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Brexit and its discontents

Key hurdles in the Brexit negotiations on financial services and future regulation in the UK

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Résumé

This article reviews the key hurdles in the Brexit negotiations on financial services as they came into sharp focus at the end of June 2020. Although the Political Declaration between the UK and the European Union signed in October 2019 clearly sets out the path of the future trading relationship in financial services based on equivalence (i.e. the granting of market access to (certain) financial services by both parties on the basis that their regulation of financial services is broadly equivalent to each other), the British and European approaches to the implementation of equivalence in a future free trade agreement are very different, and are in many ways mutually incompatible. From this point of view, the impasse reached in early summer concerning financial services reflects the broader problems of the UK and the EU reaching a free trade agreement by the end of 2020, and perhaps even for a considerable while later. While “Monty Pythonesque” horse-trading of giving UK-based financial services access to EU markets in exchange of access to British fishing waters by EU fleets cannot be ruled out entirely, the odds of not reaching agreement in financial services are shortening. This will lead to stronger competition between the UK and the Eurozone in the development of financial services, although a dash to de-regulation by the UK seems unlikely. Instead, the London market is more likely to seek a competitive edge by designing future regulation that is both more stringent but also more “stylish”.



Entrées d'index

Keywords: Brexit, financial service, regulation, competition

Texte intégral

Introduction

- 1 On the 12 June 2020, the UK government announced that it would not be seeking an extension to the transition period between officially leaving the European Union (EU) at the end of January 2020 and exiting all EU economic and legal arrangements at the end of the year. According to the Political Declaration accompanying the New Withdrawal Agreement signed between the Johnson government and the EU in October 2019, UK-based financial services will then move from having full access to the European Single Market (ESM) based on mutual recognition passporting rights, to having access to a more-limited range of EU financial market segments on the basis of equivalence. This means that both parties will accept services provided by firms based in the other's jurisdiction on the basis that regulations there are equivalent to their own.
- 2 However, at the end of June, it became clear that considerable differences existed between the British and European positions, reflecting problems in other areas and the persistent flaw in the UK position of Britain wanting to fix its own laws yet maintain (full) access to EU markets ; or as Boris Johnson memorably said to *The Sun* in September 2016, of wanting to “have our cake and eat it”.¹ In a speech by Michel Barnier, the EU's chief negotiator on 30 June, he bluntly warned that the UK's negotiating proposals were “unacceptable”, because : i) “they would severely limit the EU's regulatory and decision-making autonomy” ; and ii) “the UK is trying to keep as many Single Market benefits as it can”, even though it “will progressively start diverging from the EU framework... one of the main purposes of Brexit”. Mr Barnier also asserted that the EU would “only grant equivalences in those areas where it is clearly in the interest of the EU ; of our financial stability ; our investors and our consumers”. He further recalled that equivalence does not exist in many areas of retail finance and that “big changes” will take place on 1 January 2021 “*whatever happens*” [his italics].²
- 3 This article will start by reviewing how the UK government's policies and proposals for the future relationship with the EU in financial services are evolving during the Transition Period. It then briefly reviews the issue of equivalence before examining how Britain's regulation of financial services may evolve once all existing ties to EU legislation have been cut. It concludes with a discussion about how negotiations on financial services fit into the broader negotiations between the UK and the EU.

Key hurdles in the negotiations and the question of equivalence

- 4 According to the Political Agreement, accompanying the New Withdrawal Agreement and signed in October 2019, the EU and UK have restated their commitment to “preserving financial stability, market integrity, investor and consumer protection and fair competition, while respecting the Parties' regulatory and decision-making



autonomy, and their ability to take equivalence decisions in their own interest”. These are of course basic principles, which it was fairly easy to agree on. Financial market regulators throughout the world are still living in the shadow of the 2007-2008 global financial crisis (GFC), even as – or perhaps especially as – the “coronacrisis” unfolds. In preparing for possible hard Brexit/cliff-edge Brexit in 2019, the UK and EU authorities did much work – together and separately – to ensure financial market stability. This kind of cooperation will surely continue as the 1 January 2021 deadline approaches : the basic mechanisms used being to allow exceptional extended access to certain markets and service providers in both jurisdictions (notably so-called central counterparties for euro-denominated derivative markets – see below) and stand-by measures to ensure markets have sufficient liquidity, especially in the case of hard Brexit.

