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“Brexit: What does the UK’s departure mean for EU financial regulation?“

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You might remember that that there was a plan to reach a deal on a Withdrawal Agreement by mid-October. This objective was not fulfilled and three weeks ago the probability of a no-deal scenario increased. Today we still lack a deal on the Withdrawal Agreement, in particular on the Northern Irish backstop, and on a political declaration on the future relationship.

As I see it, the probability of a no deal scenario results today less from the risk of the failure of the negotiations and more from risks related to the very fragile political situation in the UK. As we speak, the negotiations go on, they have resumed last week and there is a government meeting, in which Prime Minister May has locked away all ministers. I hope we will see white smoke anytime soon. If we reach agreement next week, hopefully, it would still be on time for a European Council summit in November. This would give us, EU side, the sufficient time span to look at the agreement before the crucial vote on the EU side, which will be the vote of the European Parliament.

Regarding the financial sector, it is useful to see two workstreams related to Brexit.

One is preparing for the situation in which there would be no deal, and the other is adapting to the post-Brexit environment in which the UK will be a third country.

As regards the risks from a no-deal, EU and national institutions and agencies have been devoting a lot of effort to mapping the risks to financial stability arising from different Brexit scenarios, including no-deal. A dedicated technical Working Group has been set up between the Bank of England and the European Central Bank to look into cliff-edge risks. You might know that the report is finalised, but we are still awaiting its publication.

What we know is that this group has identified four key areas of concern: cleared derivatives and access to clearing; contract continuity of uncleared derivative transactions; continuity of insurance contracts and data transfers. To this should be added the uncertainty around the eligibility for MREL and TLAC of bank debt which was issued under UK law and does not include the contractual term recognising the bail-in powers of EU authorities. This is also a debate in an ongoing trilogue on the Capital Requirements Regulation.

I would like to take the opportunity of the presence of industry practitioners to here to ask whether you consider this an exhaustive list or whether there are additional risks that you would see. Let us have this issue in mind for our debate.

Then, once risks have been identified, they need to be addressed.

We have been raising the issue of preparedness for a while now.

In this respect, firms have a primary responsibility both in preparing for no-deal and for adapting to Brexit through the contingency planning that they are doing. The Commission has consistently encouraged all stakeholders to prepare for the UK withdrawal from the EU, and this encouragement was underlined again by the European Council of 29 June.

After all, firms cannot control whether or not there will be a deal, but the size of the risks associated with a no-deal scenario directly depends on the actions taken by firms. A very good example of how adequate contingency planning by firms can reduce cliff edge risks is contract continuity in the insurance sector. Thanks to the work done by companies, which have transferred contracts or established new branches in the EU, EIOPA estimates that the amount of contracts at risk in the case of no-deal has been reduced by a factor of four.

This is why I would once again take this opportunity to urge all of you to continue or step up your contingency planning. Action by the authorities is no substitute for preparedness action by the industry.

However, there are issues that call for policy intervention in order to give guidance to firms and complete their efforts. They are actually rather few.

There is a need to act in order to ensure continuity of access to clearing, via a temporary recognition of UK CCPs. The EU side does not see a need for specific actions to mitigate cliff edge risks in other areas. This is why Valdis Dombrovskis has told the Financial Times last week that EU banks and companies would be able to continue using UK CCPs even in the case of a no-deal. He stated that the recognition regime that would potentially be established would be offered for a short term, would be subject to conditions and would be based on the standard EU equivalence regime. I expect the Commission to announce further details if and when this becomes necessary.

There are also actions taken by the ESAs, ESMA, EBA and EIOPA. They have already provided guidance on the application of relevant pieces of legislation. Most notably, ESMA has issued guidelines on the application of MiFiD, UCITS and the Alternative Investment Fund Managers Directive in the context of relocation of firms from the UK.

There are also some actions taken at national level. The French government has been for instance obtaining emergency powers to act in case of a no-deal Brexit. It seems legitimate to expect some information on those matters soon.

