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# Brexit

The potential impact on retail banking, wealth management  
and payment institutions

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# Brexit and retail business

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- Introduction
- Structural questions: The position of UK firms as third country firms after Brexit
- Products and services:
  - General observations
  - Specific products and services
- Lobbying and engagement

# The position of UK firms as third country firms after Brexit

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- Any country which is outside the EEA is a "third country". The UK will become a third country when it leaves the EU.
- It is still conceivable that the UK could:
  - Remain in the EEA (like Norway) – in which case it retains its passporting rights under the Single Market Directives.
  - Reach an agreement with the EU on a bilateral basis and have some alternative status.
- If the UK was just another third country, what position would UK firms be in?

# Third country regimes

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Some of the Single Market Directives make specific provision for third country firms.

## Banking (CRD IV) and Insurance Directives

- Acknowledge the existence of third country branches; and
- Set out common conditions that Member States should apply in considering whether to authorise them.

## AIFMD

- Is proposing to introduce a "third country passport" regime, under which third country managers, or EU managers of non-EU alternative investment funds, can apply for passports to enable them to sell funds within the EU. But it:
  - Depends on the AIF meeting certain conditions (i.e. equivalence in some areas); and
  - Is only available for "professional investors" and will exclude most retail clients.

# Third country regimes

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## Prospectus Directive

- Allows third country firms to have prospectuses approved in a Member State, provided:
  - The prospectus has been drawn up in accordance with international standards; and
  - The information requirements, including information of a financial nature, are equivalent to the requirements under the Prospectus Directive.

## Markets in Financial Instruments Directive (MiFID)

- No current third party regime, but MiFID II (due January 2018) proposes a regime that will allow access to the EU for third country firms.
- For wholesale business, firms from third countries that have equivalent regulation will have the right to provide services into Member States on a cross-border basis.
- For retail business, the third country regime is much more limited:
  - Individual Member States will have the discretion to allow third country firms to establish branches in their jurisdiction.
  - If they allow third country firms to establish branches, they will have to follow criteria set under MiFID in determining whether to do so.

# Third country regimes

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- Even where Member States allow access, there are likely to be practical concerns:
  - There may be local requirements (e.g. to hold capital) which make it inefficient to do business in multiple EU member states.
  - Local law will apply, and third country firms who are used to home state regulation will have to adapt to that.

# What if there is no third country regime?

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- High level summary of the position in some key European jurisdictions:

France	For many types of business (e.g. banking, insurance, investment business), it is generally difficult for third country firms to carry on business in France. In theory, a third country firm could open a branch and apply for it to be authorised but in practice we advise third country firms to establish a local subsidiary and apply for it to be authorised by the French regulators.
Germany	Some access for financial institutions may be permitted on a cross-border or through the establishment of a branch. Reverse solicitation rules mean that UK firms could continue to service existing clients and provide new services where requested by the client – but cannot be marketed to directly.
Italy	Some banking and financial services may be allowed on a cross-border basis if the firm applies for authorisation. Others (e.g. payment services and insurance) require the establishment of an Italian entity.
Spain	Some access for financial institutions may be permitted on a cross-border or through the establishment of a branch. If a branch is established, there are minimum requirements (e.g. to hold capital and to have individuals responsible to the Spanish regulator). The requirements differ according to the sector.

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# Setting up a local subsidiary

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- A subsidiary in an EU Member State will have passporting rights and will therefore:
  - Be able to do business in all other Member States.
  - Not require capital to be held separately in each Member State.
- Questions:
  - Which Member State should we choose?
  - How long will it take the subsidiary to get authorised in that Member State?
  - Can we outsource back to the UK?
  - How do we achieve the transfer?



# Impacts on retail financial services businesses

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- What laws will apply?
- Will impending laws still be implemented?
- Can we make changes on Brexit?
- Is there an opportunity to influence approach to existing or new laws?