Completing the Transition Period

5 The Political Agreement also restates that Parties have equivalence frameworks which allow them “to declare a third country’s regulatory and supervisory regime equivalent for relevant purposes”. These frameworks should be kept “under review”, as divergence in regulation emerges. On 1 January 2021, both jurisdictions (i.e. the EU and the UK) will have the same regulatory environment, as EU law will be onshored to the UK, where it will be progressively changed or discarded. Even with so-called Henry VIII powers, whereby the Government executive reviews and possibly amends such legislation without passing through Parliament, this will take time. However, various important pieces of EU financial regulation are already in the pipeline, and in late June 2020, the Chancellor of the Exchequer and the Treasury indicated (in a written statement to Parliament) what rules will be transposed into UK law because they will become operable before the end of 2020, and what rules will not.³ Thus, the EU’s Fifth Capital Requirements Directive (CRDV, which deals with capital ratios ; i.e. the amount of capital relative to assets banks must hold) and the Bank Recovery and Resolution Directive II (BRRDII, which sets out procedures for winding up failed banks) will be transposed into UK law. The same is true for part of the Minimum Requirements for Own Funds and Eligible Liabilities (MREL) framework, setting out the minimum amount of equity and debt that a firm must maintain to absorb losses and provide for recapitalisation in case of resolution (i.e. winding up the firm after failure). These are elements of regulation which follow on from the re-regulation of banking activities since the GFC. They follow guidelines originally set out in G20 agreements in 2009 (between the world’s twenty largest economies and representatives of country blocs), and which have notably been taken forward by the Basel Committee on Banking Supervision. The UK has been playing an active role in designing the above-mention EU regulations (and indeed the international regulatory framework), seeking to make sure that they correspond to the UK’s future needs as much as possible.

6 By contrast, the June statement by the Chancellor and the Treasury informed Parliament that “the UK will not be implementing the EU’s new settlement discipline regime, set out in the Central Securities Depositories Regulation, which is due to apply in February 2021” ; nor the Securities Financing Transactions Regulation (for non-financial counterparties, or NFCs), due to apply from January 2021, etc.⁴ In other words, divergence in regulation will begin soon after the end of the Transition Period.

7 As we shall see below, divergence between UK and EU legislation does not necessarily mean the UK will lurch towards a hyper-deregulated “Singapore-upon-Thames” economic model, with its attendant free-for-all in financial markets. But it will entail different and perhaps better regulation, as regulation can be tailored to specific UK



requirements, involving fewer negotiating partners, and drawing on Britain's leading expertise in finance (all discussed below). The question of market access on the basis of equivalence will therefore come up fairly quickly and probably in a persistent manner.

Trade in financial services based on equivalence

8 Compared to the mutual recognition and passporting of EU membership, which guarantee almost automatic access to markets, equivalence requires the authorities of each party to examine the legislative and regulatory framework of the other, granting market access when the other party's regulation is considered equivalent to its own. Attesting equivalence is something which is in principle outside the negotiations on a future free trade agreement between the UK and the EU. By nature, it is an on-going process, although here the UK and the EU diverge, as the UK wants to lock equivalence decisions into the chapter of the future trade agreement as much as possible, whereas Brussels wants to retain the right to review the equivalence it grants unilaterally. In his speech on 30 June, Michel Barnier very clearly and specifically asserted that the EU's "equivalence regimes [...] are autonomous, unilateral tools. And, as such, they are not part of [the] current negotiations".⁵ This position was reiterated very formally and emphatically in early July 2020, when the European Commission published a 35-page communication on *Getting ready for changes* at the end of the Transition Period. Moreover, the Commission has also warned that equivalence is unlikely to be in place in numerous areas as of 1 January 2020.⁶

9 On the whole, the British position has so far been to favour openness to EU-based financial firms, this being in line with a general free-trade approach to the post-Brexit commercial relationships that supporters of Global Britain want to nurture across the world ; and as we shall see below, the institutional organisation of regulation in the UK may make it relatively nimble in adapting and developing its equivalence regime.

