Financial Services Club

An update on EU financial services legislation and associated initiatives

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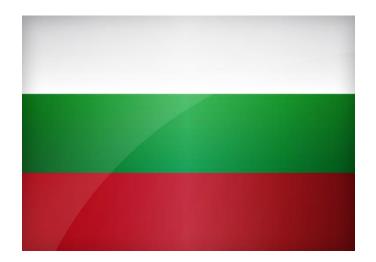
EU Policy Advisor on Financial Services legislation

The Bulgarian EU Presidency

- Completion of the Banking Union agree on European Deposit Insurance Scheme
- Building on the Capital Market Union
- Mitigation of the clearing and reporting obligations (EMIR, MiFID II)
- Developing the central counter-party recovery and resolution framework
- Reviewing the CCP supervisory regime + 3rd country requirements
- Establishing a pan-European pension product (PEPP) – Regulation
- Review of the European Financial Supervision System (ESA's)
- Proposed EU prudential regime for investment firms
- Oversee the Brexit negotiations

Priorities January – June 2018

- Economic growth
- Social cohesion
- Connectivity of the Western Balkans
- Security and stability
- Digital economy.



The Retail Financial Services Action Plan (March 2017)

Moving beyond national frontiers over 2018...

- Amend regulation on cross-border payments to reduce charges for cross-EU border transactions
- Review current practices in dynamic currency conversion consider means (enforcement of existing legislation, voluntary approaches, reinforced legislation) allowing consumers to choose the best rate
- □ Further steps to enable switching to more advantageous retail financial services, the Payment Accounts Directive
- Enhance the quality and reliability of financial services comparison websites, by promoting the uptake of existing principles and through voluntary certification schemes
- Review of the Motor Insurance Directive to improve the crossborder recognition of claims history, i.e., no-claims bonuses, transparent car-rental pricing of insurance-related elements
- □ Identify risks/opportunities in distance selling rules

- Access to loans across borders whilst ensuring a high level of consumer protection - addressing consumer over-indebtedness linked to credit activities.
- Examine national consumer protection and conduct rules to assess whether they create unjustified barriers to cross-border business
- Introduce common creditworthiness assessment standards based on a minimum set of data to be exchanged between credit registers
- Electronic identification and know-your-customer portability based on EIDAS to enable banks to identify customers digitally



EU Regulatory Oversight – new strategic orientations

- Need for improved supervisory convergence and centralised supervisory arrangements
- Eliminate regulatory arbitrage across-borders
- Move to introduce EU supervision of all financial services' actors operating on Pan-EU basis and systematic nature, covering:
 - Entities + €30bn (\$36bn, £26.7bn)
 - Financial instruments, ie, ETFs, cryptocurrencies

□ Financial institutions to identify and report on risks linked to ESG, climate change...lower capital charges for "green" investments

Direct oversight of outsourcing, delegation and risk transfers to 3rd Countries (non-EEA/non-EU), post-Brexit Regulatory developments so far...

- EC proposed revised CCP Regime via ESMA (June 2017)
- ESMA Opinions on supervisory convergence of asset management activities in the context of the UK's withdrawing from the EU (13 July 2017)
- EC Proposal to strengthen ESAs (20 September 2017)
- EU prudential framework for investment firms under CRR2 (2019)



EU-UK Exit negotiations

... state of play

- Concerns about risk concentration in, and risk transfers to, 3rd countries
- EU Equivalency regime being updated to fit the purpose – scale of 3rd country FS activity



- No "special deal" for UK financial services No negotiations on a piecemeal or sectoral approach
- Free Trade Agreements: not inclusive of financial services, rare, negotiations time-consuming ...
- Swiss, Norwegian models membership of EEA/EFTA?
- WTO Rules limited for mutual access of financial services
- No EU legal basis for "mutual recognition" EU "Single Rulebook" prevails
- Bilateral FTA financial services difficult to negotiate and rare, i.e., CETA, US.
- EU "Equivalency regime" the only show in town for UK financial services continuing EU access!

General Data Privacy Regulation ...

...poised to be in place May 2018

- Increased Territorial Scope (extra-territorial applicability)
- Strengthened conditions for consent
- Breach Notification
- **Right to Access**
- **Right to be Forgotten**
- **Data Portability**
- □ Privacy by Design
- **Data Protection Officers**
- Penalties

Main Obligations:

- Keeping records of processed data
- Implementation of measures to ensure compliance with GDPR
- Appointment of DPO
- Taking measures to ensure data security
- Privacy Impact Assessment for operations with specific risks
- Data minimization (explicit reference) data privacy by default



Data Sovereignty after Brexit!

□ UK firms offering goods and services into the EU, or carry-out monitoring of EU citizens, will continue to fall within GDPR

□ If a UK company has a group company or staff within the EU, GDPR will apply

Post 2019, UK needs to implement a GDPR equivalent framework and acquire a 'adequacy jurisdiction' status.



WITHDRAWAL OF THE UK FROM THE UNION AND EU RULES IN THE FIELD OF DATA PROTECTION ...

... EC DG Justice Statement of 9 January 2017

Background

- UK leaves EU on 29 March 2019: EU rules for transfer of personal data to third countries apply
- EU's data protection rules the current Directive 95/46 + new General Data Protection Regulation 2016/679 (GDPR) will apply as from 25 May 2018 and allow a transfer if the controller or processor has provided "appropriate safeguards"



What are the EC appropriate safeguards?

- Standard data protection clauses: the Commission has adopted three sets of model clauses which are available on the Commission's website
- Binding corporate rules: legally binding data protection rules approved by the competent data protection authority which apply within a corporate group
- Approved Codes of Conduct together with binding and enforceable commitments of the controller or processor in the third country
- Approved certification mechanisms together with binding and enforceable commitments of the controller or processor in the third country
- In absence of an "adequacy decision" or of "appropriate safeguards" - data transfers may take place on the basis of "derogations": they allow transfers in specific cases, such as based on consent, for the performance of a contract, for the exercise of legal claims or for important reasons of public interest.



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