

MEMO# 33502

April 26, 2021

Recent Key Brexit Related Developments

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ICI Global Brexit Task Force SUBJECTS: International/Global RE: Recent Key Brexit Related Developments

This memo summarises the key Brexit related political and regulatory developments that have occurred since the conclusion of the Brexit transition period at the end of last year.

Political Developments

Trade and Cooperation Agreement

On 24 December 2020, the United Kingdom (UK) and European Union (EU) announced the conclusion of negotiations on the EU-UK Trade and Cooperation Agreement (TCA).^[1] The agreement provisionally entered into force on 1 January 2021, pending adoption by the European Parliament. Adoption by the European Parliament was originally envisaged before 28 February 2021, but due to political discussions regarding the UK's implementation of the Brexit withdrawal agreement this has been delayed. On 15 April 2021, the European Parliament's Foreign Affairs and Trade Committees voted in favour of the TCA^[2] and a debate and possible vote is scheduled for the European Parliament's plenary session on Tuesday 27 April 2021.^[3] The provisional application of the TCA ends on Friday 30 April 2021.

The TCA only contains high level provisions relating to financial services and does not include any equivalence decisions. Alongside the TCA, the UK and the EU published a joint declaration^[4] in which they agreed to establish "structured regulatory cooperation on financial services, with the aim of establishing a durable and stable relationship between autonomous jurisdictions" through a memorandum of understanding (MoU) by 31 March 2021.

Memorandum of Understanding

On March 26, 2021, the UK^[5] and EU confirmed that technical negotiations had concluded on the MoU envisaged by the TCA. The MoU will create a framework for voluntary

regulatory cooperation in financial services and establish a Joint UK-EU Financial Regulatory Forum, which will serve as a platform to facilitate dialogue on financial services issues. The MoU does not grant any form of regulatory equivalence between the UK and the EU for cross-border business purposes and, as such, the expiry of the various "transitional" measures that are currently in place have potential to cause disruption in the medium to long-term.

EU Economic and Financial Sovereignty Agenda

On 19 January 2021, the European Commission published[\[6\]](#) a communication on fostering openness, strength and resilience in the European economic and financial system, as part of its work programme to develop "a stronger Europe in the World." The Communication sets out various steps to build and maintain the EU's strategic autonomy, many of which relate at least partially to Brexit, including strengthening the EU's financial market infrastructures and deepening the EU's capital markets. The European Commission has cited reducing the exposure of EU clearing members to UK Central Counterparties (CCPs) as a particular example.

Regulatory Developments

UK Funds Regime

On 26 January 2021, Her Majesty's Treasury (HMT) published a call for input on its review of the UK funds regime.[\[7\]](#) The review covers the UK's approach to fund taxation and regulation and the opportunities for wider reform, building on the work of the UK Government's Asset Management Taskforce,[\[8\]](#) including input from the UK's UK Funds Regime Working Group.[\[9\]](#) HMT, working with other departments and regulators as necessary, has said that it will prioritise measures that have the greatest impact and those that can be delivered swiftly.

FCA's Approach to International Firms

On 3 February 2021, the Financial Conduct Authority (FCA) published its approach to assessing international firms providing, or seeking to provide, financial services that require authorisation in the UK.[\[10\]](#) The FCA's approach follows an earlier consultation on which the FCA has also provided feedback.[\[11\]](#) The FCA has set out the minimum standards it expects for authorisation, including taking account of the nature of a firm's operations, personnel and decision-making, systems and controls and its approach to assessing the firm's risk of "harm" such as its potential for retail harm, client asset harm and wholesale harm.

Temporary Permissions Regime

The FCA has started to allocate "landing slots" for firms in the Temporary Permissions Regime (TPR), such as those previously passporting into the UK.[\[12\]](#) The FCA is contacting firms by email to confirm their landing slot - the point at which the firm can either apply for full permission under Part 4A of the Financial Services and Markets Act or to vary their existing Part 4A permission. The FCA has set out considerations for firms leaving the TPR,[\[13\]](#) its authorisation process[\[14\]](#) and its approach to authorisation.[\[15\]](#)

EEA based funds (e.g., UCITS) which are passporting under the temporary marketing permissions regime (TMPPR)[\[16\]](#) - having submitted a notification before the end of the transition period - may apply in due course for permanent authorisation under the new Overseas Funds Regime in the Financial Services Bill.[\[17\]](#)

Recent HMT and FCA Communication on post-Brexit divergence

HMT and the FCA have both issued various communications, including speeches, indicating the future direction of travel for UK financial services regulation and highlighting areas of post-Brexit divergence from the EU regulatory framework. On 16 March 2021, Edwin Schooling Latter, Director of Markets and Wholesale Policy at the FCA, delivered a speech[\[18\]](#) covering the following:

- welcoming HMT's decision not to bring non-financial companies into scope of the reporting regime under the UK Securities Financing Transactions Regulation;
- confirming that the settlement discipline regime would not be implemented under the UK Central Securities Depositories Regulation;
- welcoming the recommendations in the Hill review to aligning prospectus documentation requirements with the type of capital raise being undertaken;
- assessing where MiFID II rules can be simplified and where costs can be saved without the material loss of benefits, including whether to implement aspects of the recent MiFID Quick Fix.

Schooling Latter also noted the FCA's initial approach not to automate caps in dark trading (i.e., the EU double volume cap) and how best to improve the "detailed machinery" of the MiFID II transparency regime.