10 By contrast, the situation in the EU is likely to be more complex, because decision-making authority on equivalence is shared by several institutions with different levels of influence in the Union. Thus initial assessment is conducted by European Commission's DG FISMA,⁷ often based on the advice of the EU arm's-length agencies which oversee financial services.⁸ Decisions are ultimately then taken by the EU Commission, supervised by a regulatory committee of EU Member States' representatives who must approve Commission decisions. These decisions must evidently conform to EU law. But they can be swift and radical.⁹ For instance, in June 2019, the Commission decided not to renew the "recognition of equivalence" of Switzerland's financial market rules, making it illegal for companies to list their stocks both in Switzerland and the EU, as 1 July 2019. The Commission's decision was partly motivated by the EU's frustration with Switzerland in not moving to adopt an umbrella agreement between the two parties to set up an institutional framework to cover the 120 bilateral agreements which cover their trade and commercial relationships. The EU move was implemented quickly, and has been interpreted as providing a warning to UK financial institutions.¹⁰ It also signals – deliberately or otherwise – the view in Brussels about Britain pursuing so-called "mini-deals" with the EU on a sector-by-sector basis, instead of a broader, comprehensive trade agreement.

11 All that said, equivalence will affect financial activities variously, with there being a general distinction between services sold to retail clients (for which there tends to be no equivalence) and services sold to professional clients/companies. More specifically, equivalence does not exist for banking – be it retail or wholesale banking. Similarly, investment services provided by UK-based financial firms to retail customers will not be



able to access the Single Market on the basis of equivalence. In insurance too, there is no universal rule. Retail insurance policies for households tend to be nationally based by their very nature, so the fact that equivalence does not exist here is not really an issue in practical terms. On the other hand, wholesale activities like reinsurance or insurance bought through Lloyd's of London do require equivalence, and access to the EU market on the basis of equivalence is important for such business.¹¹

12 Equivalence is also important to services provided by derivative trading exchanges. These are used by actors in the real economy to manage better their interest repayments on loans, to hedge themselves against the non-repayment of loans by borrowers, to protect themselves against adverse foreign exchange movements, etc. The trading exchanges or so-called central counterparties (CCPs) stand between buyers and sellers of derivatives, and the CCPs guarantee payments in case one party fails to honour a contract. Since the global financial crisis, trading of standardised derivatives in such markets has become obligatory.¹² This is a business dominated in Europe by the London Clearing House (LCH), which is mainly owned by the London Stock Exchange (LSE) group. The LCH clears more than \$ 200 billion in euro-denominated derivatives per day, and overall clears more than 90 % of euro interest rate swaps.¹³ Given the volumes traded, the LCH can spread risks of non-payments by parties, which it is obliged to cover, more widely and hence benefits from extra economies of scale, on top of the infrastructural advantages it has in terms of size.

13 Recent information provided by DG FISMA confirms that the EU tends to provide equivalence for such activities to major developed or emerging countries (e.g. Australia, Brazil, Canada, Japan, the United States, etc.).¹⁴ Moreover, in its July 2020 communication, the European Commission has acknowledged that this is one area of financial services in which Brexit may present risks to financial stability. Accordingly, it will grant time-limited equivalence to London CCPs, so that EU companies and financial institutions can still access these services when the Transition Period ends.¹⁵ Yet as the Swiss case already mentioned shows, the Commission may unilaterally withdraw such equivalence for reasons not directly connected to the quality of regulation. Furthermore, equivalence over CCPs is a particularly thorny issue. On the one hand, this is an important business for London, and there has already been litigation brought to the European Court of Justice by the European Central Bank to end euro-denominated derivative trading outside the Eurozone, for the ECB to have better regulatory authority over trading. This followed concerns that actions by the LCH had aggravated financial market pressures on Irish and Portuguese government debt during the Eurozone crisis in the early 2010s. The ECB lost its case in 2015 under Single Market rules. But today the UK is no longer part of the EU, and so the EU authorities are likely to try to bring such trading into the Eurozone and hence their jurisdiction. The Bank of England also has some interest in such business moving to the Eurozone as this would reduce its regulatory responsibility and ultimately its financial liabilities in case of business failures. London's potential competitors, like Paris, are also pushing in the same direction, and the LCH has indeed already expanded its derivative trading business there. On the other hand, the task of building up similar capacity to London is far from easy, and fragmenting trading venues as well as shifting activities to new IT infrastructures are not without risk. Derivatives trading within small, Eurozone-based exchanges will also be more expensive as volumes will be smaller, leading to losses in economies of scale. In the final analysis, this in turn leads to higher borrowing costs throughout the banking system.

