

The Weekly Report from Brussels, provided by the European Affairs team at the City of London, provides an update on key developments relating to financial services in the EU.



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**23 June 2017**

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Welcome to the Weekly Report from Brussels, prepared by the City of London Corporation European Affairs team.

This week includes:

- [MEPs discuss Action Plan for Retail Financial Services](#)
- [The Constitutional Challenges of the Brexit Negotiations](#)
- [European Council Summit](#)
- [In other news](#)
- [Upcoming EU Institutions events and consultations](#)

More information about the work of the City of London Corporation European Affairs team can be found [here](#).

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### **MEPs discuss Action Plan for Retail Financial Services**

On 20 June, the Economic and Monetary Affairs (ECON) Committee held a [meeting](#) to discuss a draft report on the European Commission's Action Plan for Retail Financial Services.

#### **Background:**

In December 2015, the European Commission launched a [Green Paper consultation on Consumer Financial Services](#), which sought views on how to improve choice, transparency and competition in retail financial services and how to facilitate the cross-border supply of these services. Currently, only 7% of consumers buy financial services from another EU Member State.

The responses received indicated that consumers were interested in having easier access to simple financial products and that this would be best achieved through greater transparency and the sale of simpler products, rather than more products. Additional difficulties for consumers included the inability to access certain products online due to geo-blocking. Responses from firms argued that there was insufficient demand to justify selling products across borders when taking into account differences in local regulation and taxation.

Following on from this consultation, the Commission published its [Action Plan for Consumer Financial Services](#) in March 2017.

### **Latest Developments:**

Olle Ludvigsson MEP (S&D, Sweden), rapporteur of the [draft report](#), told the Committee that many of the proposals made in the Action Plan are strongly needed to create a true single market for retail financial services. He also highlighted that the digital transformation is going to rapidly change consumer behaviour and expectations, and so it is important that the legal framework keeps up with digital development. Discussing the need to improve transparency in currency conversion, he argued that enforcement of the current legislation is necessary to tackle dynamic currency conversion which would ensure that, when making a payment abroad, consumers are informed as to which currency is the most advantageous in which to pay. The Commission's proposals in this area, Mr Ludvigsson stated, would move away from this.

He also discussed the plan's proposal to develop a deeper and safer single market for consumer credit. The rapporteur raised concerns about the need to address consumer over-indebtedness linked to credit activities before exploring ways of facilitating cross-border access to loans, as this could increase abuses that lead to irresponsible lending. Further, he said that setting out common creditworthiness assessment standards would be insufficient and called for these standards to be introduced by amending the Mortgage Credit Directive and the Consumer Credit Directive.

Mr Ludvigsson concluded by reiterating that the proposals in the Action Plan were a step in the right direction, but strongly warned against allowing general consumer legislation to be watered down as part of a drive to remove cross-border barriers.

Burkhard Balz MEP (EPP, Germany) agreed that the Action Plan proposed was ambitious because it comprises realistic targets which are achievable by 2019. He also noted that, despite digitalisation having rapidly changed the financial services sector in recent years, digital innovation alone cannot remove the cross-border barriers to the provision of retail financial services. He raised concerns about the development of common e-ID standards, calling for reassurances that the standards will provide a level playing field for established and new participants, and prevent start-ups from being blocked from the market. He was also critical that the actions did not specifically remove geo-blocking when purchasing financial services products, as there is currently legislation going through the parliament on removing unjustified geo-blocking, but financial services has been excluded.

Ashley Fox MEP (ECR, UK) agreed that the proposals in the Action Plan should be broadly welcomed, especially on efforts to improve the transparency of financial transactions for consumers. However, he disagreed with Mr Ludvigsson's suggestion that the Mortgage Credit and the Consumer Credit Directives should be amended, pointing out that the directives have only been recently been transposed by national governments and they should wait and see the impact of the current legislation before amending it. Additionally, he was opposed to the use of taxpayers' money in the setting up of a European comparison portal, advocating that this action should be removed.

Cora van Nieuwenhuizen MEP (ALDE, Netherlands), who was rapporteur for the Parliament's

report on an EU framework for FinTech which was **approved** in April, welcomed the action to put forward proposals to support the development of FinTech, but argued they should go further. She called on the proposals to be incorporated into the framework of the Capital Markets Union (CMU) and Digital Single Market (DSM) strategies.

