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Implementing Brexit

Practical challenges for wholesale banking in adapting to the new environment

April 2017

Association for Financial Markets in Europe
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Foreword

The UK's departure from the EU is unprecedented in scale and complexity. The recent notification of the UK Government to trigger Article 50 is an important step, formally commencing the two-year Brexit negotiation process. Brexit creates uncertainty for all sectors of the economy, but particularly those such as wholesale banking which have a large share of cross-border business. With a significant proportion of Europe's capital market activity being conducted in the UK, the wholesale banking industry faces particular challenges during the Brexit process to continue to provide essential services to clients and maintain well-functioning markets.

In relation to Brexit, AFME takes a firmly fact-based and pan-European approach, seeking to act as a bridge for conveying market expertise and insight to Europe's policymakers and regulators. Our aim is to work to safeguard financial stability and market efficiency during the Brexit implementation process and subsequently. As we show in this paper, there is already a substantial amount of evidence on the challenging implementation issues facing clients, supervisory authorities and wholesale banks.

Market participants will need support from policymakers and regulators to help them navigate the Brexit process. In particular, affected market participants and supervisors will clearly need more time to prepare effectively for Brexit than the two years provided for by the Article 50 process. Both the UK Government and the EU27 are signalling their willingness to explore a phasing-in period, which will be vital to underpin the functioning of Europe's capital markets through the process. The sooner that a phasing-in period is confirmed then the smoother the adjustment process will be.

With the triggering of Article 50, the countdown begins for the UK's exit from the EU. AFME stands ready to assist policymakers and regulators at this important juncture in the development of Europe's capital markets.

Simon Lewis
Chief Executive
Association for the Financial Markets in Europe

Executive summary

Executive summary

Brexit is a large, complex and unprecedented challenge affecting all sectors of the European economy. This paper assembles the available evidence to help Europe's policymakers reach an informed view of the potential challenges in Brexit implementation for wholesale banking and capital markets and how best to mitigate the risks arising to financial stability and market functioning of a compressed timeframe.

Brexit implementation as a collective action problem

Europe's key economic sectors currently have little clarity on the scale, scope and timescale of the eventual Brexit deal. The process is likely to be particularly challenging in wholesale banking, given the high concentration of Europe's market capacity in the UK and the high share of cross-border business currently conducted from a UK base.

The scale and nature of the impact of Brexit on wholesale banking will be determined by the decisions of a range of actors (including governments, EU institutions, banks, investors, clients, and regulators in the UK and EU27) which have multiple and partly conflicting objectives. If each set of actors acts solely in response to its short-term incentives then the overall economic outcome will be clearly sub-optimal. In other words, Brexit implementation is a classic 'collective action problem' which requires coordination across all parties and clear expectations on outcomes and timelines in order to mitigate the risks to markets and avoid cliff effects.

Overall, two essential public goods – financial stability and market efficiency – must be safeguarded during the Brexit implementation process and subsequently. However, this will not be straightforward in view of the current lack of structure in the negotiation process. Given the short Brexit timescale, as set out by the two-year period envisaged in Article 50, market participants and regulators are already having to make important decisions amid considerable uncertainty. A recent study for AFME by PwC[1] highlights that most banks are having to assume a 'hard Brexit' scenario in their planning, with little or no provision for market access across jurisdictions and where the existing third-country equivalence provisions in EU regulation cannot be relied upon for permanent market access. This paper discusses the implementation challenges for capital markets based on similar assumptions.

Implementation challenges for the key players

The Brexit timescale is dominated by the requirement to complete negotiations within two years from the invocation of Article 50 of the Treaty on the European Union, absent unanimous agreement on an extension. Operationally, the restructuring of wholesale banking business caused by Brexit will have a major impact on three main sets of actors: (i) clients; (ii) supervisors; and (iii) wholesale banks. The main implementation challenges include:

- **Clients and end users:** Brexit creates significant uncertainty for clients and counterparties and the potential for disruption to essential products and services; particularly for clients holding (or planning to hold) long-dated contracts such as swaps, loans or cross-border revolving credit facilities. The main risk is that after Brexit, a bank which had signed a contract may no longer have the required approvals to lawfully perform the services it had committed to, or could no longer access the necessary market infrastructure. There is particular concern about 'cliff edge' risk to the operations of UK central counterparties, which currently manage more than a quarter of global clearing activity. There may also be a significant impact on corporate finance as EU27 companies may be uncertain whether they can or should rely on a single European hub for capital raising and advisory services.

- **Supervisory authorities:** Prudential and markets supervisors will have to adapt to the changes in markets and location of regulated activities and have an important role to play in ensuring financial stability and a smooth implementation. Brexit will require supervisory capacity to follow a changing pattern of markets and banking business. In much of the EU27, expertise in markets supervision is in relatively short supply. There will be a major challenge for the SSM and national authorities to ensure that sufficient resources and expertise are in the right place to provide timely delivery of licence and model approvals and maintain or supervise rigorous, common standards for wholesale markets business. New mechanisms are also required for cross-border regulatory cooperation, avoiding fragmented capital markets and ensuring financial stability.

1 PwC report: "Planning for Brexit – Operational impacts on wholesale banking and capital markets in Europe", 2017

- **Wholesale banks:** For international banks based in the UK, the principal operational impacts of restructuring for Brexit are: establishing or expanding legal entities in the EU27; obtaining necessary licensing and approvals; securing the right people and premises; building out technology; and integrating with new market infrastructure. A recent study by PwC for AFME[2] found considerable variation in the required scope and scale of transformation activities across different banks. Overall it can be argued that banks will require a 3-year implementation period following the completion of the Article 50-exit negotiations. Moreover, the eventual plans that will be implemented depend heavily on the requirements set by regulators and supervisors, adding a dependency and additional source of variability to the process.

The following points should be noted in relation to the implementation challenges discussed in this paper:

- Other market participants in wholesale banking markets – such as asset managers, providers of market infrastructures, data providers and credit rating agencies – will also face direct implementation challenges, although those are not examined in this paper.

- This paper is designed to act as a primer for policy makers in relation to the issues as they are understood today; around the triggering of Article 50. However, Brexit is expected to be a rapidly evolving process and we would expect that some of the issues raised in this paper may be addressed or superseded in the coming months.

- This paper considers the potential impacts of Brexit on the supervision of wholesale banking activities. However, the relevant authorities at national and European level will have the best understanding of the potential impact of Brexit on their own workload, operations and main sources of risk. This paper aims only to provide an illustrative set of issues to help inform discussions among policymakers.

Supporting Brexit implementation in wholesale banking

Given the scale, complexity and risk of the Brexit implementation challenges for wholesale banking, market participants will need significant support from policymakers and regulators to help them effectively navigate the process. This support must be provided at European and Member State level and should comprise three elements: (i) coordination; (ii) flexibility; and (iii) time. Our suggested priorities for action are set out below.

Coordination

The form and structure of the Brexit negotiations is not yet clear to wholesale market participants and may not become fully clear for some time. Market functioning and the implementation process would benefit greatly from coordination by EU27 and UK policymakers in four key aspects:

- **Legal certainty:** To avoid disruption to services, existing legislation should continue to be effective during a transitional period on all firms and situations. This includes regulators explaining their positions on how and to what extent banks will continue to be able operate across borders; how regulations and equivalence provisions will be applied; and applying consistent approaches to ensure continuity of existing contracts. It also requires replacing existing arrangements which provide for EU-wide decisions (e.g. through the European Supervisory Authorities (ESAs)) and automatic legal recognition between EU27 and UK, such as for resolution actions and application of resolution stays.

- **Financial stability risks:** Brexit creates additional pressures on European and national authorities' central objective of maintaining financial stability. Policymakers must remain focused on market functioning, emerging sources of risk and the appropriate allocation of supervisory expertise and resources. To do so effectively will require close coordination and enhanced information sharing between the Commission, European Central Bank, the ESAs, national supervisors in the EU27 and the UK authorities. Maximising legal certainty should support this goal.

- **Market capacity:** Policymakers face a significant challenge in maintaining the capacity of Europe's wholesale markets during the Brexit implementation period. Given the potential need for a significant and rapid shift in the location of wholesale market capacity in Europe, policymakers should maintain close, structured dialogue with market participants to respond to such shifts and ensure that the EU27 economy maintains the overall capacity of its capital markets. Maintaining cost competitive access to capital markets in the EU27 will be a parallel challenge. Banks which currently

2 PwC report: (2017): Planning for Brexit – Operational impacts on wholesale banking and capital markets in Europe

use the UK as a hub generate around 60% of total capital markets revenues in the EU but have an estimated four-year transformation period ahead. With an inadequate implementation period, part of the market capacity which these banks provide could be at risk.

- **Supervisory policy:** To enable wholesale banks to adapt effectively to Brexit, the SSM and national supervisors should clarify with industry participants as early as possible the range of interim business models that will be acceptable post-Brexit. Helpfully, the ECB has already begun to communicate its expectations to the market on this issue.

Flexibility

In addition to providing coordination and certainty where possible, policymakers should be prepared to provide flexibility where it is necessary to support successful implementation of any change programs by the wholesale market participants. Key aspects where flexibility will be required include:

- **Contracts:** According rights to ensure the continuity of existing financial contracts, including for swaps and loans, would remove a significant source of potential market disruption arising from long-dated contracts executed before the UK's departure from the EU. Similar certainty could also be provided for contracts agreed during the transitional period. Such grandfathering arrangements would also significantly reduce the operational risks from Brexit transformation by avoiding the need to migrate open contracts agreed before the UK formally leaves the EU.

- **Entity approval and licensing:** Firms will adopt different structures and operating models solutions to be able to operate in the post-Brexit environment. Regulators can assist firms' transformation by accelerating approval processes and adopting a pragmatic approach. It may be sensible to create 'settling-in' mechanisms which would allow firms to apply for local licenses or recognition under third country regimes while still benefitting from passporting arrangements.

- **Model approval:** Approving models is a complex and time-consuming exercise. Regulators could permit flexibility in this process by accepting the use of prior regulator-approved risk models. Once approved and in place, regulators could re-assess the adopted risk models over a longer timescale.

Time

Affected market participants and supervisors will clearly need more time to prepare effectively for Brexit than the two years provided for by the Article 50 process. The study by PwC of the operational impact on Brexit suggests[3] that a further 3 years will be required to adapt following completion of the Article 50 exit negotiations. It will be vital to give an early indication that a transitional arrangement will be agreed upon as part of the exit negotiations. These transitional arrangements could comprise:

i. **a bridging period** to avoid short-term disruption until the new trade relationship between the UK and the EU27 is ratified, should that prove unachievable within the two-year Article 50 period; and

ii. **an adaptation period**, following the bridging period, which would enable phased adjustment to the new trade relationship.

