

Position paper

Position paper on the Future Relationship between the European Union and the United Kingdom

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Starting point and key challenges

The United Kingdom (UK) left the European Union (EU) in an orderly manner on 31 January 2020 on the basis of the Withdrawal Agreement and Political Declaration setting out a possible framework for the future relationship [1]. Negotiations regarding the future relationship have started along the lines of the parties' respective negotiation guidelines [2] and draft proposals for trade agreement texts [3].

Parallel to the ongoing separation process, the coronavirus pandemic brought about significant market uncertainty and unprecedented, extraordinary circumstances that have led to delays in the initially foreseen – already tight – negotiation timeline. Combined with additional challenges (e.g. negotiation rounds can now take place only in virtual format), this has led to decreased efficiency and limited outcomes of the negotiations.

The Association of German Banks (BdB) and its members follow the negotiations closely. As it remains unclear whether the parties will find an agreement, the banking industry has been preparing for various outcomes – including a cliff-edge separation scenario. In the present paper, we outline recommendations that, in our view, can ensure a smooth transition and contribute to minimising detrimental societal and economic outcomes.

BdB's recommendations

The primary goal of the negotiations shall be to ensure market and financial stability as well as a close relationship, which is beneficial for the society and economy on both sides of the channel. This holds particularly true in this time of heightened uncertainty due to the coronavirus crisis.

To achieve the primary goal of market and financial stability, the following sub-goals shall be addressed:

- the separation should take place in an orderly, transparent and regulated manner based on a comprehensive free trade agreement (FTA) and all necessary additional elements, such as equivalence decisions;
- clarity regarding future market access arrangements should be provided at the earliest possible date;
- the EU internal market and market infrastructure need to be strengthened.

In the following sections, the BdB details its recommendations regarding the individual building

1. Free Trade Agreement

Incorporating a financial services chapter into an FTA between the EU and the UK can ensure that market access arrangements are comprehensive, stable, predictable and based on a sound regulatory and supervisory cooperation framework. This can support market participants' long-term strategic decision-making abilities.

The BdB recommends an ambitious financial services chapter in the FTA that includes:

- the framework conditions for a fair and reciprocal market access;
- the recognition of critical payment systems and clearing houses;
- a structured regulatory and supervisory cooperation in the form of regular dialogue;
- a close and structured cooperation in judicial matters;
- consultation and dispute resolution mechanism to manage regulatory divergences as they emerge over time.

In addition to these building blocks, the FTA should include further commitments, such as

- fair cooperation and the preclusion of dumping;
- the prohibition of regulatory and tax dumping;
- the establishment of a comprehensive framework for information exchange and data security, including basic transparency and data protection requirements;
- the prohibition of discrimination against foreign investors;
- the framework conditions for labour market access.

2. The equivalence mechanism

Regulatory equivalence as a tool for market access

Concrete market access solutions can be based on regulatory equivalence. We welcome the UK and EU counterparts' commitment in the Political Declaration to undertake the equivalence assessments by the end of June 2020 and – according to the European Commission's approach towards equivalence – encourage them to avoid taking an overly granular approach to assessing the equivalence of each other's jurisdictions.

Some key areas where the European Commission's equivalence decisions are necessary with respect to the UK (the list is non-exhaustive):

- **Investment services and activities -MiFID/MiFIR [4]:**
central bank exemption; share and derivatives trading obligations, access to trading venues, cross-border services from third-countries to professional clients and eligible counterparties.
- **Credit institutions and investment firms - CRR/CRD IV [5]:**
exposures to third country investment firms, credit institutions; exposures to public entities; definition of 'large financial sector entity'; shadow banks.
- **Market infrastructure - EMIR/SFTR [6]:**
transactions with central banks; regulated markets; clearing, reporting, risk mitigation and margin requirements; central counterparties (CCPs) recognition; trade repositories, transaction requirements.

Temporary equivalence decisions as primary contingency measures

With a view to market stability and to prepare for any outcomes, even a cliff-edge separation scenario, the European Commission should ensure that temporary equivalence decisions in pivotal areas are in place until a comprehensive arrangement is agreed. Particular areas that should be prioritized are derivatives clearing and access to trading venues for derivatives and shares. Should the required equivalence decisions in respect of UK CCPs and trading venues not be in place after the transition period, significant disruptions to derivatives markets and share trading with potentially systemic consequences have to be expected.

As UK CCPs are required to provide a three-month notice of contract termination to clearing members and clients (which would be necessary for entities from EU member states in the

event of no EU equivalence decision), temporary equivalence should be guaranteed accordingly at least three months before the end of the transition period, thereby supporting market participants' decision making abilities and ensuring business continuity and financial stability.

