End of transition period

FAQs on the provision of financial services to corporates

Context and introduction

Financial services are a vital component of businesses' supply chain. Financial institutions have put in place plans to make changes to their business and operations to maintain the continuity of financial services as the United Kingdom (UK) exits the European Union (EU).

Most businesses are currently focusing on the commercial considerations and the direct impacts of Brexit, including movement of goods across borders. It is important that they are aware of changes that may take place in the financial services sector, so that they understand what this means for how they access financial services in the UK and the EU, and if necessary, can take action to avoid disruption that may arise.

At the end of the transition period on 31st December 2020, when the UK leaves the single market and customs union HM Treasury (HMT), the Bank of England (BoE) and Financial Conduct Authority (FCA) have set out plans for a temporary permissions and recognition scheme, which will allow EU-authorised firms currently passporting into the UK who wish to continue serving business clients in the UK, to operate in the UK for a limited period after withdrawal while they seek authorisation or recognition from UK regulators. Alongside the temporary permissions regime, the Government has created further legislation, to ensure existing contractual obligations not covered by the temporary permissions regime can continue to be met. The Government has enacted legislation for the financial services contracts regime (FSCR) which will provide a limited period of time during which EEA passporting firms can continue to service UK contracts entered into prior to exit, in order to wind down their UK business in an orderly fashion.

The Confederation of British Industry (CBI), working closely with Association of Corporate Treasurers (ACT), have developed a set of frequently asked questions (FAQs) that corporate treasurers and those with risk management responsibilities may find helpful to consider in the context of Brexit. We are compiling responses to these questions having consulted members from the FS sector, UK regulators, financial services trade associations and other stakeholder groups with the aim of providing a set of FAQs to inform businesses. This will provide general advice to firms and will not constitute legal advice.

BELOW WE HAVE PROVIDED SOME ANSWERS AS AT 22.12.20 TO AN INITIAL SET OF QUESTIONS. PLEASE SEND FEEDBACK, COMMENTS OR ADDITIONAL QUESTIONS YOU WANT ANSWERED TO technical@treasurers.org or flora.hamilton@cbi.org.uk.

This set of FAQs will be kept updated as negotiations and facilitations continue.

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General notes

FCA/PRA Temporary Permissions Regime (TPR): see https://www.fca.org.uk/markets/eu-withdrawal/temporary-permissions-regime (https://www.bankofengland.co.uk/news/2018/july/temporary-permissions-and-recognition-regimes). This is intended to enable European Economic Area (EEA) firms which currently operate in the UK (using the EEA passport) to continue to do so as the end of the transition period on 31st December 2020. Firms must apply for their Temporary Permission. Alongside the TPR, the Government has introduced legislation to create the Financial Services Contracts Regime (FSCR) which will allow, for a limited period of time, EEA passporting firms that do not enter the TPR to continue to service UK contracts entered into prior to the end of the transition period (or prior to when they enter FSCR) in order to conduct an orderly exit from the UK market once the transition period has ended - https://www.fca.org.uk/brexit/temporary-permissions-regime-tpr/financial-services-contracts-regime

Withdrawal Act (WA): see http://www.legislation.gov.uk/ukpga/2018/16/section/13/enacted. The UK complies with EU law through a mixture of directives, regulations and other means.
A **directive** is a legal act of the EU which requires member states to pass their own legislation to achieve a result defined in the directive. A regulation is deemed to be implemented in the member state. The WA is intended to bring current EU law into UK law with appropriate adjustment.

Transition Period (TP): the transition period ends on 31 December 2020 and it is the 11-month implementation period following the UK's departure from the European Union on 31 January 2020 where the UK remains both in the single market and the EU customs union. The UK left the European Union at 23:00 GMT on 31 January, but that is not the end of the Brexit story.

Technical Notes for no deal Brexit: the UK government has issued Technical notes on the outcomes of a no deal Brexit for a broad range of circumstances. These are being added to as at the date of writing. Those relevant published notes are quoted in the text below and others will be added in updates as relevant. The Technical notes can be accessed through this link here.

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1. TEMPORARY PERMISSIONS REGIME (TPR)

What is the TPR and how does this work?