The length of any bridging period would depend on the time it will take for the UK and the EU27 to negotiate their new trade relationship. The adaptation period is necessary to allow business, clients and supervisors to adapt to the new trade relationship between the UK and the EU27.

3 PwC report: "Planning for Brexit – Operational impacts on wholesale banking and capital markets in Europe", 2017

1. Brexit implementation as a collective action problem

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For wholesale banking markets, the challenge of implementing Brexit is a classic 'collective action problem'. If each group of actors – firms, clients, regulators and others – is guided solely by its immediate interests then there will be a poorer outcome overall for clients and for the European economy.[4] This section of the paper:

- examines the role and size of Europe's wholesale banking markets;
- outlines the main EU regulations affecting wholesale banking;
- reviews potential post-Brexit arrangements for wholesale banking;
- discusses the immediate incentives for wholesale market actors in implementing Brexit; and
- considers the potential sources of disruption arising from Brexit.

The role and size of Europe's wholesale banking markets

Wholesale banking involves a wide range of essential services which include: underwriting of equity, debt and derivative securities; sales, risk management, research, trading and post-trade services for equities, fixed income, FX and derivatives instruments; corporate finance, mergers and acquisitions advisory services, and access to financial markets infrastructure. Through these services, wholesale banking plays a significant role in facilitating capital markets financing and risk management to large and small firms, governments and other market participants in Europe and across the world.

Recent policy discussion increasingly emphasises the role of the capital markets and wholesale banks as a stabilising force at the macroeconomic level in Europe. The European Commission emphasises the importance of its Capital Market Union (CMU) initiative for financial stability, as well as its contribution to growth and jobs[5]. ECB President, Mario Draghi, has said that *"it is better to finance the real economy through several channels rather than to rely on just one. Capital markets in particular can act as a useful 'spare tyre'".[6] In a recent staff paper, IMF researchers highlighted the importance of deep wholesale financial markets for the economic success of advanced economies.[7]*

The EU accounts for almost a quarter of global GDP[8] and has a large and sophisticated wholesale financial services sector which generates over 30% of the world's wholesale financial services[9] activity. The UK is the EU's largest financial centre and a global hub for wholesale banking and capital markets. According to Oliver Wyman, around 78% of European capital markets and investment banking revenue is based in the UK, of which 55% originate from EU27 clients[10]. The UK also holds 37% of Europe's assets under management, followed by France (20%) and Germany (10%)[11]. Annex B provides additional data on Europe's wholesale financial and capital markets.

As a global financial centre, the supply of UK wholesale banking is provided by banks headquartered across the world. According to Bruegel[12], there are £3.8 trillion of wholesale banking assets in the UK, of which 14% are held by EEA banks, 31% by UK banks and 55% by banks headquartered outside the EEA. The UK is the access point for EU27 clients as around 76% of companies that use MiFID passporting are based in the UK[13].

4 Further discussion of the concept of the collective action problem can be found in Britannica among other sources

5 European Commission Q&A on CMU Action Plan

6 Speech by Mario Draghi, 22 September 2016

7 IMF staff discussion note "Rethinking Financial Deepening: Stability and Growth in Emerging Markets"

8 Expressed in market prices

9 London Economics report "The importance of wholesale financial services to the EU economy", 2009

10 Oliver Wyman presentation "EU scenarios and the UK financial centre"

11 EFAMA 8th Annual Review "Asset Management in Europe"

12 Bruegel report "Lost Passports: a guide to the Brexit fallout for the City of London"

13 New Financial report "The potential impact of Brexit on European capital markets"

Main EU regulations affecting wholesale banking

With wholesale banking activity regulated by a broad range of European and UK financial services legislation, all play an important part in supporting the sector's ability to meet clients and customers' needs across the value chain. For example, investment banking, and sales and trading activities also support corporate and business banking, with access to various types of market infrastructures critical for supporting functions such as payments, reporting, collateral management, etc.

EU wholesale banking activities are governed by a number of EU Regulations and Directives of which CRD/CRR, MiFID and EMIR are perhaps the most notable. CRD4 regulates access to deposit-taking activities and provides EU banks with a passport for providing cross-border banking and investment services. MiFID2/MiFIR regulates the provision of investment services and provides EU investment firms with a passport for these services. EMIR regulates transactions in derivatives. A much broader range of EU regulations apply to certain types of wholesale banking business, including: prospectus rules; market abuse; financial collateral; Central Securities Depositories Regulation (CSDR) for repo activity.

A key concern of many banks and investment firms is that the exit of the UK from the EU would remove their rights, leaving them subject to similar restrictions as non-EU firms with respect to their cross-border business with clients and counterparties in the EU27. This might compel them to relocate activities into the EU27 and thus increase fragmentation and reduce the current benefits available to them of being able to cluster activity in a single European hub. Annex C provides an overview of regulations affecting the provision of cross-border services following Brexit.

Potential post-Brexit arrangements for wholesale banking

There is a spectrum of potential outcomes for the UK's relationship with the EU27, from a 'soft' to 'hard' Brexit with regard to the provision of wholesale banking services. Following the UK Prime Minister's Lancaster House speech in January 2017 it could be argued that ongoing membership of the Single Market is off the table and not a likely outcome of the negotiations. Three potential alternative models are summarised below:

- **A free trade agreement offering wide market access for financial services:** A broad FTA between the EU27 and the UK could potentially see UK-based firms being offered wide market access, enabling the provision of services under existing and future third country regimes, as well as services that are not covered by these regimes (e.g. lending and deposit-taking, payments and access to market infrastructure). This option would pose limited disruption to the current delivery of services and could be underpinned by regulatory equivalence and reciprocal access between EU27 and UK markets;

- **Access to third country equivalence regimes:** Many of the EU's third country regimes that enable market access are conditioned on regulatory equivalence and reciprocal access to UK markets. Therefore, if the UK wishes to enable UK banks and investment firms to continue accessing EU27 markets, it would need to maintain equivalence with the EU regulatory regime;

- **No access to third country equivalence regimes:** Under this arrangement, the UK would have limited access to the EU27, as a result of losing existing EU passports and not being able to use third country passports. This is the most disruptive outcome among the three potential models.

A recent study by PwC highlights that, for business continuity purposes, most banks are assuming a 'hard Brexit' scenario, with little or no provision for market access across jurisdictions and where the existing third-country equivalence provisions in EU regulation cannot be relied upon for permanent market access. This paper discusses the implementation challenges for wholesale banking based on similar assumptions.

Immediate incentives for wholesale market actors in preparing for Brexit

The eventual market access arrangements for Brexit depend on decisions taken by the governments and parliaments of the EU27 and the UK, as well as the EU institutions. However, the nature of the implementation process in financial services – and wholesale banking in particular – will be determined by the decisions of a range of public and private actors with important stakes in the market. Currently, these actors have widely varying objectives which may also contain internal tensions. To illustrate:

- the UK Government has indicated its aim to secure the best possible access to the EU27 market, short of remaining part of the Single Market;
- the European Commission is charged with leading Brexit negotiations for the EU27 alongside its ongoing responsibility for EU financial markets policy and CMU;
- some national finance ministries are aiming to attract new jobs and tax revenues from wholesale markets business while seeking to limit additional sources of systemic risk;[14]
- national supervisors and conduct regulators will aim to maintain domestic financial stability and local safeguards, working with constrained resources and expertise;
- the Single Supervisory Mechanism will aim to maintain common supervisory standards in the banking union, notwithstanding resource constraints and a continued reliance on national supervisors; and
- wholesale firms will aim to minimize disruption to their clients and their own operations from adjusting to Brexit, while ensuring full compliance with the new trade and regulatory requirements.

With such a disparate set of actors and incentives, it will be a major challenge to implement Brexit in an orderly way in relation to wholesale banking. The process will require close coordination across all the affected parties and certainty about outcomes. Without such preconditions, the challenge is larger, embodies more risk and will require more time.

Potential sources of disruption arising from Brexit

The operational impacts for wholesale banks, clients and supervisors identified in this note could cause significant disruption to Europe's wholesale banking markets in several ways:

- loss of capacity as certain lines of business migrate out of Europe or become uneconomic, resulting in a significant contraction in European market capacity;
- loss of banking or other services in individual Member States;
- risks to financial stability which could arise from diverging supervisory standards or disruption to market functioning;
- reduced choice reflected in a narrower range of capital markets providers and products and fewer options for execution; and
- increased costs reflected in higher costs for firms, increased costs to investors and corporates and potentially also lower shareholder returns.

To mitigate any potential risks, banks and supervisors are taking steps to accelerate their response to Brexit. This is being driven by the fixed timeline of the Article 50 process. Although these are not considered preferred options, banks may need to adopt them to be ready to continue to serve their customers and continue operating when the UK exits the EU. Such approaches include: starting implementation prior to certainty around Brexit negotiation outcomes; making assumptions on likely outcomes around regulatory approvals; identifying "no regrets" actions before the UK triggers the Article 50 process; considering novel operating models; and accepting sub-optimal operational choices in the short term.

Overall, two essential public goods – financial stability and market efficiency – must be safeguarded during the Brexit implementation process and subsequently. However, this will not be straightforward in view of the current lack of structure in the negotiation process.

14 On 2 March, it was reported that ESMA is studying the risk of Member States using regulatory arbitrage to attract new financial services activity as a result of Brexit. Also in March, the Irish Government was reported to have complained to the Commission about the supervisory approach of another EU27 jurisdiction in response to Brexit

2. Implementation challenges for the key players

2. Implementation challenges for the key players

This section considers the impact that the restructuring of wholesale markets business caused by Brexit will have on three sets of actors:

i. clients and end users, notably corporates and investors;
ii. supervisory authorities; and
iii. wholesale banks.

Several other types of wholesale banking market participants will also be required to prepare for Brexit including market infrastructure providers, data providers and advisors. However, the impact on these groups is not examined in this paper.

2.1 Implementation challenges for clients and end-users

The level of disruption to clients and users of wholesale banking services will depend on the scale of adaptation that is required of wholesale banks and other key players including market infrastructures. At this stage, it appears likely that the principal implementation challenges for clients will arise in relation to:

- key products and wholesale banking services;
- access to market infrastructures; and
- contract documentation and applicable legal regime.