Necessary enhancements in the EU's equivalence regime

While acknowledging the advantages of the EU's existing equivalence regime and welcoming the recent developments in the framework [7], we do not consider it sufficient to regulate market access issues in the future EU-UK relationship.

Therefore, we call for additional enhancements in the regime and recommend the following (mainly non-legislative) actions to increase its predictability and better enable market participants to rely on it:

1. Establishing a more transparent decision-making mechanism based on objective and consistent principles for the assessment of third-country equivalence.
2. Expanding the scope of current equivalence rules.
3. Enhancing reliability, predictability and transparency.
4. Encouraging a standardised two-way market access.

For further information, please consult our position paper on the EU's equivalence framework [8].

3. Additional areas to support a smooth transition and future market access

Strengthening the EU internal market and market infrastructure

Acknowledging both the inevitable differences in the current and future financial market access between the EU and the UK, and the possibility of a separation without a comprehensive agreement, the EU's internal market and market infrastructure need to be strengthened.

The creation of a harmonised and efficient European capital market has long been one of the EU's primary objectives. A stable and efficient business environment can not only fill in the gaps left after the separation of the UK but can also ensure liquidity and the availability of a broad range of financial services. While alternative liquidity pools and market infrastructure have already been established with the aim of substituting for the UK alternatives, further enhancements in a number of key areas are necessary to cater for the needs of European market participants. In a recent position paper, the BdB has outlined recommendations to establish a true Capital Markets Union [\[9\]](#).

Information exchange and data security

The framework conditions for information exchange and data security should be included in the FTA and adequacy decisions should be undertaken by the earliest possible date. To avoid duplicate reporting, data exchange among regulatory and supervisory authorities, such as the European Securities and Markets Authority (ESMA), National Competent Authorities (NCAs) and Financial Conduct Authority (FCA), should already be possible at the beginning of the new relationship.

Avoidance of conflicting regulatory regimes

"Conflicting regimes" may arise where the UK mirrors the existing EU-regulation when implementing it into national UK law. Unless there is a clear regime allowing for reciprocal recognition and clear rules determining how these mirrored regulations are to be applied to EU institutions and, in particular, UK branches of EU institutions, this is likely to result in duplicative and, in some cases, conflicting obligations.

For example, where today an EU market participant has an obligation to trade shares or derivatives on an EU trading venue or recognised third-country trading venue, UK banks will have an obligation to trade shares or derivatives on a UK venue after the end of the transition period. Considering that it remains unclear whether UK branches of EU banks will be subject to EU law or UK law [\[10\]](#) under the future relationship,

this could mean that UK branches of EU institutions may become subject to both the UK and the parallel EU trading obligation that would collide in case there is no reciprocal recognition of EU and UK trading venues.

Framework conditions for employment

In knowledge-based sectors, such as the financial sector, knowledge and experience are vital for success and operational efficiency. The FTA should include a chapter on framework conditions for employment – addressing relevant issues such as the transfer of staff, visa application processes, acknowledgments of degrees and residency questions.

Adaptation period

The future relationship will materialize during the so-called “transition period” and the new framework will come into force only at the end of it – or even later. Thus, a sufficiently long period should be provided for the implementation and the adaptation to the new regulatory and supervisory environment. The time necessary depends on the degree of changes but up to 24 months should be allowed upon the finalization of the trade agreement and all other regulations.

[1] Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, UK Government, 19 October 2019; Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom, UK Government, 19 October 2019

[2] Council decision authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for a new partnership agreement, Council of the European Union, 25 February 2020,; The Future Relationship with the EU – The UK’s Approach to Negotiations, UK Government, 27 February 2020

[3] Draft text of the Agreement on the New Partnership with the United Kingdom, European Commission, 25 March 2020,; Draft UK negotiating documents, UK Government, 19 May 2020,

[4] MiFID/MiFIR = Markets in Financial Instruments Directive/Regulation

[5] CRD/CRR = Capital Requirements Directive/Regulation

[6] EMIR = European Market Infrastructure Regulation; SFTR = Securities Financing Transactions Regulation

[7] Communication from the Commission – Equivalence in the area of financial services, European Commission, 29 July 2019

[8] Position paper on the EU's equivalence regime, Association of German Banks, 28 February 2020

[9] Position paper of the Association of German Banks on capital markets union 2020, Association of German Banks, 19 February 2020

[10] In the past, i.e. before 31 January 2020, the FCA has taken the view that UK branches of EU banks would be subject to UK law, whereas the EU authorities tend to consider the branches as part of the EU banks.