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## **The Constitutional Challenges of the Brexit Negotiations**

On 20 June, the European Parliament's Constitutional Affairs (AFCO) Committee held a public hearing on '**Brexit: Constitutional Challenges and Implications**'. In this **Public Hearing**, the Committee heard from Sionaidh Douglas-Scott (Anniversary Chair Law, Queen Mary University of London), Piet Eeckhout (Professor of EU Law, University College London) and Christophe Hillion, (Professor of European Law at the University of Leiden and at the University of Gothenburg) to discuss various constitutional and institutional aspects related to the UK invoking Article 50, including the UK constitutional dimension, the scope of the withdrawal agreement and the nature of the transitional measures.

### **Background:**

Following the invocation of Article 50 by the UK Government on 29 March, the European Council decided on a set of guidelines setting out how negotiations on the UK's exit from the EU will proceed.

The **guidelines** set out a phased approach to the negotiations, where the first phase will focus on the terms of the UK's exit, the second on the future arrangement between the EU and the UK, and, if possible, a final phase providing for a transitional period. The Council's guidelines also set out the core principles for the negotiations, namely that, once it is a third-country, the UK cannot receive all of the benefits of the Single Market without taking on the obligations. Equally, they rule out Single Market access on a sector-by-sector approach.

The issues of priority which need to be resolved in the exit agreement are guarantees for EU citizens residing in the UK (and vice-versa); a financial settlement between the UK and the EU (which covers all budgetary commitments and liabilities); a workable arrangement for Northern Ireland; an agreed dispute resolution mechanism regarding the application of the withdrawal agreement; and an assurance that goods from the UK which entered the Single Market before the exit date can remain once the UK has withdrawn from the EU.

### **Latest Developments:**

Professor Douglas-Scott opened the workshop by explaining that resolving all the issues that need to be addressed during the negotiations will be a difficult feat given the two-year timeframe. She noted that many experts have been warning of the legal and political complications since before the referendum, and highlighted her uncertainty as to whether the UK Government is fully prepared. She then discussed the importance of the UK

Government's Great Repeal Bill, in the context of the urgency to ensure that EU law is transferred into UK law, and stated that her greatest concern with the bill is that it grants ministers the ability to repeal EU law through executive order without parliamentary approval. However, following the UK general election, there is much greater scope for the opposition parties and the House of Lords to amend the bill.

Professor Eeckhout discussed the decision by the Council to follow a phased approach to the negotiations, and the fact that the EU will not start discussions on the UK's future relationship with the EU until sufficient progress on the exit agreement has been made. He advised that, the closer one looks at it, the more precarious this distinction becomes and went on to say that, in theory, there is much greater room for manoeuvre on what can be included in a withdrawal agreement, such as participation in Europol and the European Arrest Warrants.

Turning to the European Parliament's role in the negotiations, Mr Eeckhout stated that many believe the Parliament can only approve or reject the deal reached between the Commission and the UK. However, he urged caution, declaring that a constitutionalist reading of the Treaty of Lisbon should allow Parliament to pressure the negotiators to go back to negotiations on specific points, rather than only being able to reject the agreement outright.

Finally, Professor Eeckhout hypothesised about the possibility that a party chooses to challenge the constitutionality of the agreement at the Court of Justice of the European Union (CJEU), noting that currently deliberations by the CJEU have no suspensory effect, meaning that the agreement could potentially come into force before a decision is taken. However, Mr Eeckhout expected that, in such a case, both the EU and the UK would delay the exit date until the CJEU has ruled on the issue.

Professor Hillion discussed potential dispute resolution mechanisms which could be agreed in a final deal. He declared the EU's preference to have the CJEU settle disputes but, if that is to be the case, it is not guaranteed that the UK Government would retain the right to ask questions before the CJEU as it will be a third-country. If there is no role for the CJEU after the UK's exit, there would have to be a new dispute resolution mechanism under which, if it were an intergovernmental model, companies and citizens would be unable to bring forward disputes. This would be problematic if, as the Council proposes, contracts signed by EU firms in the UK would be grandfathered.

#### Questions from MEPs:

Discussing the un-entrenched nature of the UK constitution, György Schopflin MEP (EPP, Hungary) queried the possibility of reaching any agreement on the issue of EU citizens residing in the UK retaining their rights post-Brexit which could be guaranteed in the long-term. Professor Douglas-Scott responded that over the past fifty years there has been an ongoing development of the UK constitution, with the traditional view of Parliamentary

sovereignty competing with the semi-entrenchment of laws related to the EU, human rights and devolution. She went on to say that how this might continue after the UK leaves the EU is not yet clear, but the potential loss of entrenchment of human rights legislation is her biggest concern.