Potential impact on clients and key products and services

In general, EU legislation does not directly affect private contracts as the EU does not have jurisdiction in this area. Financial contracts will be impacted by the need to have the right regulatory approvals and permissions in place before conducting business and establishing, or continuing to perform a contract. Following Brexit this could lead to a situation whereby the contract that a firm has signed has bound it to certain activities, while those activities cannot be performed post-Brexit as the firm does not have the necessary regulatory authorisation to do so. If a firm is party to a contract, the obligations of which it can no longer fulfil because of Brexit, this could lead to counterparties having to seek alternative arrangements to replace transactions and/or the novation of contracts to an entity in the EU27 or the UK.

A range of issues facing clients need to be considered in the context of Brexit[15]. The following provides a range of potential issues for key wholesale bank products and services:

- **derivatives:** changes may be required to be made to the terms of a pre-existing derivative. When a UK firm is appropriately authorised when entering into a derivative contract, payments to be made in both directions under the contract should continue to be allowed, even after Brexit. A problem is likely to arise when substantial changes are being made to the terms of the derivative contract as this could be considered to be entering into a new derivative which would require authorisation in the relevant member state;

- **credit facilities:** a bank has entered into a cross-border revolving credit facility and the bank could be in breach of local law after Brexit if it made a further advance to the borrower when it has lost its passporting right. For the client the revolving credit facility is expected to become more expensive when it needs to be split between a UK and EU27 revolving credit facility;

- **syndicated loans:** corporates make use of syndicated loans and existing pan-European syndicated loan agreements might need to be split into two components (an EU27 and UK). There might be a drop in overall capacity of loan funding available to corporates. In case a client needs to set up a subsidiary in the EU27, it might be that the client will face less favourable terms due to the lower credit rating of the newly established EU27 subsidiary;

15 See also Clifford Chance's submission to the UK Treasury Select Committee on transitional issues

- **deposit taking:** UK banks have taken deposits of EU27 clients and vice versa. If a UK bank has accepted a deposit from a customer in the EU27 by virtue of a passport in EU27 regulation. UK banks may no longer be able to maintain EU27 deposits after they have lost their passporting rights;

- **cash managements:** firms providing cash management, payments and trade finance might need to split their activities between the UK and the EU27. Most corporates prefer to undertake cash pooling but UK-based banks operating within a non-CRD operating structure will need to split pooling;

- **liquidity provision:** fragmentation of liquidity provision for equity, debt, FX and commodities might cause secondary spreads to widen, also impacting primary issuance;

- **clearing and collateral:** clearing and the use of collateral could be significantly disrupted if euro clearing is required to take place mainly or entirely within the Eurozone.[16] Potential impacts could include increased hedging costs (as scope for netting is reduced) and significantly increased capital requirements for use of non-qualifying central counterparties (CCPs).

- **capital market services** – uncertainty arises about whether corporates can rely on their ECM, DCM and M&A services still being provided from a single hub.

AFME is undertaking further analysis of the expected impact of Brexit on corporates and investors, including through the products discussed above.

Access to market infrastructure

At the moment, banks based in the UK are able to access market infrastructure in the rest of the EU and vice versa. This includes for example access to exchanges and CCPs. Being an EU regulated entity is generally a membership requirement for market infrastructure. Banks based in the UK will no longer be considered to be EU regulated entities following Brexit. This could result in UK based firms no longer being able to trade products on EU exchanges. To overcome this issue, trading would need to be done via a regulated broker in an EU27 jurisdiction or banks would need to set up a regulated entity in the EU27. Similarly, EU27 based banks may no longer have access to UK-based exchanges. This will result in longer transaction chains and increased costs.

This problem may be exacerbated by the share trading obligation under MiFID II which will come into force in January 2018. Under this obligation, shares which are available for trading in the EU generally need to be traded by firms on i) a regulated market / multilateral trading facility, ii) systemic internaliser, or iii) a third country trading venue which is considered as being equivalent. In the event that UK trading venues are not considered third country equivalent immediately upon the UK ceasing to be a Member State. EU-based firms would no longer be able to trade shares on them if the shares are also available for trading in the EU27. This could have an adverse impact on clients of such firms where the deepest pool of liquidity might be available at the UK trading venue offering more competitive pricing to clients. EU27 clients and firms would also no longer have access to the liquidity that would be available off-exchange in the UK.

For derivatives clearing, there will be major implementation challenges for UK CCPs by EU27 banks and vice versa. If no mitigation measures are put in place, after Brexit UK CCPs would no longer be authorised by EU regulation and EU27 banks maintaining positions in them could be in breach of regulations and suffer punitive capital increases. Currently, the Capital Requirements Regulation requires members of CCPs to apply a risk weighting of 2% of the total exposure value to CCPs which are recognised under EMIR. Assuming these CCPs are no longer authorised or recognised under EMIR after Brexit, clearing members of UK CCPs will be subject to higher capital charges, with their risk weighting increasing from 2% to 100% of the exposure value. This in turn would lead to a significant increase in the cost of clearing for clients.

16 ECB President Mario Draghi is reported to have emphasised the aim of enhancing the EU authorities' current level of supervision and oversight of clearing. Bank of England Deputy Governor Jon Cunliffe has challenged the rationale for centralising euro clearing within the EU and has instead advocated stronger collective oversight of market infrastructures and effective cooperation between supervisors and central banks

There is concern about a major 'cliff edge' risk to the operations of UK CCPs which, the Bank of England estimates, currently manage more than a quarter of global clearing activity. A paper by the International Regulatory Strategy Group17 highlights the apparent inability of EU regulators to ensure continuity of treatment of UK CCPs as qualifying entities under EMIR. Currently under EMIR, only third country CCPs may apply for ESMA recognition, meaning that in principle, prior to Brexit UK CCPs cannot apply for pre-authorisation. Thus, on day one after Brexit, UK CCPs would not be qualifying CCPs under EMIR, triggering the capital impacts under CRR which are discussed above.

To avert such an outcome, open positions in UK CCPs could in theory be moved to EU CCPs. However, the IRSG concludes that *"is not practical for EU27 banks to move their existing positions from UK CCPs to those within the EU27".* This assessment is based on a range of factors, including: the web of conflicting legal jurisdictions that govern any such transfer; differences in membership and authorizations between relevant CCPs; and the length of time needed to plan, obtain consents and execute the transfer.

Client documentation issues and applicable legal regime

Overall, Brexit is expected to lead to a significant "repapering" exercise for firms and clients. References to EU law, regulations and regulators may have to be amended. It might also be that firms decide to move certain contracts from the UK to newly established entities in the EU27 (and vice versa). Novation will require client consent in each case.

In addition, unless the automatic recognition of resolution actions and resolution stays is put in place, as discussed below, there could be significantly increased burdens on banks to put in place contractual recognition of resolution actions and resolution stays in contracts of EU27 banks governed by English law and UK banks governed by the law of an EU Member State.

Some more detailed considerations for derivative contracts and loan agreements are set out below.

Derivatives

The ISDA Master Agreement governs most OTC derivative contracts. Passporting rights are an important underpinning to entering into OTC derivatives on a cross-border basis in the EU. When firms in the UK lose these passporting rights when the UK leaves the EU, they will be subject to the regulations of the relevant EU member state where their counterparty resides. Many EU Member States do not allow third country firms to enter into derivatives with locally resident counterparties except on a wholly unsolicited basis, or on the basis of narrowly defined local law exemptions[18].

Nearly all derivatives contracts entered into among EU/EEA-based counterparties are governed by English law. The freedom to choose English law is currently protected by the Rome I Regulation. No question arises whether, following Brexit, the choice of law will remain protected before EU courts as the Rome 1 (and Rome 2 Regulations continue to apply). The continued recognition of the choice of a third country governing law is also in line with general principles of private international law. There is no suggestion that an EU governing law will be made mandatory after Brexit (which would equally affect New York (or other) law governed contracts across the board). Any such move would be most unusual and contrary to practices in international trade generally.

An issue separate from the choice of the law governing the contract is the choice of jurisdiction under a master agreement. The mutual recognition of jurisdiction and judgments is currently governed by the EU Brussels 1 Regulation which will cease to apply post-Brexit. Unless specifically addressed in a bilateral EU-UK treaty (e.g., similar to the current arrangement between the EU and Denmark) or by way of immediate adherence by the UK to The Hague Choice of Court Convention or the Lugano Convention (both instruments have been ratified by the EU), the recognition of English jurisdiction clauses will become subject to provisions under each EU member state's national law. Furthermore, should any restrictions be imposed on the choice of dispute forum along the lines of provisions like Art.46(6) MiFIR, market participants can insert various types of model arbitration clauses that have been developed by ISDA in recent years (arbitration agreements are in no way affected by Brexit). Also, this scenario would arise for any kind of financial contract (derivatives and beyond) with a third country dispute forum clause.

17 'CCPs Post Brexit: implications for the users of financial markets in the UK and EU27', IRSG, February 2017

18 ISDA info webpage "Brexit Briefings"

Furthermore, when using the ISDA Master Agreement, a counterparty makes the representation that it has all the necessary authorisations and approvals in place. If during the transition period a problem occurs and the representations are no longer true, this is seen as a breach of the agreement and the counterparty may be in default. The counterparty will have 30 days to correct the misrepresentation/default. A default does only lead to termination of the relationship if triggered by the other counterparty after the cure period is completed.

As said, Brexit might also create problems for clearing derivatives if UK CCPs can no longer be used by EU27 entities to clear derivatives and vice versa. In such a scenario, parties might need to consider adding termination rights to their ISDA Agreements to address the inability to clear derivative transactions through EU or UK CCPs.

Loans

Brexit related questions have arisen in a number of areas related to loan documentation. For many loans, the standard documentation developed by the Loan Market Association is being used. The majority of the LMA's recommended forms of documentation are governed by English law. Similar to the derivatives documentation, a question has been raised whether the use of English law will continue to be possible. The LMA has come to the conclusion that it likely will. Therefore, in case of Brexit, the courts of EU27 Member States should continue to give effect to English law in the same way as they do currently.

A further question concerning the enforceability of judgments from English courts has arisen. An English judgement is currently enforceable in all other EU Member States as determined by the Brussels I Regulation. The UK's withdrawal from the EU could affect the extent to which a judgment of the English courts will be enforceable in other EU Member States. It could be that the UK enters into an arrangement with the EU to continue the recognition of judgments but this is uncertain at this stage.