Passporting allows firms authorised in an EEA state to conduct business in other EEA states, based on their 'home' member state authorisation. The passporting regime will end at the end of the transition period.

The temporary permissions regime (TPR) is designed to allow EEA firms and investment funds to continue their UK business with minimal disruption when the passporting regime ends.

EEA FS firms that are passporting into the UK, the TPR will allow them to operate in the UK within the scope of your current passport, for a limited period, after the end of the transition period. This will give you the opportunity to apply for full UK authorisation, if required. If they are a solo-regulated firm, you will need to notify the FCA before the end of 30 December 2020, if you wish to enter the TPR.

The TPR will cover both the firm's pre-existing business and any new business entered into during the TPR.

EEA firms and fund managers must notify the FCA if you wish to use the TPR. Notifications must be submitted via their Connect system before the end of 30 December 2020.

What is the Financial Services Contracts Regime and how does it work?

Alongside the TPR, the Government has introduced legislation to create the FSCR which will allow, for a limited period of time, EEA passporting firms that do not enter the TPR to continue to service UK contracts entered into prior to the end of the transition period (or prior to when they enter FSCR) in order to conduct an orderly exit from the UK market once the transition period has ended.

The FSCR will be relevant to EEA firms which passport into the UK if:

- they need to carry out regulated activities in order to continue to perform their existing contracts, but do not to notify the FCA that they wish to enter the TPR, or
- they are unsuccessful in securing authorisation when leaving the TPR but still have regulated business in the UK to run off

Your firm will not be able to write new UK business and will be limited to the regulated activities which are necessary for the performance of pre-existing contracts only, plus certain limited specified activities.

If your firm wants to continue doing new business in the UK after the end of the transition period, or if your firm wishes to have more flexibility in the regulated activities it is permitted to carry on, it will need to enter the TPR and then secure full UK authorisation, if appropriate.

In addition, if your EEA firm manages UK authorised funds, you will not be able to continue to manage those funds after the end of the transition period from within the FSCR. You will need to notify the FCA in order to enter the TPR to benefit from the transitional period. If you wish to continue to market funds in the UK you will in addition need to notify for the TMPR.

The same applies to trustees or depositaries of such funds.

How long will the TPR remain in place?

Once in the TPR, the FCA will allocate firms that will be solo-regulated a period (a 'landing slot') within which they will need to submit their application for UK authorisation, if required. The maximum duration of temporary permission is 3 years.

Which firms/funds will be eligible to use the TPR?

- Firms that have passports under Schedule 3 to FSMA in place before the end of the transition period, including where they also have top-up permissions
- Treaty firms under Schedule 4 to FSMA which qualify for authorisation before the end of the transition period, including where they also have top-up permissions
- Electronic money institutions, payment institutions and registered account information service providers who are exercising their passporting rights under the Electronic Money Directive (EMD) or the Payment Services Directive (PSD2) before the end of the transition period
- Credit institutions and insurers
- EEA-domiciled UCITS and any notified sub-funds
- UK and EEA-domiciled Alternative Investment Funds (including EuVECAs, EuSEFs, ELTIFs and AIFs authorised as MMFs) managed by EEA authorised manager

What if the firm does not enter the TPR or, if it does, has its application declined?

Alongside the TPR, the Government has introduced legislation to create the FSCR which will allow, for a limited period of time, EEA passporting firms that do not enter the TPR to continue to service UK contracts entered into prior to the end of the transition period (or prior to when they enter FSCR) in order to conduct an orderly exit from the UK market once the transition period has ended.

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2. CONTRACTUAL ISSUES

a. What is, or will be, the legal basis for cross border documents to remain legally enforceable?

- *Will parties be able to rely on contract-agreed English Law if one party is not in the UK, or the contract is performed outside of the UK?*

If you are an English or Welsh company, it is most likely that your contracts (extending to loan and derivative agreements for finance) are under English Law. Scottish and Northern Ireland companies may use local law or English law.

English Law is often used for agreements between UK and EU27 businesses. REGULATION (EC) No 864/2007 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) enables an EU entity, which the UK remains until either the withdrawal date or the end of the TP, to choose the jurisdiction for its contracts including use of non-EU jurisdictions.