14  The issue of granting equivalence to UK-based financial services, and to UK-based CCPs in particular, is therefore very complex, especially as it fits into the wider questions raised by future trade negotiations. However, as Prof. Niamh Moloney of the

London School of Economics rightly noted before the House of Lords Financial Affairs Sub-Committee that “the EU is speaking to a global constituency [...] everybody is watching : [...] so politically and practically, although it is possible [to withdraw equivalence], it is practically very unlikely”.¹⁶

The summer 2020 impasse

15 Mr Barnier’s speech on 30 June set out significant differences over the substance of negotiations. These follow-up the revised free trade agreement proposals published openly by the UK government on 19 May and accompanied by a long and blunt letter by David Frost (the UK’s Chief Negotiator) to Mr Barnier. In this letter and concerning financial services, Mr Frost laments the fact that the EU is not offering the UK the kind of provisions on regulatory cooperation granted to Japan ; the lengths of stay for short-term business visitors granted to Canada ; nor the non-discrimination commitment found in the EU’s trade deal with Mexico. On these points, the Frost letter concludes, “we find it hard to see what makes the UK, uniquely among your trading partners, so unworthy of being offered the kind of well-precedented arrangements commonplace in modern FTAs”.¹⁷

16 In the accompanying, revised, 292-page *Draft UK-EU a Comprehensive Free Trade Agreement (CFTA)*, Chapter 17 sets out the UK’s proposed text on financial services. Having defined these services, Article 17.3 proposes that “Each party shall accord to [...] financial service and cross-border financial service suppliers of the other Party [...] treatment no less favourable than it accords to its own financial services and like financial service suppliers”.¹⁸ Article 17.5 of the *Draft* proceeds by stating that “No Party shall adopt or maintain [...] measures that impose limitations on : (a) the number of cross-border financial service suppliers of the other Party [...] (b) the total value of financial service transactions or assets [...] (c) the total number of financial service operators [...] (d) the participation of foreign capital [...] (e) the total number of natural persons that may be employed [...] or (f) restrict or require specific types of legal entity or joint venture through which a cross-border financial service supplier may supply a service”.¹⁹ And so the UK Draft goes on [...], calling for market access for new financial services,²⁰ no restrictions on the transfer or processing of information,²¹ no requirements to engage natural persons of any particular nationality as senior managerial or other essential personnel,²² etc. Chapter 17 of the Draft ends by calling for the creation of a Financial Services Committee to settle disputes between parties, reflecting the UK’s rejection of the European Court of Justice as the arbiter in its future relations with the EU.²³ It also calls for “transparency and appropriate consultation in the process of adoption, suspension and withdrawal of equivalence decisions”.²⁴ In other words, it seeks to limit the EU’s unilateral powers for withdrawing equivalence.

