

Issue 12: Lex et Brexit — Supervisory Convergence in Financial Services and Proposals Amend the EMIR Supervisory Regime

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On June 23, 2017, we passed the one year mark since the referendum on the UK's membership of the EU. Although certainty on the eventual consequences of that decision is in short supply, the UK and the EU finally began the Brexit negotiation process last week in Brussels. The unexpected result of the June general election in the UK (where the ruling Conservative Party lost its majority in the House of Commons) means that the UK negotiating team begins the Brexit process without the clear mandate that had been sought by the UK Prime Minister. It is not yet apparent how the consequent lack of political stability in the UK will affect the UK's position in the negotiations. In this issue, however, we focus on the EU side of the negotiating table in relation to financial services.

First, we look at an opinion published by the European Securities and Markets Authority ("ESMA") on supervisory convergence in the context of firms relocating from the UK following Brexit. The opinion addresses regulatory and supervisory arbitrage risks that may arise from such relocations and sets out general principles for a common supervisory approach across the remaining EU Member States. We also look at comments by senior officials from the European Central Bank ("ECB") that indicate that the ECB shares ESMA's concerns about regulatory standards in respect of UK banks moving to the EU.

We then look at a recent legislative proposal by the European Commission to amend the European Market Infrastructure Regulation. The proposed Regulation amends, inter alia, the procedures involved for the authorization of central counterparties and requirements for the recognition of third country (non-EEA) central counterparties ("CCPs"). Despite ESMA suggesting that the reforms are consistent with the goal of ensuring the robust supervision of CCPs as systemically important institutions, the proposals have been criticised by some UK policymakers who view them as a means of forcing the clearing of euro-denominated financial instruments from the UK to the EU.

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