Rome II continues to apply to the EU27 following Brexit. Rome II is included in the Withdrawal Act (WA).

Less certain is how post Brexit judgements by UK courts will remain enforceable in EU27 member states. The UK Government has indicated that the UK will accede in its turn to the 2005 Hague Convention. This will give a similar result in many cases.

- *Will Rome I and Rome II be enacted in the UK under the Withdrawal Act?*

The Lugano Convention governs jurisdiction and the enforcement of judgements in civil and commercial matters between EU member states and EFTA members, Iceland, Norway and Switzerland. It predates the Single Market and is part of the international social infrastructure that underpins the rule of law and respect for obligations across our region with common rules on jurisdiction and enforcing court judgments.

As things stand, the UK's involvement in the Lugano Convention will cease at the end of the transition period. On 8 April 2020 the UK submitted its application to accede to the Lugano Convention which would result in little change to the current arrangements. English court judgments would continue to be enforceable throughout EU and EFTA countries and English jurisdiction clauses respected, and vice versa.

The UK's application to accede will only succeed if it has unanimous agreement of all contracting parties. Whilst Iceland, Norward and Switzerland have indicated their support for the UK's access the EU has been less positive in its response.

The Ministry of Justice has published guidance for legal professional on how various areas of legal practice will change from 1st January 2021 – you can access this guidance here.

Jurisdictions

At the end of the transition period, a UK court judgement will not be enforceable across the EU, unless the contract contains a two-way exclusive jurisdiction clause so it falls under the remit of the Hague Convention. Where a contract does not fall under the remit of the Hague Convention, then it will depend on the national rules of that EU member state with regards to enforcement.

The UK's application to join the Lugano Convention is still to be approved by all of its existing signatories – the EU, Switzerland, Norway and Iceland. Access to the Lugano Convention would be another route for all English judgments to be enforceable across all EU member states.

b. How will existing contracts continue post Brexit?

- *What are financial services providers doing to mitigate risks on contracts?*

Financial services providers can take a number of steps to mitigate the risk of being unable to service cross-border contracts. Those actions may involve setting up entities in other jurisdictions and transferring contracts to those entities or selling books of business to providers who are based in the jurisdiction where the customers are based.

See specific notes below on ISDA Agreement, Loan Agreements, and Insurance**.**

The TPR will enable an EU27 financial services supplier to continue to service its UK contracts, if the service provider applies for permission under the TPR.

Performance of certain derivative life-cycle events such as roll-over, novation and portfolio compression, may be construed as entry into a new derivative transaction that is subject to either MiFID II passporting or authorisation in the relevant EU member state. More information on the ISDA contracts can be found at https://www.isda.org/2020/07/21/brexit-faq/ It should be noted that where a contract has a lifecycle event that could be construed as a new contract, then loss of the passport could render such activity illegal in the EU.

- *What are regulators doing to mitigate the potential impacts on contract validity?*

The FCA and PRA will offer the Temporary Permissions facility for EU27 suppliers of financial services. An EU27 non-financial services provider will need to ensure it is enabled to export from the EU27 and import into the UK. See Technical Notices for industry specific advice.

Alongside the TPR, the Government has introduced legislation to create the FSCR which will allow, for a limited period of time, EEA passporting firms that do not enter the TPR to continue to service UK contracts entered into prior to the end of the transition period (or prior to when they enter FSCR) in order to conduct an orderly exit from the UK market once the transition period has ended.

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- they are unsuccessful in securing authorisation when leaving the TPR but still have regulated business in the UK to run off

There is no TPR-equivalent in the EEA and the transitional regimes put in place by various Member States ahead of previous exit dates have lapsed. However, some EU member states are taking steps at national level to enable continuation of contracts, for instance Ireland will allow the runoff of existing insurance contracts for up to 15 years. Italy will require firms to ensure the execution of existing insurance contracts, and Denmark also has a temporary regime for cross border provision of investment services. Refer to individual member states' and national competent authorities' guidance on the continuation of contracts.

