



BREXIT – IMPLICATIONS FOR THE FINANCIAL SERVICES INDUSTRY

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OVERVIEW

§ 1 – Setting the stage

§ 2 – Access from 3rd country via Equivalence

§ 3 – EU Subsidiary

§ 4 – Bilateral Market Access

§ 5 – Passive Use of Freedom to Provide Services

§ 6 – Conclusions

1.1. BREXIT SCENARIOS

- UK as EEA member (but: freedom of movement !)
- Bilateral Treaties (example: EU - Switzerland), but delay in negotiations
- Third Country / Equivalence (Example: USA)

1.2. SCOPE OF EU FINANCIAL SERVICES LAW

- Territoriality doctrine => seat/ headquarter (financial regulation)
- Market doctrine => market (sales, market regulation: prospectus etc.)
- Effects doctrine => negative impact on EU (systemic risk, market abuse)

1.3. BENEFITS OF EU / EEA MEMBERSHIP

- EU's Single Market
- 1 license - 31 countries – 510 million consumers
- Pro competition: channel intermediation to most productive venue
- Towards Development of Financial Centres

1.4. DOWNSIDES OF EU MEMBERSHIP

- Mandatory law and coordination of supervision and enforcement
- Necessary evil of Single Market: Mitigate risk shifting

1.4. DOWNSIDES OF EU / EEA MEMBERSHIP

- Not all mandatory financial law is necessary or efficient
=> some political, some overly detailed, some outright silly, all costly.
- Examples:
 - Diversity Rules for Board Composition
 - 40 L1-L3 statements on MiFID II/MiFIR (+1000pp.)
 - Regulation of bank directors' remuneration under CRD IV
 - Asset stripping rules for AIFMs

1.5. WAYS INTO THE EU SINGLE MARKET

- Access from 3rd country via Equivalence
- EU Subsidiary
- Bilateral Market Access
- Passive Use of Freedom to Provide Services

§ 2 Access from 3rd country via Equivalence

- US « substituted compliance » (for derivative clearing)
- Scope: where worldwide risk spreading mitigates EU's systemic risks => PD, AIFMD, MiFID, CCP/EMIR, CRA, CSDR, Re-Insurance Undertakings

- Equivalent rules and regulations
- Equivalent enforcement
- Equivalent social factors: AML/CFT Rules + Tax Transparency
- Equivalent market access: Reciprocity

§ 2 Access from 3rd country via Equivalence

- Up:
 - home rules + regulators
 - Low costs
- Downs
 - Equivalence statement under political influence
 - Limitations on clients/customers/investors: professionals only
 - Limited scope
 - MiFID license insufficient for full-service investment banks, re-insurance for insurance undertakings, AIFMD for UCITS ManCos

§ 3 EU Subsidiary

- Scope: all financial law
- Requires minimum substance in EU
- Ups
 - All EU financial services passports
- Downs
 - Double costs
 - Double processes

US, Asian
intermediaries:
Why not move
EU Hub into EU
and forget
London?

§ 4 Bilateral Market Access

- Scope: MiFID and others
- Requires friendly market access regime in MS
- Upsides
 - Some MS have liberal approach
 - Some discretion of national regulator
- Downsides
 - Varies across Member States
 - No Single License – feasible for large MS only
 - Policial uncertainty

§ 5 PASSIVE USE OF FREEDOM TO PROVIDE SERVICES

- Scope: all financial services
- Requires clients to request services on their own initiative
- Upsides:
 - Details not harmonized => liberal approach eg by BaFin re professional investors
- Downsides:
 - Details not harmonized => subject to change, MS' approach varies
 - Need to contact new clients outside of the EU
 - Compliance in day-to-day business difficult; violations likely

	Prerequisites	Clients	Ups	Downs	Scope
3rd country passport	EC equivalence decision	Professionals	1 organization low costs	scope, politics, experience	MiFID, AIFMD, PD, EMIR, Re-Insurance
Subsidiary	Substance	All, EU-wide	scope	costs, 2xprocesses, EU rules	All
Bilateral Access	Bilateral recognition	All, 1 MS	1 organization low costs	political exposure	MiFID
Passive Use of Freedom to Provide Services	Request by client, earlier contact	All	own rules	not harmonized, Compliance	All

§ 6 CONCLUSIONS

1. **Based on equivalence** UK firms will have some market access. Experience with recognition of third-country equivalence is scarce. Political criteria could impact equivalence assessment. Equivalence decisions are not reviewable in court.
2. **Bilateral access** under MiFID is an option only in some EU Member States. **No passport exists** for third country IMs in banking and primary insurance business.
3. Many UK IMs it will try to establish a **functionally independent, but minimally equipped EU subsidiary** taking advantage of the equivalence-based facilitation of capitalization and supervision. Minimum substance (prohibition of letter-boxes) deserves special attention.
4. **Reverse solicitation** if not amended could support the business with institutional clients from London with few restrictions. But: Regulatory approach not harmonized, regulatory uncertainty exists.

Thanks!

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