On 13 April 2021, Nausicca Delfas, the then Executive Director of International at the FCA, delivered a speech[\[19\]](#) with the following highlights:

- underscoring the FCA's commitment to maintaining open and fair markets;
- ensuring firms serving UK customers and businesses meet consistently high standards, with strong supervisory co-operation between the UK and overseas jurisdictions;
- continuing to work with the FCA's international colleagues to shape global standards and to work towards regulatory convergence and co-operation on cross-border issues.

Delfas highlighted the double volume cap in MiFIR, the Long-Term Assets Fund Regime and the Investment Firms Prudential Review as three examples of where the UK can focus on what works for UK markets while having an eye to global standards. She also noted the important areas that the FCA will need to address in the coming years, including sustainable finance and the UK's future regulatory framework.

Delfas concluded her remarks by outlining the FCA's ongoing global activity, including establishing cross-border agreements with regulators such as the US SEC and CFTC and working with global standard setting bodies such as the FSB, IOSCO and the OECD.

On 19 April 2021, the Rishi Sunak, the UK Chancellor of the Exchequer, set out plans in a speech[\[20\]](#) for enhancing UK FinTech activity and ensuring the UK remains at the cutting edge of digitalising finance. He also announced plans for capital markets reform, including the listing regime and the capital markets regime, on which the FCA will consult in the summer.

FCA Consultation on a new UK Prudential Regime for MiFID Investment Firms

On 19 April 2021, the FCA published a consultation[\[21\]](#) on the second phase of its proposed rules to introduce the UK Investment Firm Prudential Regime (IFPR) - the prudential regime for UK firms authorised under MiFID. The FCA is accepting comments on the consultation by

28 May 2021. The consultation proposes changes to the existing prudential regime for FCA investment firms in respect of their own funds requirements, remuneration requirements and regulatory reporting requirements. Of particular note, the FCA is consulting on whether an investment firm's remuneration policy should reflect the firm's risk appetite and risk strategy, including with regard to aspects such as environmental, social and governance (ESG) risk factors and its culture and values.

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endnotes

[1] ICI Memorandum 33012, RE: Brexit: Trade and Cooperation Agreement, dated 4 January 2021, *available from* <https://www.ici.org/memo33012>

[2] European Parliament Press Release: EP Committees recommend giving consent to EU-UK agreement, dated 15 April 2021, *available from* <https://www.europarl.europa.eu/news/en/press-room/20210415IPR02102/ep-committees-recommend-giving-consent-to-eu-uk-agreement>

[3] https://www.europarl.europa.eu/sed/doc/news/flash/25265/SYN_PDOJ_April_BRU_a_EN.pdf

[4] p2, Joint Declaration on Financial Services Regulatory Cooperation between the European Union and the United Kingdom, *available from* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948105/EU-UK_Declarations_24.12.2020.pdf

[5] <https://www.gov.uk/government/news/technical-negotiations-concluded-on-uk-eu-memorandum-of-understanding>

[6] Communication from the Commission on the European economic and financial system: fostering openness, strength and resilience, dated 19 January 2021, *available from* <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021DC0032&from=EN>

[7] Review of the UK funds regime: a call for input, *available from* <https://www.gov.uk/government/publications/review-of-the-uk-funds-regime-a-call-for-input>

[8] <https://www.gov.uk/government/news/governments-asset-management-taskforce-revamped>

[9] IA UK Funds Regime Working Group, 6 June 2019, *available from* <https://www.theia.org/sites/default/files/2020-04/20200330-ukfrwgfinalreport.pdf>

[10] Out approach to international firms, Financial Conduct Authority, February 2021, *available from*

<https://www.fca.org.uk/publication/corporate/approach-to-international-firms.pdf>

[11] Our approach to international firms, summary of responses: Feedback to CP20/20, February 2021, *available from* <https://www.fca.org.uk/publication/feedback/fs21-3.pdf>

[12] <https://www.fca.org.uk/brexit/temporary-permissions-regime-tpr/landing-slots-firms>

[13]

<https://www.fca.org.uk/brexit/temporary-permissions-regime-tpr/considerations-firms-leaving>

[14] <https://www.fca.org.uk/firms/authorisation>

[15] <https://www.fca.org.uk/publications/corporate-documents/our-approach-authorisation>

[16] <https://www.fca.org.uk/brexit/temporary-permissions-regime-tpr>

[17] <https://bills.parliament.uk/bills/2792>

[18] A forward look at regulation of the UK's wholesale financial markets, Speech by Edwin Schooling Latter, Director of Markets and Wholesale Policy at the FCA, dated 16 March 2021, *available from*

<https://www.fca.org.uk/news/speeches/forward-look-regulation-uks-wholesale-financial-markets>

[19] Regulating the UK as a global financial centre, Speech by Nausicaa Delfas, Executive Director of International, dated 13 April 2021, *available from*

<https://www.fca.org.uk/news/speeches/regulating-uk-global-financial-centre>

[20]

<https://www.gov.uk/government/news/ambitious-plans-to-boost-uk-fintech-and-financial-services-set-out-by-chancellor>

[21] A new UK prudential regime for MIFID investment firms, Consultation Paper CP21/7, April 2021, *available from* <https://www.fca.org.uk/publication/consultation/cp21-7.pdf>