- *Under what circumstances will I need to renew or renegotiate contracts?*

In the case of contracts between UK and EU firms, service providers may seek to repaper contracts, where the servicing of the contract under its current terms would be impacted by the loss of passporting. The repapering may be, for example where they are transitioning the contract from one legal entity to another. UK firms with EEA clients may seek to transfer contracts to an EEA entity. We would expect corporates to be contacted by their service provider about this.

Your EU27 contract counterparty will need to inform you if it is unable to continue to supply in the UK after the Brexit date, or after the end of the TPR.

c. Can intra-group transactions between UK and EU entities (FX trades, loans/deposits, interest rate and cross currency swaps etc.) continue to be carried out?

Group companies will need to check that the legal framework has not changed in relation to intra group transactions in their field as the movement of exposures is dependent on EU and member state supervisors and regulators.
Firms should contact their individual supervisors.

HMT has announced its intention to take an equivalence decision under article 13 of EMIR.

Under this decision, UK firms will be able to apply for the margining and/or clearing exemption for intragroup transactions where their intragroup counterparty is located in the EEA and, if granted, may benefit from the exemption on a non-time limited basis. However, UK firms will still need to be aware that their EEA intragroup counterparties may not be entitled to reciprocal exemptions under the EU EMIR requirements and should check the position on this.

A separate transitional regime has already been provided under UK EMIR for intragroup exemptions from clearing and margin for UK to EEA and UK to third country intragroup transactions. Following this equivalence decision, intragroup exemptions between UK firms and their EEA group entities will not need to make use of this transitional regime but will need to follow the process as detailed below. The transitional regime will continue only for intragroup exemptions from clearing and margin between UK firms and their third country group entities where no equivalence has been determined.

UK firms who have already been granted an intragroup exemption from reporting by the FCA may continue to benefit from those exemptions immediately following the end of the TP with no requirement to reapply. Firms with EU group entities which currently benefit from the intragroup exemption from reporting under EU EMIR may want to confirm with the relevant EU national competent authorities for those entities their expectations in relation to the intragroup exemption from reporting under EU EMIR.

d. Can I continue to access loan facilities under contracts agreed pre-Brexit?

As a UK entity, loan documentation will often be based on the forms published by the Loan Markets Association (LMA). These forms of documents are used for loans written between UK borrowers and banks' lending in the London markets. Your lawyers will be able to advise if this is correct. The following notes reflect a position where a UK corporate is the borrower, and banks currently lending in the London money markets are the lenders.

Some groups may have loan agreements where the lenders are group entities within the EU27. These are likely to be subject to local loan agreement standards. In the event the lenders include UK financial institutions, the no deal effect of loss of passporting rights for UK

lenders in EU27 domiciled loan agreements depends on the specific banks and the approach taken by relevant countries (for example the UK, Ireland Netherlands do not regulate lenders). There is a patchwork of regulation across the EU member states with regards to lending. The groups will have to check the rules that apply in each member state that they operate in to understand if they will be able to continue to access loan facilities.

EU Law references: Your loan agreements may contain some minor references to EU law, and you may need to consider with your lenders how these remain applicable post Brexit.
Clauses to Watch:

1. Illegality: what is the consequence of a Lender's participation becoming illegal due to Brexit?
2. Facility Agent: what is the consequence of the Agent's role ceasing to be legal or operational due to Brexit?
3. Transfer and Accession of New Lenders: How do they function? Must they be triggered pre-Brexit or post?

Passporting: Lenders may be non-UK and rely on passporting to lend into the UK market. Passporting rights will cease on the final day of the transition period, 31st December 2020. The UK's Temporary Permissions Regime is expected to help EU27 lenders to continue to operate in the UK for up to three years.

e. What is the impact on ISDA derivative contracts?

