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UK

A UK-EU association agreement and future UK free trade agreements: TheCityUK report

On 30 August 2018, TheCityUK published a [report](#) on a UK-EU association agreement and future UK free trade agreements.

The report begins by analysing major features of the UK Government's July 2018 [White Paper](#) on the future relationship between the UK and the EU, with particular focus on the free trade agreement (FTA) as one aspect of the future UK-EU economic partnership. It addresses what an FTA is and what it could potentially cover.

The report discusses all the economic aspects of the White Paper proposals, offering commentary on each and highlighting questions that it says should particularly engage the financial and related professional services industry. TheCityUK says that the aim of the report is to raise awareness of core areas in the White Paper along with suggestions for assessing their full implications for the industry.

These areas include:

- **the UK-EU economic partnership:** the report draws attention to the implications of the White Paper's proposals on trade in goods, services and investment, the framework for mobility, digital issues, open and fair competition, socio-economic co-operation, and the UK's future independent trade policy;
- **the UK-EU security partnership:** this gives a more selective review of the implications of proposed arrangements on shared security, law enforcement and criminal justice co-operation, and foreign policy, defence and development;
- **cross-cutting and other UK-EU co-operation:** the report considers the financial and related professional services industry's interests in data protection, classified information and UK-EU cooperative accords in various fields;
- **institutional arrangements:** particular focus is concentrated on new forms of UK-EU dialogue, administrative provisions and dispute resolution, and industry's interest in these.

No deal Brexit: DExEU Secretary of State speech, framing notice and technical notices

On 23 August 2018, the Secretary of State for the Department for Exiting the European Union (DExEU), Dominic Raab, gave a [speech](#) on the Government's planning for a no deal Brexit. Among other things, Mr Raab also announced the publication of a collection of material on how to prepare if the UK leaves the EU with no deal.

This collection of material is made up of:

- an [overarching framing notice](#) on the UK Government's preparations for a no deal Brexit which puts the Government's technical notices in context, explaining the current progress in negotiations and the unlikely circumstances in which a no deal scenario might materialise. It also explains the Government's overarching approach to preparing the UK for this outcome in order to minimise disruption and ensure a smooth and orderly exit in all scenarios. A no deal scenario is one where the UK leaves the EU and becomes a third country at 11pm on 29 March 2019 without a Withdrawal Agreement and framework for a future relationship in place between the UK and the EU;
- the first 25 in a series of [technical notices](#) which set out information to allow businesses and citizens to understand what they would need to do in a no deal scenario, so they can make informed plans and preparations. These technical notes include one on banking, insurance and other financial services (see below).

HM Treasury publishes guidance on banking, insurance and other financial services if there is no Brexit deal

On 23 August 2018, the Government published a collection of material on how to prepare if the UK leaves the EU with no deal. These technical notes include one on [banking, insurance and other financial services](#) published by HM Treasury.

The purpose of this technical notice is to provide stakeholders (including personal and business customers of financial services firms and funds, and financial services firms, funds and financial market infrastructure) with information about the impact of the UK leaving the EU without a deal, and the Government's approach to ensuring that the UK has a functioning financial services regulatory framework in any scenario.

The technical notice includes sections on:

- **the position after 29 March 2019 if there is no deal:** among other things, this section states that when the UK leaves the EU, it will be outside of the EU's framework for financial services regulation. In a no deal scenario, UK firms' position in relation to the EU would be determined by the relevant Member State rules and any applicable EU rules that apply to third countries (countries outside of the EEA) at that time. The UK will also, in general, default to treating EEA states and EEA firms largely as it does other third countries and their firms. However, the Government has confirmed that there will be instances where divergence does take place in order to ensure that a functioning legislative regime is in place, to minimise disruption and avoid material unintended consequences for the continuity of financial services provision, to protect the existing rights of UK consumers, or to ensure financial stability;
- **individual and business customers - UK-based customers of UK based providers:** among other things, this section states that for UK-based (individual or business) customers accessing domestic services in the UK provided entirely by UK-based providers, there is unlikely to be any change as a result of exit. If UK customers will be affected by their firm's planning for exit, then this should be clearly communicated to customers by the firm. Some EEA firms that provide deposit taking and retail banking services in the UK do so via a UK-authorized subsidiary. There will be no change to their UK authorisation as a result of the UK leaving the EU, and they will be able to continue providing services. However, in this scenario, UK-based payment services providers would lose direct access to central payments infrastructure, such as TARGET2 and the Single Euro Payments Area (SEPA), which means that customers (including business using these providers to process euro payments) could face increased costs and slower processing times for Euro transactions. The Government is looking to align payments legislation to maximise the likelihood of remaining a member of SEPA as a third country. The cost of card payments between the UK and EU will likely increase, and these cross-border payments will no longer be covered by the surcharging ban;
- **individual and business customers - UK-based customers of EEA firms operating in the UK:** for UK-based customers who access banking, insurance, investment funds and other financial services with EEA firms currently passporting into the UK, the temporary permissions regimes will enable these firms to continue to provide those services to UK customers for up to three years after exit;
- **individual and business customers - EEA customers (including UK citizens living abroad) of UK firms operating in the EEA:** among other things, this section states that, in the absence of action from the EU, EEA-based customers of UK firms currently passporting into the EEA, including UK citizens living in the EEA, may lose the ability to access existing lending and deposit services, insurance contracts (such as a life insurance contracts and annuities) due to UK firms losing their rights to passport into the EEA, affecting the ability of their EEA customers to continue accessing their services. This could impact these firms' ability to continue to service their existing products. The Government has committed to putting in place unilateral action, if necessary, to resolve these issues as far as possible on the UK side;
- **financial services firms and funds:** among other things, this section states that HM Treasury is continuing to engage with stakeholders as it drafts the legislation, under the EU Withdrawal Act 2018, to ensure that there is a fully functioning financial services regulatory framework at the point where the UK leaves the EU. At this stage, firms should continue to plan on the basis that an implementation period will be in place from March 2019 to December 2020, and continue to follow guidance from the regulators;
- **financial market infrastructure:** among other things, this section states that there will be no need for UK-based clearing members (and, for example, UK-based clients of UK clearing members) using UK central counterparties (CCPs) to take any action as a result of EU exit. To ensure that there will be no significant impact for UK-based users of non-UK CCPs (including EEA CCPs) as a result of EU exit, the Government has provided for a temporary regime that will enable non-UK CCPs to continue to provide services to the UK for a period of up to three years. This section also gives information in relation to settlement, trading venues, credit rating and market operators;
- **data sharing:** the Government will publish a technical notice on transfers of personal data between the UK and the EU. Organisations that receive or transfer personal data between the

UK and the EU (including financial institutions) should refer to this document for further information on preparing for the UK leaving the EU without a deal.

Links are also provided to relevant Financial Conduct Authority, Bank of England and Prudential Regulation Authority documents.

UK Government publishes presentation document on framework for the UK-EU partnership - financial services

On 20 August 2018, the UK Government published a [document](#), in the form of a presentation, dated 25 July 2018, entitled "Framework for the UK-EU partnership - financial services". The document follows on from the [White Paper](#) on the future relationship between the UK and the EU, which was published on 12 July 2018. The framework contains three parts: context (part I), proposed model (part II) and conclusion (part III).

The framework says that the new, bilateral economic and regulatory arrangement would have three pillars, which are all discussed further in the presentation document:

- **common principles for the governance of the relationship:** the UK-EU arrangement should include common objectives to manage shared interests such as financial stability, investor protection, market integrity, and the prevention of regulatory arbitrage;
- **extensive supervisory co-operation and regulatory dialogue:** the UK proposes that the UK and the EU would commit to an overall framework that supports extensive collaboration and dialogue;
- **predictable, transparent and robust processes:** to give business the certainty necessary to plan and invest, transparent processes would be needed to ensure the relationship is stable, reliable and enduring.

The document concludes by saying that the three key takeaways are:

- **autonomy of decision making:** this proposal fully respects each side's autonomy of decision-making, addressing challenges and concerns around the sovereignty of decision making. The bilateral commitments envisaged do not constrain each side's discretion, but rather ensure that change can be managed effectively;
- **the bilateral component is critical:** it should be commensurate to the UK/EU relationship and degree of market integration, it should address key gaps in scope, set out institutional co-operation and use consultation and mediation to explore solutions and agree timescales appropriate for the scale of changes before they take effect;
- **cross-border co-operation matters:** for EEA firms doing business in the UK and for supervisors, the UK has no desire to water down existing co-operation. There is no need to default to a world with less predictability about how the two sides will share information, and co-operate day-to-day and in crisis.