# Legislative timeline

Broad application	<ul style="list-style-type: none"> <li>• 3<sup>rd</sup> Money Laundering Directive /WT Regulation</li> <li>• Data Protection Directive</li> <li>• Unfair Terms/Commercial Practices Directives</li> <li>• Distance Marketing/E-Commerce Directives</li> <li>• Rome I and II &amp; Recast Brussels Regulations</li> </ul>	<ul style="list-style-type: none"> <li>• SEPA Migration Regulation (Oct 2016)</li> <li>• 4<sup>th</sup> /5<sup>th</sup> Money Laundering Directive (Early 2017)</li> <li>• New WT Regulation</li> <li>• General Data Protection Regulation (May 2018)</li> </ul>	<ul style="list-style-type: none"> <li>• Capital Markets Union (intended to be implemented by 2019)</li> <li>• Implementation of Green Paper on Retail Financial Services (Action Plan due in summer 2016)</li> <li>• Implementation of Commission review of EU Regulatory Framework for Financial Services (Commission report due in mid-2016)</li> </ul>
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Product specific application	<ul style="list-style-type: none"> <li>• Mortgage Credit Directive</li> <li>• Consumer Credit Directive</li> <li>• Capital Requirements Directive IV</li> <li>• Markets in Financial Instruments Directive I</li> <li>• Payment Services Directive</li> <li>• Electronic Money Directive</li> <li>• Interchange Fee Regulation</li> <li>• SEPA Regulation</li> </ul>	<ul style="list-style-type: none"> <li>• Payment Accounts Directive (Sept 2016)</li> <li>• PRIIPs Regulation (Dec 2016)</li> <li>• Markets in Financial Instruments Directive II (Jan 2018)</li> <li>• 2<sup>nd</sup> Payment Services Directive (Jan 2018)</li> <li>• Insurance Distribution Directive (Feb 2018)</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Regulation</b> establishing the European Deposit Insurance Scheme</li> </ul>
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# What laws will apply? (1)

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- Source
  - Directives – require implementation in each Member State
    - Implemented under European Communities Act normally by Regulation or Order (or changes to FSMA)
    - Those continue unless repealed/amended
  - Regulations – have direct effect
    - Will fall away
    - Replacement?
    - Manual or auto?

# What laws will apply? (2)

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- Others
  - Regulatory Technical Standards, eg:
    - Security and communications under PSD2
    - Detail under the PRIIPs Regulation
  - Guidelines
  - Commission Qs and As
  - CJEU judgments
    - Fairness
    - Durable medium

# Will pending laws still be implemented?

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- Yes



- For sure

Any scope for divergence?

Global standards

More goldplating?

What about laws due to be implemented in EU Member States in the period after Brexit?

# What happens to products with existing customers?

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- One-off, eg pre-paid cards, sales of securities
- Fixed term, eg fixed term loans, resi mortgages, deposits, structured products, annual home insurance (renew)
  - Continue – ability to vary?
  - Authorisation?
- Continuous – eg credit cards, current accounts, securities, annual home insurance (review)
  - Continue but could vary or terminate
  - Authorisation?
  - Use of or additions to exiting variation provisions
    - Negative interest rates
    - Volatile forex
- Choice of law/jurisdiction

# What might we change for new customers?

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- Additions to variation/termination provisions?
- Choice of law/jurisdiction
- Pre- and post-Brexit policies?

# Areas of focus for products and services?

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## Deposits

- PAD – use of common terms and glossary
- Deposit protection scheme

## Payment services

- Third party services
- Card payments and acquiring
- Information requirements and treatment of net compensation, commercial cards and cobadging under the Interchange Fee Regulation
- Payment systems
- SEPA

## Consumer lending

- Residual CCA provisions
- SECCI

## Mortgages

- Best interests rule
- Article 3(1)(b) loans
- ESIS

## Insurance mediation

## Investments

- Particular impact on UCITS funds
- PRIIPs, disclosure requirements and incentives



# Lobbying and engagement

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- Likely to be no direct access from UK
- Possible consultation status for UK Government
- Access via:
  - European trade bodies
  - Authorised local subs in EU Member States
  - Law firms with multiple offices in various EU Member States

# Webinars on Brexit implications across the sector

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*Coming soon:*

- Market Infrastructure – Wednesday 3 August, 2pm (BST)

*Available to watch now (links below):*

- [Implications for Financial Services](#) – held 30 June
- [Impact of Brexit on the Insurance Industry](#) – held 13 July
- [Capital Markets Union](#) – held 19 July
- [Derivatives](#) – held 22 July
- [Securitization](#) – held 27 July

# Contact Us

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- If you have any questions, you can email us on:  
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- Access our latest thinking on our Brexit hub at:  
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