A third issue for loans provided under the LMA document is that the documentation contains references to the EU and EU legislation. These will need to be removed for certain transactions. Finally, it is not clear whether the loss of passporting would affect loans or commitments that parties have entered into or extended prior to the UK's exit; for certain jurisdictions the LMA believes that it likely will affect commitments after Brexit. It might be possible to address these issues by including provisions in the documentation to allow lenders to make loans through affiliates. These were originally designed for use on a case-by-case basis but it might be possible to use these more structurally. If there is no such safeguard lenders may have the right to cancel their commitment if it becomes illegal to make the loan because of loss of passporting.

2.2 Implementation challenges for supervisors

This section considers the potential impacts of Brexit on the supervision of wholesale banking activities in Europe. Brexit will affect the practical operations of four sets of supervisory authorities:

- micro-prudential (banking) supervisors;
- markets and conduct regulators;
- resolution authorities; and
- the European Supervisory Authorities.

These authorities will have to adapt to the changes in markets and location of regulated activities and have an important role to play in ensuring financial stability and a smooth implementation throughout the Brexit process. Clearly, the relevant authorities at national and European level will have the best understanding of the potential impact of Brexit on their own workload, operations and main sources of risk. The discussion below aims to provide an initial, illustrative high level list to inform discussions with and among policymakers.

Micro-prudential supervision

A key responsibility of EU prudential supervisors is granting authorisations for credit institution business, which is defined as the business of taking deposits from the public and granting credit for the entity's own account. European prudential supervisors also ensure that credit institutions and investment firms comply with the European prudential framework[19] and conduct the so-called Supervisory Review and Evaluation Process (SREP); an assessment of the institution's overall exposure to risk and its resources to manage this exposure.

An authorised credit institution established in the UK which currently has a branch in the EU27 which uses that branch to conduct cross border business in the EU27 is likely to have to create a locally established entity in order to continue those operations once passporting is lost. This entity will require authorisation as a credit institution from the relevant competent authority, which will either be a national banking supervisor or the ECB as shown in Figure 1 below. If an authorised credit institution established in the UK currently has a branch in an EU27 member state which only conducts operations in that EU27 member state, that branch would be able to continue those operations provided that the UK is considered to be equivalent.

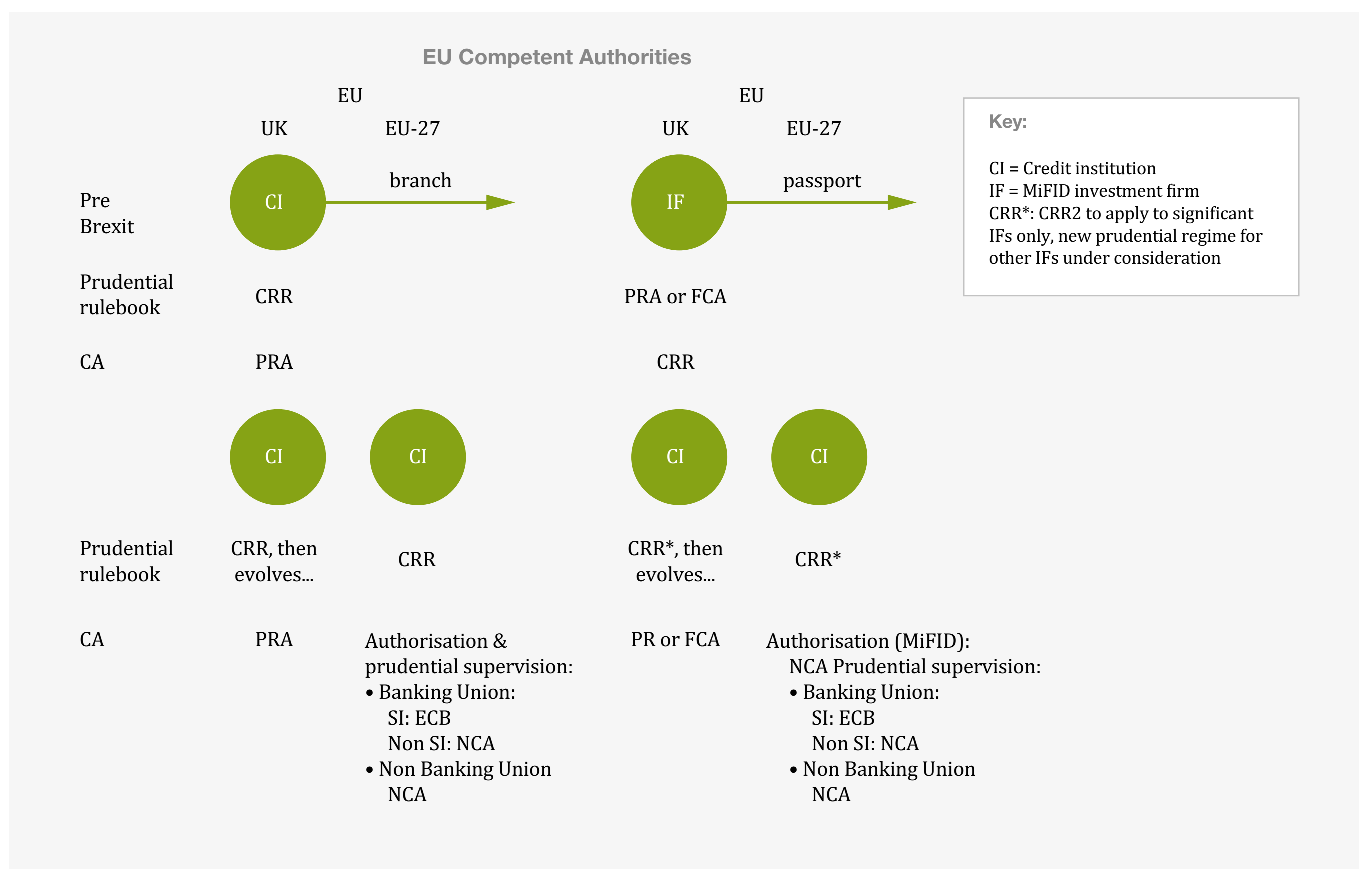


Figure 1: **Illustrative impact of Brexit on banks' entity structure**

The impact of Brexit on prudential supervisory workload and resources will depend on the number and scale of institutions seeking to set up operations in the EU27; the jurisdictions in which banks will seek to establish or expand an entity; and the timeframe for doing so. While these variables are difficult to predict, an early assessment of European prudential authorities' capacity to take on additional tasks will be useful for policymakers; particularly if demand peaks over a relatively short time period.

19 As set out in the Capital Requirements Directive/Regulation (CRD4/CRR)

Competent authorities for prudential supervision include national banking supervisors and the SSM. Institutions operating in the Eurozone are either supervised directly by the SSM (if they qualify as a 'significant institution'[20]) or by the national supervisor. Large international firms wishing to expand in the EU27 are likely to fall under direct SSM supervision for their Eurozone operations. It is therefore important to examine the question of supervisory resource within the SSM.

The ECB's supervisory function has progressed from having limited capacity to a fully functional supervisory authority at significant speed, particularly given the size of the task it faced. It is now the direct supervisor of 126 significant banks accounting for almost 82% of Eurozone banking assets. As such, it has already demonstrated its ability to take on new tasks within short periods of time. Nevertheless – even without an influx of new authorisation requests and ongoing supervision requirements – the ECB faces several constraints which will must be addressed before achieving its intended 'steady state' operating model.

The November 2016 report by the European Court of Auditors (ECA) into the initial operation of the SSM provides additional context on the supervisory challenge in the EU27. Overall, the SSM receives a positive audit report. However, the ECA highlighted several issues for the ECB/SSM to examine and address, including: SSM resourcing; burden sharing between ECB and national authority staff; and supervisory expertise. These issues may bear on the capacity of the SSM to respond to a substantial reorganisation of wholesale banking activity within the banking union.

SSM and national authority staff resourcing

In preparation for new applicants with different business models put in place in response to Brexit, the ECB may need to increase its capacity and expertise in areas such as capital market related activities and consider the requirements necessary for continuing cooperation with third country supervisors including the UK authorities. The table below highlights that currently the UK PRA is responsible for supervising a much larger number of 'third country' (i.e. non-EU parent) firms than the ECB.

	ECB[21]	PRA[22]
Total supervised institutions	124	164
Ultimate parent located outside the EU	10	83

As the continued flow of data is essential to the smooth conduct of supervisory activities, it may be necessary to consider whether any obstacles to information exchange could arise between EU27 national supervisors and the ECB on the one hand, and the PRA and FCA on the other, to ensure that communication channels between these supervisors can continue to function efficiently.

The same ECA report also highlights a perceived shortage in numbers of ECB staff generally, which is evident in the composition of Joint Supervisory Teams (JSTs) and in on- and off-site inspection teams. While staff from national competent authorities are involved in these supervisory tasks, the ECA notes that "neither the NCAs nor the ECB are currently in a position where they have excess levels of staff and are able to choose the person with the ideal skillset for a given JST". The ECA also recommends that the ECB develops and implements a risk-based methodology for determining the composition of JSTs.

The ECB intends to implement training programmes, a centralised database of skills available across the SSM (i.e. including within the NCAs) and analytical tools for staffing levels to address these issues. The current target date given by the ECA to the ECB to implement these changes is end 2018. Nevertheless, new applications and increased supervisory duties as a result of Brexit may well place additional pressure on staffing levels in a relatively short time frame. It may therefore be beneficial to consider building additional expertise or acquiring additional supervisory resources prior to this deadline.

Potential supervisory bottlenecks

The ECB is currently carrying out an extensive review programme of banks' existing internal models, known as the Target Review of Internal Models (TRIM) process, involving significant internal and external resource. The EBA's on-going IRB repair programme will place increased stress on the already stretched supervisory capacity in the area of model approval as it will require a substantial number of additional, material model changes to be approved by the ECB by end-2020.

20 Designation as a significant institution depends on factors including the institution's absolute size, its size relative to the economy (national or EU as a whole) and the extent of its cross border activities.

21 ECB Q2 Supervisory Banking Statistics, November 2016

22 Credit institutions and PRA designated investment firms, Bank of England: List of banks at 31 December 2016

The inclusion of additional models into the existing population as a result of new institutions entering into SSM supervision following Brexit will place further pressure on the need for model experts, including in particular on expertise for market, counterparty valuation adjustment and counterparty credit risk models. However, the immediate resource pressure should be partly alleviated by the ECB's indication of *"a transitional period in which new euro area entities might use internal models that have not yet been approved by the ECB"*.[23]

Also worth noting is the recent proposal as part of CRDV which would require global systemically important banks and other eligible credit institutions and investments firms which at least two institutions in the EU, and with assets of EUR 30bn or more, to establish an intermediate parent undertaking. Given the criteria for direct SSM supervision, the parent company will in all likelihood be brought under the supervision of the ECB making it responsible for ongoing supervision and conducting the Supervisory Review and Evaluation Process.