17 Michel Barnier’s trenchant remarks on 30 June must therefore be seen as a strong rebuttal of the kind of FTA the UK is proposing on financial services. Returning to the limits the UK wants to place on the EU’s autonomy (mentioned above in the introduction), Mr Barnier asserted that neither Member States nor the European Parliament could accept the UK’s proposals : “to create a legally enforceable regulatory cooperation framework” ; “to frame the EU’s process for withdrawing equivalence decisions” ; or “to limit the scope of the so-called prudential carve-out” [i.e. the prudential measures authorities may take to protect investors, depositors and policyholders, etc.]. Similarly, he went on to observe that the UK’s proposals “would like to make it easy to continue to run EU businesses from London, with minimal operations and staff on the continent”, made possible by : allowing “almost free reign for service



suppliers to fly in and out for short-term stays” ; proposing “provisions on the performance of back-office functions that could create a significant risk of circumvention of financial services regulation” ; assimilating “British audit firms to European ones to meet ownership and control requirements” ; and banning “residence requirements for senior managers and boards of directors, to ensure that all essential functions remain in London”. In short, the UK is trying to keep as much access to the Single Market as possible.

- 18 More generally, Mr Barnier stated most emphatically that UK regulation is bound to diverge with the EU, as this was “one of the main purposes of Brexit”. The European Union, therefore needed to be “extra careful”, in making sure “to capture all potential risks : for financial stability, market integrity and consumer protection, and the level playing field”. Such risks and especially financial stability need to be “managed within the framework of our Single Market ecosystem of legislation, supervision and jurisdiction”. Moreover, and especially within the context of Europe recovering economically from the coronacrisis, Mr Barnier asserted that it was important to “look beyond short-term adaptation and fragmentation costs, to [the EU’s] long-term interests”, which include building its Capital Markets Union, deepening Banking Union and “fostering the international role of the euro”. These remarks reflect clear acknowledgement of the strategic concerns of the EU and the challenges it faces in losing its main financial marketplace, set to be a clearer competitor, just as indeed UK-based financial services will lose automatic access to their EU customers.²⁵

The UK’s new regulatory review of financial services

- 19 Michel Barnier was of course correct in recalling that the aim of Brexit was for Britain to make its own laws, and this applies as much to financial services as other areas of government policy. And as in other areas, the EU is concerned about having a major, increasingly de-regulated competitor on its door-step. Indeed, the Treasury launched its *Future Regulatory Framework Review* in July 2019, beginning with a consultation, in view of passing a new Financial Services Act to enhance the UK’s attractiveness for international business. However, the review process should not be interpreted as seeking to light a bonfire of regulations. In its launch document, the government stated notably that the “institutional arrangements [set up after the global financial crisis] provide the most effective way of ensuring clear and robust regulatory focus on macroprudential, microprudential, economic and conduct risks. As such it [the government] does not expect to examine these arrangements”.²⁶ At present, this architecture involves five main regulators, including : i) the Financial Conduct Authority (FCA) which is an independent body regulating 58,000 financial service firms in the UK, and is also the prudential regulator for 18,000 of these, with the power to make rules, publish guidance, authorise firms and take enforcement action ; ii) the Prudential Regulation Authority (PRA) at the Bank of England, which is responsible for prudential regulation and supervision of about 1,500 banks, building societies, credit unions, insurers and major investment firms ; iii) the Bank of England which supervises financial market infrastructure, such as central counterparties ; iv) the Payments Systems Regulator (PSR) that regulates the payments systems industry ; and v) the Competition & Markets Authority (CMA) which is the UK’s primary competition and consumer authority, investigating mergers, and enforcing competition law etc.

Moreover, the UK’s overall regulatory approach will also continue to be shaped by



international commitments under the G20 process and the so-called Basel III+ accords which are currently being implemented. Here it should be noted that re-regulation since the financial crisis has gone further in many ways in the UK than in the rest of Europe. This is especially so concerning capital ratios, where UK banks have been better capitalised than many continental banks, with equity (reserves) equivalent to 15.6 percent of risk weighted assets (before the coronacrisis).²⁷ Significantly too, the UK did implement specific structural reforms of banking after the GFC, by introducing “ring-fencing” to protect retail banking activities from possible failures in banks’ investment banking business. Lastly, the Senior Managers Regime has also been established for banks and insurance companies, making senior managers personally responsible for operations. Yet, as the document starting the Review noted, Brexit raises four challenges for future UK regulation and policy-makers, including : i) operating outside the EU requires bringing back legislative functions and policy-making to the UK ; ii) developing new relationships, not just with the EU, but other parties worldwide, including dynamic emerging markets ; iii) technological change ; and iv) wider global challenges, requiring an “agile” framework, so that financial services may meet the tasks of an ageing population and attaining a net zero-carbon emissions economy by 2050.

