

## Issue 3: Lex et Brexit — The Law and Brexit

August 5, 2016 | Client Update | 2-minute read

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August has arrived and, with it, little additional clarity on next steps in the Brexit process. Speculation remains rife about the objectives of the UK Government in the negotiations. Will it seek access to the single market, will it pursue a clean break from the EU, or will a hybrid engagement model emerge? What has become clear in recent weeks, however, is who will be leading the negotiations. David Davis, the Secretary of State for Exiting the EU, will manage the negotiations on the UK's behalf, while Michel Barnier, a former European Commissioner responsible for financial services, will act as the EU's chief negotiator.

In the third edition of Lex et Brexit, we examine the development of the Total Loss Absorbing Capacity ("TLAC") and Minimum Requirement for Own Funds and Eligible Liabilities ("MREL") standards applicable to financial institutions, the UK's proposed implementation of these standards and how Brexit might affect such implementation. We conclude that the UK's ability to influence the final EU standards is likely to diminish as it negotiates the terms of its withdrawal from the EU. In addition, while there may be some divergence in the way in which the TLAC and MREL standards will be applied in the UK and the EU, an overarching trend towards convergence may attenuate the adverse consequences that could result from parallel regimes.

We then examine the impact of Brexit on the regulation of variable pay in the UK. Although the UK will legally be able to repeal the bonus cap following Brexit (assuming the UK does not retain its membership of the European Economic Area (the "EEA")), it may not want to do so. Removing the cap would create discrepancies between the regulatory regimes of the UK and the EU, which could burden the UK's ability to pass the EU's equivalency assessment and, as a result, might impair the rights of UK financial institutions to do business in the EU.

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