The supervision of a bank with a 'significant' investment arm is done by the SSM, but an investment firm which has a large balance sheet would still be supervised by the individual host state's regulator. Some Member States would likely be able to provide good supervisory coverage for such firms, whereas others may struggle.

Markets and conduct regulators

Firms wishing to establish non-bank investment firm subsidiaries in EU27 Member States and to move capital markets businesses from the UK such a subsidiary will require approval of the relevant NCA. Figure 2 sets out in broad terms the requirements for obtaining the relevant licence for investment firms in France, Germany, Ireland, Spain and the Netherlands.

Country	Licensing requirements (based on public information)
Ireland	The Central Bank of Ireland sets out a three-stage process of exploration, submission and decision in their guidance.
France	A firm must contact the AMF Authorisation, Licensing and Regulation Division to present plans and a proposed timetable, then prepare an application for the license desired, including all supporting documentation
Germany	BaFin offers detailed guidance on its website to firms on granting a license to provide financial services in Germany and a range of practical issues including entity structure, booking models and risk model approval
Spain	CNMV offers a fast-track authorisation process for financial companies relocating from London to Madrid, on the basis that the firm was regulated by the FCA
The Netherlands	Firms must apply for a permit from the AFM and prudential aspects will be assessed by the Dutch Central Bank

Figure 2: **Licensing guidance from various EU27 regulators**

Analysis by PwC suggests that while the official timeline for licence applications is between six months and one year, banks which have experience of the practicalities of such processes are planning for longer timeframes for approval; between a year and a year and a half.[24] Furthermore, the regulatory approvals required by the bank vary according to the jurisdictions in which it plans to operate.

Generally under EU law, host state regulators are responsible for regulation of conduct within the relevant member state. As a result, and because the majority of significant capital markets participants are presently based in London and most trading takes place from or is booked into London, the EU NCA with the greatest expertise on conduct regulation in this business is the FCA. Depending on the scale of relocation of wholesale banking activity, some NCAs may face a significant challenge to acquire the relevant expertise - staff as well as systems – to adequately assess and then continuously supervise additional conduct risk. Particular areas of importance include market abuse, financial crime and competition.

After the Brexit vote, a number of EU27 Member States have increased their efforts in terms of positioning their financial centres as viable alternative business locations to London. In most of these initiatives, the national conduct NCA is involved as well. In some jurisdictions, including Spain and France, NCAs are understood to have offered fast-track authorisation processes. Spain for example applies a pre-authorisation process of two weeks to indicate if a firm is likely to be formally authorised shortly. The Spanish regulator is also willing to accept documentation that has been approved by the FCA and is willing to rely on the FCA's decisions, subject to consideration. The Italian organisation looking to promote Milan is reported to have contacted the European Court of Arbitration to allow disputes to be governed by English law.

23 Speech by ECB Vice-President Sabine Lautenschlager, 22 March 2017

24 PwC report: "Planning for Brexit – Operational impacts on wholesale banking and capital markets in Europe", 2017

Resolution authorities

In addition to the need to ensure adequate prudential and conduct supervision during the Brexit process, it is also necessary to consider the implications for recovery and resolution planning and the resolution of entities. Within the EU, the Bank Recovery and Resolution Directive ("BRRD") provides for common rules regarding recovery planning, resolution planning, requirements for loss absorbing capacity, powers of supervisors and resolution authorities to address impediments to resolvability and the necessary tools and safeguards to implement a resolution. BRRD also establishes a process for joint decisions and cooperation between resolution authorities in different Member States and importantly provides for the automatic recognition of resolution actions across the EU. This gives rise to a several issues that need to be considered and addressed in preparing for Brexit, particularly:

- cross-border cooperation and resolution planning;
- recognition of resolution actions and resolution stays; and
- impact of new structures on recovery and resolution planning.

Cross-border cooperation and resolution planning

Given the large number of groups which are active in the UK and the EU27, it is essential that there is effective and close cooperation between supervisory and resolution authorities in relation to recovery and resolution planning and conducting a resolution.

After Brexit, the UK authorities will no longer be members of resolution colleges under the BRRD, although they could be admitted as third country observers. Institutions in the UK will cease to be within the scope of EU group resolution plans or the joint processes for the development and approval of recovery and resolution plans and setting loss absorbing capacity requirements under the BRRD. For some groups this will lead to a change in the "group-level resolution authority" which has lead responsibility for this within the EU where this was previously the Bank of England. The Single Resolution Board and other resolution authorities in the EU27 will therefore need to prepare for these changes, which may require additional resources. Any changes in approach by these authorities will also need to be implemented and this could involve changes to operations and organisation of banks and the amount and location of loss absorbing capacity within groups. Similarly, the Bank of England will need to consider similar issues in respect of subsidiaries and branches in the UK of groups headquartered in the EU27.

We suggest that that the EU27 authorities including the ECB and the SRB put in place a new cross-border cooperation agreement with the Bank of England to address issues such as recovery and resolution planning, information sharing and loss absorbing capacity requirements. Any changes to resolution plans arising out of the restructuring of European operations of banks headquartered in third countries will also require further discussion and approval with third country resolution authorities such as the Federal Reserve, FDIC, FINMA and the Bank of Japan. There may need to be changes to existing global crisis management groups for G-SIBs. To reflect these changes to the composition of these groups, it may be necessary to involve additional authorities.

Recognition of resolution actions and resolution stays

The recognition of resolution actions and resolution stays across jurisdictions is essential for cross-border resolution to be effective[25], for example for bail-in to work and for transfers of business to be valid. For example, a resolution conducted in an EU27 member state will need to be effective in the UK in order to take effect in respect of contracts governed by English law and assets located in the UK and similarly for UK resolution to be effective in the EU27. While the automatic recognition of resolution actions between the EU27 and the UK fall away upon Brexit, there is already legislation allowing recognition of resolution actions and resolution stays. This however will no longer be automatic, so cooperation will have to be established in order to ensure that solution powers can be exercised where necessary.

Impact of new structures on recovery and resolution planning

Any changes to legal entity structures and operations within a group will have implications for recovery and resolution planning which will need to be considered by banks and resolution authorities. Potential greater fragmentation of business across entities and jurisdictions could increase complexity and give rise to additional considerations in ensuring the continuity of critical functions (operational continuity). This is a key part of ensuring an effective resolution plan and any potential impediments to resolvability are likely to take time to address.

25 See FSB Principles for Cross-Border Effectiveness of Resolution Actions

The impact of Brexit on resolution plans could also lead to changes to the requirements for banks to put in place loss absorbing capacity, including intra-group arrangements to support cross-border resolution. This is complicated by the timing of requirements for banks to meet requirements including Total Loss-Absorbing Capacity (TLAC) requirements which have to be met by 1 January 2019. Banks therefore need clarity on the requirements in order to issue eligible liabilities to meet the requirements by 1 January 2019. This could be challenging given the uncertainty created by the Brexit process, particularly because the timing of the finalisation of the relevant European legislation and its transposition in the UK is not yet clear.

European Supervisory Authorities (ESAs)

The ESAs, which were established in 2010, play an important role in the EU's financial regulation architecture. The European Banking Authority (EBA), the European Securities Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA) are responsible for drafting Level 2 measures thereby significantly influencing the practical implementation of EU legislation. For wholesale banking, the EBA and ESMA are the two key institutions to deal with.

ESMA workload

Selected pieces of EU legislation contain third country regimes that can operate in relation to jurisdictions which have regulatory frameworks that are deemed to be equivalent to the EU regulatory framework. Although the Commission will be responsible for deciding whether a jurisdiction is deemed equivalent, ESMA will be asked to provide technical advice to inform the Commission's decision. There may be real time pressure on ESMA to provide this technical advice for a range of regulations where third country regimes apply in order to avoid a 'cliff-edge' effect once the UK leaves the EU. The area of CCPs, discussed below may be a particular challenge.

The key regulations with equivalence regimes are EMIR, MiFID II (from January 2018), Solvency II, AIFMD and the Payment Services Directive II (from January 2018).[26] Equivalence is determined differently in these different areas and ESMA's role in the process also differs. Specifically:

- **EMIR:** under EMIR, the Commission can request ESMA to give technical advice on the equivalence of third countries' regulatory regime for CCPs. Once the Commission has found a third country to be equivalent, individual CCPs need to apply with ESMA to seek recognition. One of the conditions for being able to be recognised is that ESMA has relevant cooperation agreements with the third country jurisdiction in place;

- **MiFID II:** following receiving advice from ESMA, the Commission adopts a decision whether a third country's prudential and business conduct requirements have equivalent effect to the EU regulations. If this is the case, a third country firm is allowed to provide investment service to certain wholesale counterparties in the EU provided it is registered with ESMA. ESMA will register such third country firms if certain conditions are fulfilled, including the requirement that a cooperation arrangement exist between ESMA and the third country's national competent authority. ESMA has the power to withdraw the registration of a third country firm;

- **AIFMD:** similar to EMIR and MiFID II, under the AIFMD ESMA can be requested by the Commission to give technical advice on the equivalence of third country regimes for fund management. Once considered to be operating from a jurisdiction which is deemed to be equivalent, funds can apply for recognition by ESMA. Again, ESMA and the third country's national competent authority need to have relevant a cooperation agreement in place.

Data from the FCA[27] show that 2250 'outbound' firms currently use the MiFID passport to provide investment services throughout the EU based on an FCA authorisation. The FCA records 988 'inbound' firms which supply investment services in the UK based on authorisation in another EU Member State. It may be expected that once Brexit is implemented, and irrespective of whether the UK regime is initially deemed MiFID-compliant, then ESMA will be asked to register a large share of the 2250 outbound MiFID firms to operate throughout the EU27.

26 Commission Staff Working Document, EU equivalence decisions in financial services policy, 27 February 2017

27 Letter from Financial Conduct Authority to Treasury Committee Chair regarding passports, 17 August 2016

ESA resourcing

The ESAs are funded by contributions from Member States (around 60%), with the remaining 40% funded by the EU budget. ESMA collects a small amount of its budget from fees from institutions it supervises directly, such as rating agencies. The UK currently contributes 8.5% of the ESAs' total budget. If the same (or greater) level of services needs to be provided following the departure of the UK from the EU, this gap in the ESAs resources will need to be filled.