Morten Messerschmidt MEP (ECR, Denmark) raised the precedence of Greenland exiting the EU in 1973 but remaining a part of the Kingdom of Denmark, and asked if this could offer any solutions to how the UK could leave the EU but also retain an open border between the UK and Ireland. He also asked whether Article 50 would prevent the UK and the EU negotiating an agreement where the UK could partially opt out of freedom of movement, but retain the remaining three freedoms. Professor Hillion argued that the Greenland precedence has limited relevance to the current negotiations, as Greenland was negotiating as a territory of a Member State rather than a third-country and, additionally, Professor Douglas-Scott noted that such an arrangement would require Northern Ireland to have significantly more autonomy than it has currently. Professor Eeckhout also explained that there is technically nothing in the treaties of the EU which would prevent a third-country from having only three freedoms instead of four, and the decision to remove this possibility is a political one by the EU, albeit one that he agrees is sensible.

Richard Corbett MEP (S&D, UK) asked whether it would be possible for the Commission and the UK Government to reach an agreement on citizens' rights separately from the exit agreement, so as to provide assurances to citizens facing legal uncertainty. He also posed a scenario where the UK Government and EU negotiators make insufficient progress during the two-year negotiating period and it results in the UK and European Parliaments voting on an agreement where most of the large decisions have been postponed. Professor Eeckhout agreed that implementing an agreement on citizens' rights separately from everything else would be possible under the treaties, as well as desirable, and argued that assertions from the EU that 'nothing is agreed until everything is agreed' is the most frightening aspect of the negotiations. He also agreed that any agreement where issues are postponed until after the approval by both parliaments poses serious democratic problems and he argued that the constitutional reading of Article 50 does not demand a two-year cut-off of the negotiations unless there is no reasonable possibility of an agreement being reached, and as long as the UK was willing to seek a fair agreement the EU should be obliged to extend the negotiating period.

Charles Tannock MEP (ECR, UK) raised the issue of acquired rights, asking the panel whether EU citizens residing in the UK losing their rights to vote in local elections would constitute a breach of human rights. Additionally, he referenced the possibility that the negotiations are extended beyond 2019 and whether, in such a scenario, the UK should have to hold European Parliament elections that year. Professor Douglas-Scott responded that there was little protection for acquired rights under UK law, although acknowledged that losing the right to vote would likely constitute a breach of human rights under the European Convention of Human Rights.

Referring to Mr Tannock's second question, Professor Hillion responded by saying that the possibility of European parliamentary elections in the UK in 2019 would depend solely on whether the UK chose to hold them, noting that the UK chose to give up its Presidency of the European Council and so it may choose not to hold the elections. By contrast, Professor Eeckhout argued that there have been examples in the past of the EU taking decisions which could have been challenged in terms of "purity of the law", meaning he could foresee an agreement to extend the negotiation period whilst also removing the UK's MEPs after 2019.

Finally, Chair of the AFCO Committee Danuta Huebner MEP (EPP, Poland) asked whether it would be possible for the UK to revoke its notification on Article 50 and stop the withdrawal process. Professor Eeckhout said he agreed with the consensus view that, if there is a serious decision to overturn the referendum verdict, either by an Act of Parliament or a second referendum, it should be respected by the EU.

Professor Hillion agreed that as there is no legal basis to eject a Member State from the EU, the EU would have to respect the revocation, but as it would need to be negotiated between the UK and EU negotiators, it would be reasonable for the EU to seek assurances that this was a sincere decision, rather than a tactic to extend negotiations by re-invoking Article 50 in the near future.

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## **European Council Summit**

On 22-23 June, EU heads of government **met** in Brussels to participate in the European Council summit. Topics discussed during the meeting included security and defence, the Paris Agreement and, on 22 June, the 27 EU leaders – without Theresa May – held a discussion on the ongoing Brexit negotiations.

### **Brexit:**

Following the working dinner, the 27 heads of government held a meeting where they were briefed by Michel Barnier, Lead Negotiator for the Commission, on the state of Brexit discussions following the **first meeting** between UK and EU negotiators. Additionally, during this meeting the heads of government endorsed a procedure for the relocation of the EU agencies currently located in the UK, namely the European Banking Authority (EBA) and the European Medicines Agency (EMA).

The **procedure** includes a set of agreed criteria which will be used to assess the suitability of each location, taking account of its ability to be set up and take up its functions on the date that the UK exits from the EU; maintaining a geographical spread of EU institutions; and adequate education facilities for the children of agency staff. The voting will be carried out by secret ballot, where each Member State can cast a preferential vote for their top three candidates, with up to three rounds of voting until one candidate receives 14 first-preference votes. Member States wishing to host one or both of the organisations are to

submit applications to the Council by 31 July, with an assessment of the locations to be carried out during September and the vote taking place in November 2017.