FCA publishes CP18/23: Claims management companies: recovering the costs of regulation and the Financial Ombudsman Service

On 1 April 2019, the Financial Conduct Authority (FCA) will become the regulator of claims management companies (CMCs) established or serving customers, in England, Wales and Scotland. At the same time the Financial Ombudsman Service (FOS) will become responsible for resolving disputes about CMCs.

On 5 June 2018, the FCA published a consultation paper, [CP18/15](#), on how it proposed to regulate CMCs when the responsibility for regulating the sector is transferred to it. Among other things, the consultation paper set out the arrangements for a temporary permissions regime so that CMCs can continue trading from 1 April 2019 onwards, and for re-authorising and regulating them after that. The

consultation paper explained that the temporary permission gateway would open between 1 January 2019 and 31 March 2019.

On 20 August 2018, the FCA published a further consultation paper, [CP18/23](#), which explains how it proposes to set the fees that will recover its costs from firms, both under the temporary permissions regime and for regulation in the long term. The FCA is proposing to recover the periodic fees for 2019/20 when firms register for temporary permissions from 1 January 2019. Future fees proposals affecting CMCs and changes in the fee rates will be consulted on through the FCA's standard cycle of fees consultation, full details of which are given in paragraphs 1.9 and 1.10 of the consultation paper.

Chapter 2 of the consultation paper sets out proposals for the long term fees structure (authorisation fees, periodic fees, definition of turnover as the base for payment of fees) and the short term arrangements for temporary permissions. Chapter 3 of the consultation paper sets out the FCA's proposals for the FOS general levy. The FCA does not propose to extend Financial Services Compensation Scheme (FSCS) cover to consumers of CMCs at present, but may review the position in the future if there is evidence of significant consumer harm. CMCs will not be required to contribute to the costs of running the FSCS.

Comments are requested by 22 October 2018. The FCA will publish feedback in a policy statement in December 2018. It will make the rules, amended if necessary in the light of comments, at the December 2018 FCA Board Meeting. The rules will come into effect from 1 January 2019, so that firms can start applying for temporary permission.

Insurance contract law: consultation period on Law Commissions' updated draft Bill on insurable interest extended

On 20 June 2018, the Law Commission and the Scottish Law Commission published an updated [insurable interest draft Bill](#), together with [accompanying notes](#). The draft Bill focusses on life insurance and other insurances which relate to human life, such as accident and health cover. A related Law Commission [webpage](#) gave full details of the background to the publication of the updated draft Bill.

Comments were originally requested by 14 September 2018, however, the Law Commissions say that they have had several requests for extensions to the deadline for comments, particularly because the consultation took place over the summer. In order to give people and organisations time to respond, they have therefore extended the deadline to 31 October 2018, although the above webpage still refers to the earlier date.

PRA public working draft of insurance XBRL taxonomy

On 10 August 2018, the Prudential Regulation Authority (PRA) updated its [webpage](#) on regulatory reporting in the insurance sector to give the information that it has published a public working draft (PWD) of the standalone national specific templates (NSTs) and standard formula reporting for firms with an approved internal model (SF.01) taxonomy, alongside related technical artefacts, that will make up part of the Bank's insurance XBRL taxonomy. Links to these are given on the webpage.

The PWD follows the publication on 28 July 2018 of the PRA's policy statement, [PS21/18](#), on changes to the Solvency II reporting format. The PRA says that the taxonomy, data point model (DPM) dictionary, annotated templates and validation rules represent the reporting requirements set out in policy statement, [PS16/18](#), on changes in insurance reporting requirements, which was published on 6 July 2018 and the [latest version](#) of Supervisory Statement SS15/16 "Solvency II: monitoring model drift and standard formula SCR reporting for firms with an approved internal model", published on 28 July 2018. The DPM extends the European Insurance and Occupational Pensions Authority's Solvency II version 2.3.0.0 dictionary.

Firms and software vendors are invited to provide feedback on the modelling, annotated templates, validations and XBRL taxonomy by 24 August 2018. The PWD should not be used for reporting. The

PRA says that it should be noted that the PWD for internal model outputs and market risk sensitivities will be released in early September 2018, and the final live release will consolidate all frameworks.

More information on the planned dates for the availability of required information is set out in these [reporting schedules](#).