In the UK, the approach has been different. The UK has already started to establish a three-year temporary recognition regime for EU CCPs and EU CSDs operating in the UK. It intends to take similar actions regarding Data Reporting Service Providers, Systems currently under the Settlement Finality Directive, Depositaries for authorised funds, Trade Repositories and Credit Rating Agencies.

It seems a welcome step, although many ambiguities still need to be clarified regarding the scope of the proposed regime and the law that would apply. This is why I would be eager to have from the industry participants during our debate, whom I understand to have significant activities in the UK, how they see those proposals for temporary recognition and the issues they raise.

Finally, I would wish to say a few words on the form that the future partnership should take.

It seems clear now that the best basis to work on will be the equivalence regime. This regime has been developed by the EU over the last decade. It is a tried and tested system: the Commission has taken more than 200 decisions covering about 30 jurisdictions and no trading partner has complained about the approach of the EU, one of the most open jurisdictions in the world. Equivalence is a regulation-per-regulation approach, which allows it to be tailored made and suit the needs of all industries.

It also has the advantage of safeguarding the regulatory autonomy of both sides.

What the choice of equivalence mean is that we would need equivalence decisions for UK entities under each of the relevant pieces of EU legislation, to be agreed during the transition period.

There will be challenges at that stage.

First, not all pieces of legislation have equivalence provisions. We were supposed to have a lot of problems about that. However, nobody has identified as of now any area where equivalence provisions would not exist and would be needed.

Then, the biggest challenge will be the risk of supervisory race to the bottom.

Some third country provisions are national, for instance under MiFiD,

Even when the rules are Europeanised, there is still a risk that national supervisors might take different approaches looking at the same issue. Therefore, there will be a real risk of arbitrage. On the EU side, there is a determination to avoid it. For this, we need strong ESAs. However, we are not always in favour of strong ESAs and there is sometimes a tendency to go for national solutions. This why the negotiations on the ESAs review, and also on the review of the investment firms, which will create a harmonised third country regime for those entities, are crucial.

At the steady stage, there will be three types of relationships between the EU and the UK after Brexit; targeted participation of the UK in some EU activities, free trade agreement and regulatory cooperation.

In financial services, continued regulatory and supervisory cooperation between the EU and the UK will be very important. Discussion, dialogue, comprehensive memoranda of understanding and the creation of good day-to-day working relationships between EU and UK regulators and EU and UK supervisors will be crucial.

Let me now introduce our panellists.

There is here a very broad range of stakeholders. , From the industry, almost every type of industry that will be impacted by Brexit is represented. There is market infrastructure with Henrik Husman, President at Nasdaq Helsinki. Claire Weston, Chief Risk Officer at Munich Re UK & Ireland was unfortunately unable to join. There is the wealth management sector with Jarkko Syyrilä, Head of Public Affairs at Nordea Wealth Management and co- Chair of the European Fund and Asset Management Association Brexit Task Force. There is the broader financial services industry association with Simon Lewis, CEO of the Association for Financial Markets in Europe (AFME).

Then, there is Ward Möhlmann, representing the EU Brexit negotiating team. He is a member of the European Commission's Task Force 50 in charge of financial services and direct taxation.

Finally, there is the investor and consumer perspective with Guillaume Prache is the Managing Director of Better Finance, the European Federation of Investors and Financial Services Users.

I hope we will be able to address four areas in the coming debate.

First, I would wish to discuss the key challenges related to Brexit impacting financial services firms, including the risks from a no-deal scenario for financial services, and the specific actions that would be required in order to mitigate the impact of a no-deal scenario.

Then, it would be good to hear from you whether and how you think the EU’s equivalence framework should be adapted, in light of Brexit as well as in general.

Then, I propode to look at how close supervisory cooperation and alignment of regulation can be maintained with the UK.

Finally, I would like to see how Brexit will impact on important European projects such as the Capital Markets Union or Banking Union.

I hope we will have a good discussion.