

Financial Services Club

An update on EU financial services
legislation and associated initiatives

17 January 2018



Dr. David Doyle

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 cross-border 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.



Dr. **David P. Doyle**

- EU Policy Adviser, Brussels
- Member, Executive Board, The Kangaroo Group (European Parliament)
- Member, Board, The Genesis Initiative, London

Email: dpdoyle@orange.fr

Tel: +33 628 69 40 40