At the end of the working dinner, Theresa May presented an **offer** on citizens' rights where the UK will guarantee EU citizens, who have moved to the UK prior to the exit date, the same rights to work, healthcare and benefits as UK citizens after five years of residing in the UK. The other heads of government welcomed the offer as a good first step as the negotiations are beginning.

#### Security and Defence:

EU leaders focussed on security and defence, issuing strong condemnations of the recent terrorist incidents in the UK and Belgium. The European Council reaffirmed commitments on a series of strategies to combat terrorism, including calling on industry to develop new technologies and tools to improve automatic detection and remove online content which incites terrorist acts. It also calls for organisations to address challenges posed by systems that allow terrorists to communicate in ways that competent authorities cannot access, including end-to-end encryption, while safeguarding the benefits these systems bring for the protection of privacy, data and communication.

The Council also called for the rapid implementation of the Entry/Exit System Agreement and the European Travel Information and Authorisation System (ETIAS) in order to enhance external border security of the Schengen Area.

Finally, EU leaders welcomed the Commission's communication on a European Defence Fund and the European Defence Industrial Development Programme, which calls on Member States to identify suitable capability projects for the programme, to enhance Europe's defence industry improve defence cooperation across borders and through participation of SMEs.

#### Paris Agreement:

The European Council issued a **statement** which reaffirmed the EU's commitment to swift and full implementation of the Paris Agreement on climate change, including its climate finance goals, and to lead the global transition to clean energy. The Council stressed the need for enhanced cooperation with international partners for these goals to be achieved.

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#### **In other news**

- The Council **agreed** its stance on part of a package of proposals aimed at reducing risk in the banking industry
- The ECON Committee **called** on the Commission to on the Commission to present a principle-based Directive for an European Covered Bond framework
- Commission Vice-President Valdis Dombrovskis **discussed** financial stability and Brexit with the ECON Committee

- The PANA Committee **called** for greater protection for whistleblowers
- The ECON Committee held a **Public Hearing** with Danièle Nouy, Chair of the Supervisory Board of the ECB, and Edward Scicluna, ECOFIN President and Minister for Finance of Malta
- The ECON Committee **discussed** the economic policies of the eurozone
- The ECON Committee **discussed** combating inequalities as a lever to boost job creation and growth
- The European Parliament has published a **briefing** which includes supervisory expectations for the relocation of banks
- The JURI Committee held a **hearing** on the Insolvency Proposal
- The Commission published a **statement** on the responses to its public consultation on the operations of the ESAs
- The ECB has **decided** to develop a service for the settlement of instant payments
- ESMA published a **report** on product intervention under MiFIR
- Christine Lagarde, IMF Managing Director, delivered a **speech** on 'Working Together to Fight Money Laundering & Terrorist Financing'
- The IMF published a **discussion paper** on 'Fintech and Financial Services'
- The Basel Committee on Banking Supervision published a **document** on 'a range of practices in implementing the counter-cyclical capital buffer policy'

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## **Upcoming EU Institutions events and consultations**

**26 June:** Deadline for responses to EBA **consultation** on the scope of the draft Guidelines on connected clients

**3 July:** Deadline for responses to ESMA **consultation** on the update of the guidelines on the application of the endorsement regime under Article 4(3) of the CRA Regulation

**11 July:** Deadline for responses to EBA **consultation** on draft RTS on the implementation of group wide AML-CFT policies in third countries

**19 July:** Deadline for responses to Commission **consultation** on reducing barriers to cross-border distribution of investment funds

**31 July:** Deadline for responses to ESMA **consultation** on trading obligation for derivatives under MiFIR

**7 August:** Deadline for responses to ESMA **consultation** on Draft technical advice, implementing technical standards and guidelines under the MMF Regulation

**8 August:** Deadline for responses to EBA **consultation** on RTS on Simplified Obligations

**18 August:** Deadline for responses to EBA **consultation** on recommendations on outsourcing to cloud service providers

**21 August:** Deadline for responses to PRA **consultation** on compliance with the EBA's Guidelines on disclosure: Composition of collateral for exposures to counterparty credit risk

**24 August:** Deadline for responses to **consultation** on guidelines on CCPs' conflict of interest management

**22 September:** Deadline for responses to EBA **Discussion** on the treatment of structural FX under Article 352(2) of the CRR

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## **City of London Research**

The City of London produces regular research on EU Financial Services which can be accessed **here**.

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