21 To meet these challenges, Sam Wood, Deputy Governor (of the Bank of England) for Prudential Regulation and CEO of the Prudential Regulation Authority, has noted that regulation must remain “stringent” but also “stylish”. By stringency, he means in particular that prudential standards need to be robust above all, with the “goal [of ensuring] continuity in supply of vital financial services to the real economy throughout the cycle, including after severe shocks”. Yet regulation also needs to be *stylish*, which involves : responsible openness based on international collaboration and standards, with the UK continuing to be at the forefront of standard-setting ; regulation must also be proportional and sensitive to business models, while promoting competition ; it must be dynamic and responsive to change, without being weak ; and it must be consistent and accountable (to Parliament). The latter is especially important where independent agencies have considerable power to make and enforce rules. For Woods, it is particularly the role of such independent or arm’s length regulators that will allow the UK to develop a more stylish form of regulation, based on more decentralised decision-making, in contrast to the existing EU approach in which “the goal of harmonising regulation and supervision across 28 countries” leads to a “norm of greater and more detailed specification in EU legislation”.²⁸

22 More recently, Nausicaa Delfas (Executive Director of International [activities] at the Financial Conduct Authority) restated the FCA’s work with the UK government to prepare for Brexit by “onshoring EU law to the UK statute book and our rule book” and preparing temporary permission arrangements for European Economic Area firms to continue providing services and to allow EEA funds to continue to be marketed in the UK, once passporting ends, and provided they have made the relevant notifications. Looking forward, she has noted that the FCA “will be guided by our continued commitment to the highest international standards, and by what is right for the UK’s markets, building on the strengths of the existing UK regulatory and legal system”. Such an approach, she argues on behalf of the FCA, “go[es] hand in hand with the UK’s competitiveness as a global financial centre”. Furthermore, the FCA supports not only open markets but also “mechanisms to defer regulatory and supervisory oversight to other jurisdictions”. Such a stance is of course the basis for facilitating trade on the basis of equivalence.²⁹

23  For its response to the government’s consultation, UK Finance, the lead trade association of the UK banking and financial services sector, has called for “better coordination, cost benefit analysis and prioritisation between regulators [mentioned

above] – air traffic control as we call it – striking the right balance between keeping the system and individual citizens safe, enhancing the UK’s competitiveness and allowing innovation and enterprise to flourish”. Tellingly, however, UK Finance has also called for a cut in corporation tax to support competitiveness, as it claims that “the typical corporate or investment bank based in London faces a total tax rate of 50 percent, compared to 34 percent for a similar bank in New York, 23 percent in Singapore or even 44 percent in Frankfurt”.³⁰ Such advocacy for lower taxes chimes with successive Conservative government’s general approach to cutting corporation tax since the mid-2010s, as a way of making the UK economy more competitive. It remains of course to be seen what will happen in the light of the Johnson government’s pledge to “level up” northern England where the Conservatives made massive inroads into traditional Labour-voting areas at the last election, and what the impact of the coronacrisis will be on future taxation.

- 24 As for specific proposals by the UK government *so far*, the policy document accompanying the Queen’s speech after the Conservatives’ election victory in December 2019 states that future legislation will : maintain the UK’s “world-leading regulatory standards” and that it remains open to international business. To this end, legislation on financial services will : enhance the competitiveness of the UK’s financial sector ; simplify “the process which allows overseas investment funds to be sold in the UK to maintain our position as a centre of asset management” ; and legislation will also enable the UK “to implement the Basel standards to strengthen the regulation of global banks, in line with previous G20 commitments”.³¹