In addition to direct funding of the ESAs, EU Member States also second in staff from NCAs. Given the significant technical expertise of both the PRA and FCA, the EBA and ESMA might face difficulty replacing the existing secondees with staff with similar expertise; not least given the resource pressure which on some NCAs arising from the wider restructuring of wholesale banking institutions in their jurisdiction.

2.3 Implementation challenges for wholesale banks

The Brexit timescale is currently dominated by the requirement to complete negotiations within two years from the invocation of Article 50 of the TEU. While there are a wide range of potential outcomes from the Brexit negotiations, banks are focusing their planning efforts on a worst case 'hard Brexit' scenario as they cannot run the risk of regulatory breach (and associated business disruption).

The majority of banks included in the PwC study[28] have performed an assessment of the impact of Brexit upon their business and operations. This assessment has typically been done by market, client and product. The impact of Brexit upon a bank depends on a variety of factors, including: geographic footprint; structure, including the structure of subsidiaries and branches; and products and services offered to a range of clients.

Brexit transformation programmes involve a broad range of activities. Whereas the activities are likely to be manageable individually, combining multiple activities will inevitably bring coordination challenges when trying to manage a complex transformation programme in a short period. These elements include:

i. **Operating model:** A fundamental part of the response by banks to Brexit will be the design of the new operating model. The operating model describes the components of the organisation and how they interact, including the business processes and activities, the locations in which the business operates, the technology used, the people working for the business, stakeholder interactions, and management structures. This will be closely tied to the legal entity structure and selection of jurisdictions (which will drive the location where activities are conducted). Another key activity which will interact with the development of the operating model is the design of changes to the booking model of the bank, which determines to which trading books and to which legal entities trades are booked, and how risk is managed within the bank.

ii. **Legal entity and organisational structure:** Banks must review their existing legal entity structure to ensure they have an appropriate presence in the required jurisdictions to enable them to continue to provide products and services in the event of a "hard Brexit" where the UK loses access to the single market. Banks are considering several factors when looking at alternative jurisdictions, ranging from practical concerns around language and infrastructure, to the end-to-end regulatory experience.

    Various restructuring options are under consideration for UK entities to maintain access to the EU27 and vice versa, including: establishing an EU27 passport vehicle supported by UK infrastructure and capital with back-to-back risk transfer to the UK; establishing an EU27 passport vehicle supported by UK infrastructure only; and establishing an EU27 passport vehicle with EU27 infrastructure and risk assumption. Other options include a UK entity supported by an EU entity providing a sales function only (an agency model) and a UK entity with a network of EU27 branches. Certain restructuring options may have limited application, for example in terms of timescale and geographical scope. For example, the ECB has stated that banks will not be permitted indefinitely to use back-to-back booking models for all exposures.[29]

28 PwC report: "Planning for Brexit – Operational impacts on wholesale banking and capital markets in Europe", 2017

29 Speech by ECB Vice-President Sabine Lautenschlager, 22 March 2017

iii. **Regulation and licensing:** Depending on a bank's plans, it will need to ensure that its proposed operating model has been approved and that it has the appropriate regulatory licences to enable it to supply products and services from any new or expanded entity. The process of obtaining approval can be difficult and complex and will depend on a bank's chosen location and size of balance sheet. Where banks have existing legal entities in their chosen location, potentially already with some of the necessary approvals, the process of obtaining approvals is anticipated to be less complex than the process for new entities.

iv. **Technology and vendors:** Technology is a fundamental element of banks' operations, and significant changes will be required to technology to support the new operating models required in the post-Brexit environment. Large banks rely on complex technology environments reflecting the nature of their business. The typical bank systems environment comprises hundreds of systems with millions of lines of code many of which are interdependent and hence require detailed analysis, amendment and testing prior to any change being implemented. Initial planning based on previous bank transformations suggests that technology will in many cases absorb most of the costs and effort for the transformation required.

Technology changes required for a bank to maintain access to market infrastructure will be driven by changes in the bank's own operating model – for example, a change in the legal entity or location from which the bank accesses the market infrastructure – and in changes introduced by the market infrastructure providers themselves.

v. **People and premises:** When a bank evaluates the jurisdictions where it will undertake its activities post-Brexit, it will need to assess what premises are available in a particular jurisdiction. Banks will need to identify the location for these premises which is suitably close to its clients and local support structures, organise property leases and insurance for the new premises, and set up the new premises to manage the day-to-day operation of the business.

Where activities are being transferred to a new location, the bank will need to recruit staff locally, relocate existing staff to the new location, or adopt a mixture of the two approaches. Conversely, where a bank is winding down some activities in a location (either by transferring them elsewhere or ceasing some activities altogether), it may need to consider headcount reductions. All of this must be done in accordance with local employment law and immigration rules. Depending on the outcome of negotiations on freedom of movement and its impact on their own operations, banks may need to identify staff affected by immigration rules and support applications for work permits or visas for staff to be able to retain them.

Dependencies affecting banks' implementation plans

As mentioned above, a range of highly inter-related factors influence the decisions that banks take during a transition period. The key decisions and dependencies for wholesale banks include:

- **Obtaining clarity on the regulatory environment and market access and developing working assumptions.** While delaying will ensure firms have more information, most banks will need to start planning before certainty is available using a set of working assumptions;
- **Selecting the jurisdictions in which the bank plans to operate.** This selection is dependent upon commercial, regulatory, tax, infrastructure and softer factors, and the choice of jurisdiction then drives the location-specific implementation activities;
- **Selecting and implementing structural options.** The design of the structure of subsidiaries or branches will depend on the working assumptions for the post-Brexit environment;
- **Obtaining regulatory approvals.** The regulatory approvals required by the bank will depend on the jurisdictions where it plans to operate, and the structural option it has selected. Where new legal entities are being created, the formal application for regulatory approvals will also depend on the establishment of those entities themselves;
- **Development of the new operating model.** The development of the new operating model will depend on the jurisdictions and the structural options. Some elements of the operating model design will feed into the application for regulatory approvals, and in turn, regulatory expectations will be one driver of the operating model design.

The PwC study has found considerable variation in the required scope and scale of transformation activities required across different banks. PwC grouped banks into three categories:

i. **Banks predominantly using a hub** (which can be either in a EU27 country or in the UK, but is typically the UK) as a basis to serve clients across the EU27. Such banks face the greatest structural and associated operational challenges. For them a realistically planned Brexit transformation programme would ordinarily take at least four years;

ii. **Banks with pan-European structures** are better placed to implement the necessary changes within the two-year timeframe;

iii. **Domestically-focussed banks** who require continued access to UK and EU27 markets do not face the same scale of challenge as the banks predominantly using a hub structure, but still have a complex transformation task ahead. By virtue of the reduced scale, a properly planed Brexit transformation programme could be completed in two to three years.

Figure 3 below outlines the main elements of the Brexit transformation for wholesale banks and an indicative timeline for each of the three categories of bank outlined above. The timelines make clear that firms providing a significant proportion of current industry capacity will need to execute transformation programmes which will extend beyond Article 50 timescales, and in many cases up to five years. The timeline for transformation might be even longer if the post-Brexit trading relationship between the EU27 and UK remains unresolved for a protracted period. The recently published report by PwC[30] estimates that European banks which use the UK as a hub to provide services across the EU, generate around 60% of total capital markets revenues in the EU.

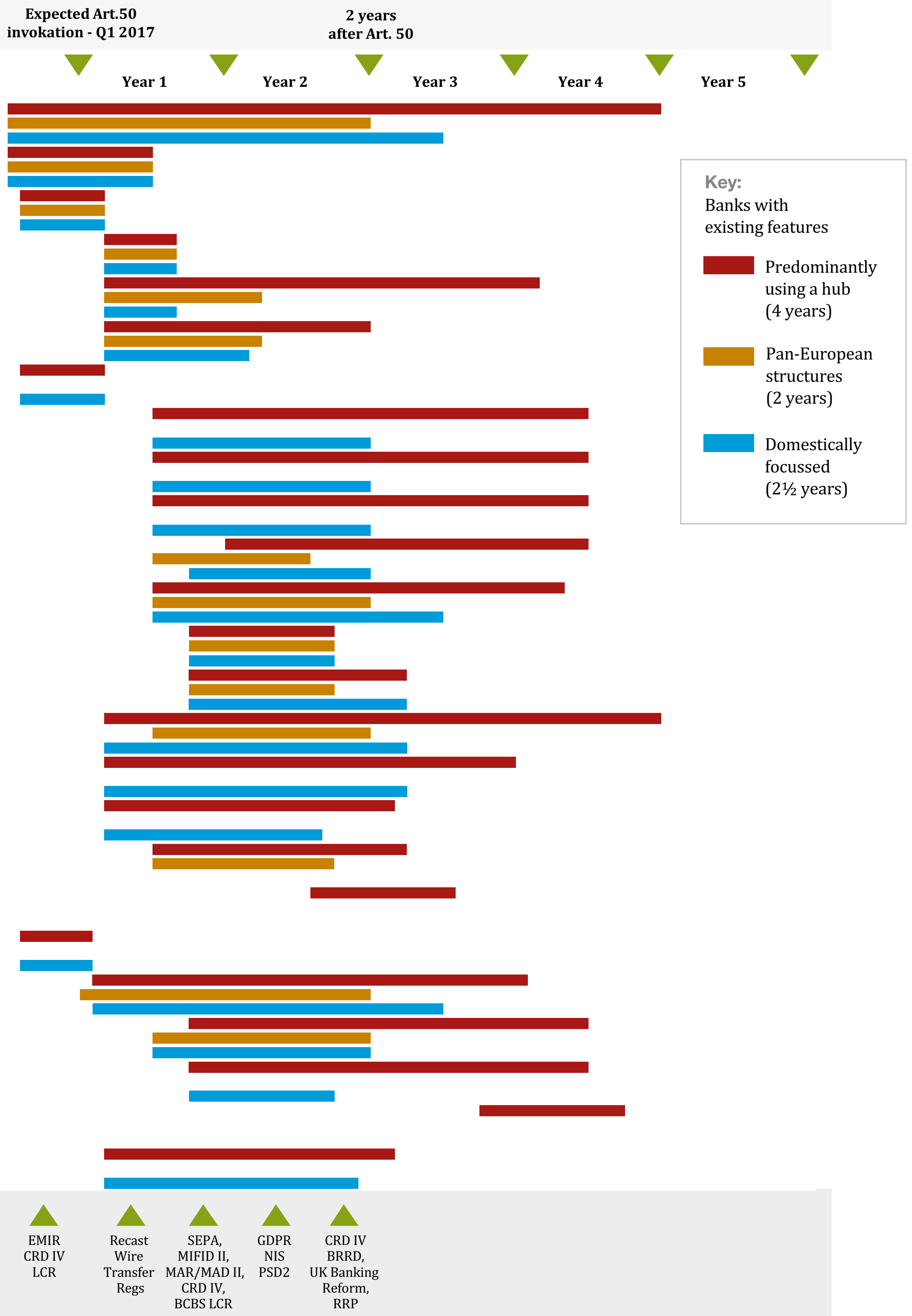
30 PwC report: "Planning for Brexit – Operational impacts on wholesale banking and capital markets in Europe", 2017

