

Issue 10: Lex et Brexit — The Miller Case and Brexit for Benchmark Administrators in the UK

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In the last few weeks, some welcome clarity has finally been introduced on the UK side of the Brexit negotiations. In her speech on January 17, 2017, the UK Prime Minister confirmed that the UK will not seek to remain a member of the single market and would not accept any role in the UK for the Court of Justice of the European Union after Brexit. Although her speech was somewhat vague on the specifics of the free trade deal that the UK will seek during the Brexit negotiations, we now know that the UK and the EU will experience a relatively 'hard' Brexit; this could have material implications for those providing financial services in the EU from the UK.

In this issue of Lex et Brexit, we look at another area in UK politics where some clarity has emerged. On January 24, 2017, by a majority of 8 - 3, the UK Supreme Court held that UK government ministers cannot deliver the notice required to leave the European Union without prior authorization through a UK Act of Parliament. The Court also unanimously held that there is no requirement for the consent of the devolved UK legislatures (i.e., the legislatures of Scotland, Northern Ireland and Wales) in order to serve the notice.

This judgment means that all members of Parliament will now have the ability to debate the legislation authorizing the UK's withdrawal from the EU. It also provides the opportunity for Parliament to introduce amendments to the authorizing legislation, which could in theory, but subject to political constraints, impose limitations on the process or even substance of the UK's Brexit negotiations.

We then examine the implications of Brexit for administrators of benchmarks and how Brexit might affect the implementation of the new EU Benchmarks Regulation. We then outline the different approaches available to UK-based providers of benchmarks post-Brexit if they wish to offer their benchmarks to EU financial institutions, before concluding that Brexit may add significant cost and complexity to the task of complying with the new Regulation.

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