Discussion and conclusion

- 25 The situation of the Brexit negotiations on financial services at the beginning of July 2020 reflects the broader difficulties both parties face in reaching a deal on future trade. The British position still seems to reflect the view that it can leave the EU, set its own regulations, no longer be subject to EU law and EU adjudication by the European Court of Justice yet somehow benefit from the institutional market architecture created by the Union. Be it hubris or ignorance, it seems quite alarming, for example, that Michel Barnier felt it important to stress *at this late stage* that equivalence does not exist for services “such as insurance, commercial lending or deposit-taking”.³² The same can be said about the long-running, apparent failure of UK governments, and of front-rank politicians, to understand the collegiate functioning of the EU, and the way the EU’s laws and institutions result from long-term, delicate compromises between many nation states, which often produced detailed legislation (as Sam Woods has pointed out concerning finance – see above). These arrangements, and the attendant insistence on respect for European law and process seem to escape London. For example, as Germany was on the eve of taking-over the rotating presidency of the EU during the second half of 2020, there were still hopes in London that somehow Chancellor Angela Merkel would go the extra-mile to reach a deal with London..³³ But fundamental concessions on the operation of the EU are simply not in the hands of Ms Merkel, even if, say, she did want to do BMW a favour.

- 26 Of course there may well still be much horse-trading between the late June impasse (overall negotiations were in fact broken off one day early in the week beginning 30 June) and the final agreement. Bizarre bargains could still be struck. In the pre-coronacrisis universe which existed light years away in February 2020, there were numerous reports in the press indicating there could be a possible trade-off in negotiations between access to EU financial markets for UK-based companies, in



exchange for access to British fishing waters for EU fishing fleets. Given the relative importance of these activities – the value of financial services to the UK economy for example is estimated to be 169 times greater than fishing – this may “almost be worthy of Monty Python”.³⁴ Yet weird compromises are not to be ruled out, and much Brussels fudge is surely in stock to sweeten the final negotiations and cobble together some kind of deal, although the odds on a hard Brexit are shortening. “Cake and eat it” does not exist for the UK and there are strong limits to concessions the EU can make on unpicking the Single Market, etc.

27 The short to medium-term will likely not be plain-sailing for anyone. London and the UK-based financial services sector have likely no choice but to look to new markets and become a strategic competitor of the rest of the EU and especially the Eurozone’s financial services. It may be noted, for example, that on the day Mr Barnier was making the EU’s position on financial services crystal clear, the British government announced it was negotiating a bilateral financial services agreement with Switzerland, based on mutual recognition.³⁵ The Eurozone in turn has no choice in developing its financial services industries to compensate for lesser access to London markets, which is likely to follow a hard Brexit, or even an agreement with equivalence in a number of areas.

28 These changes have already led to the shift of some staff and operations from London to other European centres. So far, such movements have been fairly piecemeal, and international banks have been slow to make final, big commitments before clarity emerges about the future.³⁶ Initial forecasts after the referendum (in 2016) by the consultancy Oliver Wyman about job losses of 31-35,000 in the UK seem far-fetched today.³⁷ But as the countdown to a no-deal final Brexit gets closer, business relocation may well pick-up, favouring a series of cities in the EU (including Frankfurt, Paris, Dublin, Amsterdam, Luxembourg, etc.). This is especially so as the EU authorities (the Commission and the ECB) are particularly weary of UK-based companies seeking merely to establish shell operation elsewhere in Europe while actually doing business in the UK, and Michel Barnier emphatically repeated EU warnings on this. On balance, one would assume that the major players – the big international banks for instance – are generally well-positioned (in terms of planning and resources) to make the necessary changes, and in many cases they already have a significant presence in the EU. That however leaves open questions about the future business arrangements of smaller players and of more specific areas of activity, most notably euro-denominated derivatives trading through central counterparties.

29 Quite how smooth or tumultuous the months ahead are going to be remains therefore an open question. The central bankers on both sides of the Channel will surely do their best to avoid significant financial instability in the event of a hard exit from the Single Market by Britain at the end of the year. But the fallout of the coronacrisis is set to be massive and will surely complicate everything.

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