Figure 3: **Planned Brexit transformations for different wholesale bank structures**

Brexit timeline

Phase	Activity	Description
Programme management	Planning and managing overall response to Brexit	Assess scenarios to consider, select options for the overall approach to Brexit, develop a programme of activities, undertake ongoing programme management
Operations: Operating model	Designing the new operating model	Design the way in which the bank will do business after Brexit, including locations, processes/activities, people, technology, and management structures.
Legal entity and organisation structure	Designing the legal entity structure	Identify the jurisdictions in which the bank wishes to establish a legal presence, and design an appropriate structure of subsidiaries and branches.
	Establishing new legal entities	Undertake the legal and administrative activities required to set up new legal entities (e.g. subsidiaries) based on the planned legal entity structure.
	Restructuring legal entities	Implement the new legal entity structure, including transfer of assets and liabilities between entities
Regulation and licensing	Obtaining required regulatory approvals	Identify regulatory approvals required, submit applications for approvals and additional information requested, and manage process to completion.
Operations: Booking model	Designing booking models	Design how transactions are allocated to trading books and legal entities, and how risk is managed (e.g. the use of back-to-back trades to transfer risk)
Operations: Updating processes	Changing middle and back office processes	Design updated middle and back office processes, including risk management, based on the new operating model including changes to sales and trading
	Expanding finance, governance & group processes	Update finance/governance/group processes (e.g. HR) based on new operating model and any need for activities to be performed locally in new locations
	Updating collateral management processes	Update collateral management processes following changes in the legal entities, or the collateral to be posted (e.g. if the new entity has a different credit rating)
	Changing sales and trading activity	Update sales and trading activities, including processes and controls, sales and trading relationships, and interactions with middle/back office.
Operations: Clients	Undertaking client management activities	Manage clients, including repapering clients and handling open trades following legal entity changes, and winding down/migrating clients where relevant
Operations: Market infrastructure	Maintaining access to market infrastructure, including clearing	Maintain access to market infrastructure (e.g. clearing, exchanges, payment systems), including meeting legal/regulatory requirements and planning IT
Technology	Re-engineering technology infrastructure	Design and implement changes to technology infrastructure, including changes required for market infrastructure access and for new premises
	Updating software and applications	Design and implement changes to software and applications to support the new operating model (e.g. changes in processes, controls, and reporting)
	Updating the approach to data residency	Identify data requirements under the new operating model, and ensure that these remain compliant with data protection laws
Premises	Establishing operations in new locations	Identify suitable premises, arrange leases and insurance, set up the premises to support operations, and migrate equipment and infrastructure
	Expanding operations in existing locations	Where existing bank premises can be used, set up the premises to support operations, and migrate equipment and infrastructure
	Ceasing or downsizing existing locations	Manage premises which are no longer required, including disposal of surplus premises, vacating buildings, and managing legacy premises
People and staffing	Understanding and complying with local employment law	Understand local employment law, update people management processes, and establish awareness and compliance of legal requirements
	Retaining staff in existing locations	Identify staff affected by Brexit (e.g. changes in immigration rules), and plan and implement ongoing response required (e.g. sponsoring visa/work permits)
	Relocating staff	Identify staff affected by planned relocation, manage compliance with immigration rules, and manage relocation logistics
	Recruiting staff in new or expanded locations	Identify roles required, find candidates (e.g. advertising, recruitment agencies), and assess them (interviews, background checks)
	Downsizing of staff in existing locations	Identify staff affected, and manage downsizing processes in accordance with employment law (relating to, for example, staff consultation, notice periods)
Suppliers	Managing suppliers in response to operational change	Manage suppliers, including engaging new suppliers (e.g. in new locations), and terminating arrangements with existing suppliers.

Major regulation implementation deadlines



Expected Art.50
invokation - Q1 2017
2 years
after Art. 50
Year 1
Year 2
Year 3
Year 4
Year 5
Key:
Banks with
existing features
Predominantly
using a hub
(4 years)
Pan-European
structures
(2 years)
Domestically
focussed
(2½ years)
EMIR
CRD IV
LCR
Recast
Wire
Transfer
Regs
SEPA,
MIFID II,
MAR/MAD II,
CRD IV,
BCBS LCR
GDPR
NIS
PSD2
CRD IV
BRRD,
UK Banking
Reform,
RRP

3. Supporting Brexit implementation in wholesale banking

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Given the scale, complexity and risk of the Brexit implementation challenges for wholesale banking, market participants will need significant support from policymakers and regulators to help them effectively navigate the process. This support must be provided at European and Member State level and should comprise three elements: (i) coordination; (ii) flexibility; and (iii) time. Our suggested priorities for action are set out below.

Coordination

The form and structure of the Brexit negotiations is not yet clear to wholesale market participants and may not become fully clear for some time. Market functioning and the implementation process would benefit greatly from coordination by EU27 and UK policymakers in four key aspects:

- **Legal certainty:** To avoid disruption to services, existing legislation should continue to be effective during a transitional period on all firms and situations. This includes regulators explaining their positions on how and to what extent banks will continue to be able operate across borders; how regulations and equivalence provisions will be applied; and applying consistent approaches to ensure continuity of existing contracts. It also requires replacing existing arrangements which provide for EU-wide decisions (e.g. through the European Supervisory Authorities (ESAs)) and automatic legal recognition between EU27 and UK, such as for resolution actions and application of resolution stays.

- **Financial stability risks:** Brexit creates additional pressures on European and national authorities' central objective of maintaining financial stability. Policymakers must remain focused on market functioning, emerging sources of risk and the appropriate allocation of supervisory expertise and resources. To do so effectively will require close coordination and enhanced information sharing between the Commission, European Central Bank, the ESAs, national supervisors in the EU27 and the UK authorities. Maximising legal certainty should support this goal.

- **Market capacity:** Policymakers face a significant challenge in maintaining the capacity of Europe's wholesale markets during the Brexit implementation period. Given the potential need for a significant and rapid shift in the location of wholesale market capacity in Europe, policymakers should maintain close, structured dialogue with market participants to respond to such shifts and ensure that the EU27 economy maintains the overall capacity of its capital markets. Maintaining cost competitive access to capital markets in the EU27 will be a parallel challenge. Banks which currently use the UK as a hub generate around 60% of total capital markets revenues in the EU but have an estimated four-year transformation period ahead. With an inadequate implementation period, part of the market capacity which these banks provide could be at risk.

- **Supervisory policy:** To enable wholesale banks to adapt effectively to Brexit, the SSM and national supervisors should clarify with industry participants as early as possible the range of interim business models that will be acceptable post-Brexit. Helpfully, the ECB has already begun to communicate its expectations to the market on this issue.

Flexibility

In addition to providing coordination and certainty where possible, policymakers should be prepared to provide flexibility where it is necessary to support successful implementation of any change programs by the wholesale market participants. Key aspects where flexibility will be required include:

- **Contracts:** According rights to ensure the continuity of existing financial contracts, including for swaps and loans, would remove a significant source of potential market disruption arising from long-dated contracts executed before the UK's departure from the EU. Similar certainty could also be provided for contracts agreed during the transitional period. Such grandfathering arrangements would also significantly reduce the operational risks from Brexit transformation by avoiding the need to migrate open contracts agreed before the UK formally leaves the EU.

- **Entity approval and licensing:** Firms will adopt different structures and operating models solutions to be able to operate in the post-Brexit environment. Regulators can assist firms' transformation by accelerating approval processes and adopting a pragmatic approach. It may be sensible to create 'settling-in' mechanisms which would allow firms to apply for local licenses or recognition under third country regimes while still benefitting from passporting arrangements.

- **Model approval:** Approving models is a complex and time-consuming exercise. Regulators could permit flexibility in this process by accepting the use of prior regulator-approved risk models. Once approved and in place, regulators could re-assess the adopted risk models over a longer timescale.

Time

Affected market participants and supervisors will clearly need more time to prepare effectively for Brexit than the two years provided for by the Article 50 process. The study by PwC of the operational impact on Brexit suggests[31] that a further 3 years will be required to adapt following completion of the Article 50 exit negotiations. It will be vital to give an early indication that a transitional arrangement will be agreed upon as part of the exit negotiations. These transitional arrangements could comprise:

i. a bridging period to avoid short-term disruption until the new trade relationship between the UK and the EU27 is ratified, should that prove unachievable within the two-year Article 50 period; and

ii. an adaptation period, following the bridging period, which would enable phased adjustment to the new trade relationship.

The length of any bridging period would depend on the time it will take for the UK and the EU27 to negotiate their new trade relationship. The adaptation period is necessary to allow business, clients and supervisors to adapt to the new trade relationship between the UK and the EU27.

31 PwC report: "Planning for Brexit – Operational impacts on wholesale banking and capital markets in Europe", 2017

Appendices

Annex A: Summary of potential implementation challenges

Main implementation challenges for clients, supervisors and wholesale banks

Clients

Clients using services that currently provided on a cross border basis between the UK and EU27 are expected to be impacted by Brexit. Brexit will impact the regulatory approvals and permissions to conduct business and establish contracts with clients in other European jurisdictions. It is expected to impact, *inter alia:*

- **derivatives contracts:** derivative contracts which have a maturity after the UK has left as EU member state could be impacted, in particular if changes are being made to these contracts.
- **clearing:** EU27 counterparties could face major upheaval if UK CCPs are no longer regarded as qualifying CCPs under EMIR;
- **cross border loans:** firms are unlikely to have the necessary regulatory approvals in place to continue to maintain existing credit facilities of syndicated loans in the way they are currently provided;
- **cash management and deposit taking:** firms are unlikely to have the necessary regulatory approvals in place to allow clients to conduct their cash management activities in one central place; and
- **ECM, DCM and M&A services:** Brexit may lead to a fragmentation in the provision of ECM and DCM services to clients, reducing liquidity and increasing costs.