Payment Protection Insurance Market Investigation Order 2011: CMA limited review

On 2 August 2018, the Competition and Markets Authority (CMA) [announced](#) that it is proposing to launch a limited review of the [Payment Protection Insurance Market Investigation Order 2011](#) (the Order) in response to the introduction of the Insurance Distribution Directive (IDD).

The Order states that PPI providers must provide policy holders with policy summaries which contain a summary of the PPI policy in a prescribed format. The IDD, when transposed into UK law, will mandate that PPI providers must provide policy holders with an Insurance Product Information Document (IPID), which will contain similar information to the summary in the Order.

The CMA is considering a variation to the Order to avoid this duplication and it has published an [invitation to comment](#) containing two possible options for variation of the Order. Responses to this are requested by 23 August 2018. The CMA says that it does not propose to carry out a full review of the Order at this time.

INTERNATIONAL

EIOPA joins the Sustainable Insurance Forum

On 8 August 2018, the European Insurance and Occupational Pensions Authority (EIOPA) [announced](#) that it has become a member of the Sustainable Insurance Forum (SIF), a network of insurance supervisors and regulators from around the world working together on sustainability challenges facing the insurance sector.

The SIF, together with the International Association of Insurance Supervisors, published an [issues paper](#) on climate change risks, calling on the insurance sector to enhance awareness and intensify climate risk scrutiny. EIOPA says that it particularly welcomes the case studies regarding supervisory practices which it regards as being of high value for all supervisors around the world.

EIOPA will consider transition and physical risks and provide input from an EU perspective on taxonomy, fiduciary duty, governance, own risk and solvency assessment as well as disclosure in its sustainable action plan which it plans to publish in autumn 2018.

EIOPA publishes report on understanding cyber insurance

On 2 August 2018, EIOPA published a [report](#) on understanding cyber insurance.

The report is based on responses of 13 (re)insurance groups based in Switzerland, France, Italy, Germany and the UK to a set of 14 qualitative questions. The sample was selected based on expertise and current exposures in cyber insurance and consists of eight insurers and five reinsurers.

The key findings of the report include:

- there is a clear need for a deeper understanding of cyber risk, both on the supply and demand side in order for the European cyber insurance industry to develop further;
- cyber insurance products and services are mainly focused on commercial business. However, there is increasing interest in providing cyber insurance for individuals;
- the cyber insurance industry expects a gradual increase in the demand for cyber insurance, mainly driven by new regulations, increased awareness of risks and by a higher frequency of

cyber events. The relevance and importance of cyber coverage in the overall functioning of the economy is expected to increase significantly;

- lack of specialised underwriters, data and quantitative tools are key obstacles to the development of the industry and the provision of proper coverage to the economy;
- regulation may be welcomed by the industry in a moderate fashion, as it could help to address some of the identified challenges.

Sustainable finance: European Commission request for technical advice from EIOPA and ESMA

On 1 August 2018, EIOPA published a European Commission [request for advice](#) addressed to EIOPA and the European Securities and Markets Authority (ESMA) regarding the Commission's May 2018 [package of measures](#) on sustainable finance.

The letter, which is dated 24 July 2018, says that level 2 measures adopted under the UCITS Directive, the Alternative Investment Fund Managers Directive, the MiFID II Directive, the Solvency II Directive, and the Insurance Distribution Directive will need to be "further specified" and "amended".

EIOPA and ESMA are invited to provide the final technical advice by 30 April 2019.

Digital technology and consumer outcomes: IAIS consultation on draft issues paper

On 1 August 2018, the International Association of Insurance Supervisors (IAIS) published a [consultation](#) on a draft issues paper on the increasing use of digital technology in insurance and its potential impact on consumer outcomes.

The IAIS says that digitalisation or digitisation is rapidly transforming and potentially disrupting insurance business. Examples such as mobile devices, the internet of things, telematics, big data, machine learning and artificial intelligence, distributed ledger technology, comparators, robo advisors, peer-to-peer and platform business models have an impact throughout the insurance value chain: from the design, underwriting and pricing of products, their marketing and distribution, through to claims processing and the ongoing management of customers.

The paper will consider consumer outcomes and discuss what digitalisation means for insurance supervision. The focus of the paper is on the product design and underwriting along with marketing, sales and distribution aspects of the insurance value chain.

Comments are requested by 30 August 2018.

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