outline the specifics of the proposal and the resulting critical structuring and regulatory considerations, before concluding that the proposal has the potential to introduce added complexity to Brexit planning.

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