Supervisors

Supervisors may see a major increase in applications for regulatory approvals from firms moving activities from the UK to the EU27; and to a lesser extent, firms moving activities from the EU27 to the UK. The exact scale of these moves is uncertain but will be very important in defining the scale of challenge for supervisors.

Prudential supervisors will need to spend considerable extra resources on licensing, model approval and subsequent continuous supervision. Market and conduct supervisors will need to approve the relevant licenses and build up capacity for continuous supervision. Resolution authorities will need to review and approve the resolution plans following the restructuring of firms' activities.

The key challenges likely to confront supervisors are:

- **NCA resourcing:** processing license applications and continuous supervision of institutions will create significant additional work for supervisors and they may also need to develop new expertise;
- **ESMA capacity:** there may be considerable pressure on ESMA to provide input to Commission assessments of third country equivalence in order to avoid cliff-edge effects following the UK's departure from the EU. The area of CCPs may be a particular challenge.
- **burden sharing:** particularly of relevance for the SSM and national prudential supervisors is the burden sharing between the two levels which is currently sub-optimal in some respects;
- **expertise:** approving more complex models and license applications requires significant expertise which might not be available to all supervisors at this stage. It will take time to build up this expertise which could delay the restructuring processes of firms; and
- **cross-border supervision:** with the UK being out of the EU and firms restructuring activities, new arrangements for cross-border supervision will need to be set up. This could possibly be done by enhanced supervisory colleges.

Wholesale banks

The main implementation challenges for banks will depend on a bank's existing footprint, structure and services offered. This will determine which actions the bank needs to undertake to minimise the negative consequences of Brexit on its ability to continue to provide the existing services to clients. There are however a number of uncertainties that each bank will come across and will need to deal with:

- **commercial uncertainty:** during the negotiations considerable uncertainty will remain about the political developments and the new relationship the EU27 and UK will end up agreeing on. Uncertainty will also exist around the steps that other market participants as well as clients will be taking. Nonetheless, banks will need to take decisions about structural changes they need to make. For this they need to make certain assumptions based on the information available at that time;

- **operating model and organisational structure:** based on assumptions, firms will need to take decisions about the design of a new operating model and organisational structure;

- **regulatory approval:** dependent on the decisions about the operating model and organisational structure, firms will need to obtain the necessary regulatory approval. This process will take time, particularly also given that other firms will undergo a similar process of seeking regulatory approvals. Firms will rely on the efficiency and speed of regulators to approve licenses and models; and

- **people and premises:** when having decided about the operating model and organisational structure, firms will need to bring the right people and physical infrastructure in place.

Annex B: Key data on European wholesale financial markets

This annex provides some illustrative data points on the EU's wholesale financial markets, and where relevant the concentration of UK-based activity.

Underwriting

The UK wholesale banking industry helps corporates and governments raise finance through capital markets. It contributes to business expansion and diversify the sources of financing through a wide range of equity and debt instruments.

The United Kingdom has one of the most active equity primary markets in Europe, representing around 46% of EU's equity capital raised through markets[32]. Likewise, around 40% of the EU's listed SMEs are listed on UK exchanges[33]. Although most of the UK-listed companies are domestically headquartered, around 15% of EU cross-border IPOs conducted between 2010-16 were listed on UK exchanges (i.e. IPOs originated by EU-27 companies outside their domestic exchange- or 30% excluding non-EU exchanges), indicating the relevance of UK exchanges for equity raising by EU companies.

The participation of the UK market in debt origination is also significant. UK companies issued 26% of the total value of EU corporate bonds in 2015[34] (25% of European high-yield debt) and 24% of European leveraged loans, while 25% of outstanding European securitisations are collateralised with UK assets (66% of CMBS and 97% of Whole Business Securitisations-WBS)[35][36]. Around 80% of European leveraged loans originated in 2015 were structured on the basis of English law, as it is considered the most robust and reliable among cross-border bank and non-bank leveraged loan investors[37]. UK banks provided £1.1tn in loans to EU27 businesses in 2016.

Trading and access to secondary markets infrastructure

European and global companies invest and manage their financial risks in the UK. Secondary markets rely heavily on the support of brokers and research providers that enable investors and market participants make informed investment decisions. Likewise, post-trade services are provided by wholesale banks to facilitate the clearing and settlement processes of traded instruments.

Sales and trading of securities represents c26% of UK wholesale banking revenue[38]. Of this, more than half is generated from EU27 clients.

The UK is the world's largest hub for FX trading, with 37% of the world's daily turnover of FX spot and derivatives instruments and 43% of the world's EUR FX daily turnover. Likewise, the UK is the second-largest financial centre for interest rate derivatives with 39% of global turnover executed in the UK and 75% global EUR-denominated turnover of OTC interest rate derivatives.

32 IPO proceeds originated on EU and UK exchanges between 2011 and 2015. Source: Dealogic

33 AFME infographic "Capital Markets Financing"

34 AFME infographic "Capital Markets Financing"

35 AFME and SIFMA

36 Fitch Credit Opinions database

37 Fitch Credit Opinions database

38 Oliver Wyman report "The impact of the UK's exit from the EU on the UK-based financial services sector"

London is a global centre for market liquidity of equity instruments. Across Europe, there are 45 equity markets — 24 stock exchanges and 21 Multilateral Trading Facilities (MTFs)[39], which access is intermediated by brokers. Five MTFs are headquartered in London offering trading of equity instruments listed on PanEuropean exchanges, representing on aggregate (including the LSE and LSE AIM) around c48%[40] of Europe's equity liquidity.

European bond trading activity is less centralised than other asset classes, although the participation of the UK is not minor. Around 16% of the world's euro-denominated private bonds are held in the UK (11% of EUR-denominated corporate bonds), which could be indicative of a similar participation of trading activity[41]. On the other hand, Government bond trading and auctions are largely facilitated by primary dealers (or banks market makers), most of them with a strong presence in the UK wholesale banking sector. European primary dealers participate on average in 4 different jurisdictions as market makers, with some banks holding above 10 dealerships across Europe[42] creating liquidity and facilitating access to finance to governments.

M&A advisory

The wholesale banking business provides financial advisory to corporates on a wide range of services to facilitate M&A transactions. Advisory services include, for example, due diligence process, company valuation, negotiation and financial structuring, among others.

The United Kingdom is an active market for M&A transactions. In 2016, M&A activity of UK companies totalled[43] EUR 278bn in deal volume compared with EUR531bn in Europe. Cross-border M&A transactions between UK and EU companies (excluding domestic deals) represented 54% of all cross-border transactions between EU companies[44] in 2016.

The strong presence in the UK of other relevant participants for M&A transactions such as Private Equity firms, legal advisory and other professional services, contributes to a well-functioning ecosystem for European companies that wish to expand and consolidate their businesses through M&A transactions.

39 AFME report "Why equity markets matter", 2015

40 Average of 2016 as per BATS CHI-X turnover data. For London includes LSE, London AIM, Aquis, BXE Book, CXE Book, Smartpool and Turquoise. For London, excludes Instinet Blockmatch, SIGMA X MTF and UBS MTF although they are aggregated to account for the European total. Excludes OTC which is close to 16% (see referenceAFME market analysis)

41 Bruegel report "Lost Passports: a guide to the Brexit fallout for the City of London"

42 For a comprehensive view and statistics of the European Primary Dealer system see AFME's Primary Dealers handbook

43 Intra-European M&A, defined as M&A deals where the target and acquiring companies are headquartered in Europe. Includes domestic deals (intra-UK)

44 Excluding outlier mega deal (€119bn) between UK-based SABMiller plc and Belgium-headquartered Anheuser-Busch InBev SA/NV. Including the deal, the proportion reaches 73%. Source: Dealogic

Annex C: Market access provisions in key EU regulations[45]**

Legislation	Type of EU firms/products	Passport right/mutual recognition	Third country regime for non-EU equivalent
MiFID2/ MiFIR	Investment firms	Cross-border provision of investment services	Yes, but only for wholesale clients and counterparties*
	Investment firms	Establishment of branches to provide investment services	Optional for Member States*
	Investment firms	Right to remote membership of market infrastructure	No
	Trading venues	Right to provide terminals on Member State territory	No
	Trading venues	Permitted execution venue for shares and OTC derivatives	Yes*
	Trading venues, CCPs	Non-discriminatory access to trading venues, CCPs, benchmarks	Yes*
	Data service providers	Single authorisation for EU	No
CRD	Banks	Cross-border provision of banking and investment services	No for banking services. See MiFID for investment services
	Banks	Establishment of branches to provide banking and investment services	No for banking services. See MiFID for investment services
EMIR	CCPs	Single authorisation for EU	Yes
	Trade repositories	Single registration for EU	Yes*
	CCPs, trading venues	Rights of non-discriminatory access to each other	No but see MiFID2/MiFIR
CSDR	Central securities depositories	Cross-border provision of services and branches	Yes*
Prospectus Directive	Prospectuses	Prospectus approved in a Member State can be used across EU	No
UCITS Directive	UCITS funds	Distribution in other Member States	No
	UCITS management companies	Cross-border provision of management and advisory services (and branches)	No
AIFMD	AIFMs	Can market EU AIFs across EU	No
	AIFMs	When "switched on", can market non-EU AIFs across EU	Yes*
	AIFMs	Cross-border provision of management and advisory services (and branches)	No
CRA Regulation	Credit rating agencies	Single registration for EU	Yes, but may require an EU affiliate to endorse
Benchmark Regulation	Benchmark administrators	Single authorisation/ registration for EU	Yes*
CI(WUD)	Banks, some investment firms	Home state insolvency regime applies in other Member States	No
BRRD	Banks, some investment firms	Recognition of resolution action in other Member States	Yes*
SFD	Settlement systems	Protection from insolvency law in other Member States	No
Brussels Regulation	Judgments in a Member State	Enforceable in other Member States	No

* New regime hence no examples of use to date

** This table provides a snapshot at the time of publication of the report in March 2016

45 Clifford Chance report "The UK referendum – challenges for Europe's capital markets: a legal and regulatory assessment"

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/ About AFME

The Association for Financial Markets in Europe (AFME) is the voice of Europe's wholesale financial markets.

We represent the leading global and European banks and other significant capital market players.

We believe that liquid capital markets and a well-functioning banking system are central to any successful modern economy.

We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.

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on a wide range of market, business and prudential issues

Expertise
deep policy and technical skills

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broad global and European membership

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via the Global Financial Markets Association (GFMA)

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