Uncleared OTC Derivatives

On 23 November 2020, the European Supervisory Authorities (ESAs) published draft regulatory technical standards proposing changes to the EU's rules on exchanging margin (collateral) for uncleared derivative contracts. One of the changes would allow UK counterparties to be replaced with EU counterparties in existing EU-UK derivatives contracts without triggering new margin and clearing obligation requirements. Firms will have a 12-month window, until 1 January 2022, to complete these 'novations', with the aim of easing firms' Brexit preparations by removing regulatory barriers to relocating their derivatives business to the EU. The ESAs also proposed changes to extend current exemptions from margining requirements for intragroup transactions (i.e. those between EU and non-EU entities in the same group) and for equity options (a class of derivative). The draft technical standards are now with the European Commission, which is responsible for steering them through the EU's legislative process.

https://www.esma.europa.eu/press-news/esma-news/esas-propose-adapt-emir-implementation-timelines-intragroup-transactions-equity

The Regulatory Technical Standards (RTS) are not yet finalised and are required to go through various EU processes which will take time. ESMA expects competent authorities to apply the EU framework in a risk based and proportionate manner until the amended RTS enters into force.

Available 3rd Party Advice:

ISDA has provided a helpful Brexit Q&A.Brexit FAQs – Version 8 – International Swaps and Derivatives Association
ISDA and other EU27 organisations have identified certain disruptions that might occur in a no deal Brexit:
https://www.isda.org/a/LM9TE/Brexit-Cliff-edge-Issues.pdf

After the end of the transition period: According to the FCA, the performance of many contractual obligations agreed before exit is unaffected by the UK's withdrawal. However, the performance of certain activities that are linked to these contracts may be subject to authorisation in member states. There are also potential risks to financial stability and consumer protection – in the EU - if firms cannot service these contracts.

https://www.fca.org.uk/publication/impact-assessments/eu-withdrawal-impact-assessment.pdf

For EEA firms with clients in the UK, the TPR can be utilised. Alongside the TPR, the Government has introduced legislation to create the FSCR which will allow, for a limited period of time, EEA passporting firms that do not enter the TPR to continue to service UK contracts entered into prior to the end of the transition period (or prior to when they enter FSCR) in order to conduct an orderly exit from the UK market once the transition period has ended. The ability for UK firms to service clients in the EEA is a matter for the European Commission (EC) or a regulator in the local jurisdiction where the business is being performed as per below:

Uncleared OTC Derivatives

The EC has not taken any further action for OTC uncleared derivatives. Instead, it calls for firms to prepare for this situation by transferring and seeking relevant authorisations from individual member states. Updates to the Margin RTS proposed by the EU will take place after the end of the transition period. They will look to clarify the position of equity option, FX forwards and swaps, intragroup exemptions and the updated implementation dates for the remaining initial margin phase-ins.

Cleared Derivatives

While the EC has recently adopted a temporary equivalence decision on 21 September 2020 and UK central counterparties have been recognised until June 2022, there remains a concern about the impact on clients of a requirement on EU counterparties to 'reduce exposure' to UK CCPs by that date.

On 28 September 2020 the EU's Securities and Markets Regulator (ESMA) announced that the three UK-based central counterparties (CCPs) - LCH Limited, ICE Clear Europe Limited and LME Clear Limited - will be recognised as third-country CCPs (TC-CCPs) until mid-2022 and therefore authorised to continue providing services in the EU after the end of the transition period.

- Other considerations:
    - UK Subsidiaries and branches of EU27 Entities: There has been a process of "domestication" since 2008. Banks, UK and EU27, dependent on their home government for financial support have gradually withdrawn into their national borders. Brexit may enhance this process with the potential for your counterparty to ask for termination, particularly if you are out of the money, or transfer of the transaction to an EU27 entity. Care: the change of residence of the counterparty may trigger gross up clauses for WHT (see following).
    - Withholding Tax (WHT): generally, the nature of the parties to derivatives contract are such that WHT is not required to be deducted from interest payments with each party often making a representation to this effect when the derivatives contract is finalised. This cannot be assumed to continue post Brexit because local jurisdictions, EU27 member states or the UK could withdraw the exemptions which enable WHT free payments. Negotiations will be monitored to understand if this is

going to occur. We recommend you make your tax advisers aware of the parties with which you have derivatives contracts, so they can keep you informed of the potential to require gross up. You should check the gross up clauses of your derivatives contracts and transactions to understand the consequence of gross up which may include termination.

- Collateralisation: It is expected that cash collateralisation would be no different in treatment to periodic payments under the transaction. Settlement with non-cash collateral may require that the provider possesses certain authorisations to be able to do so and these may change as the Brexit process develops.
- AFME have created a guide for clients on the potential implications of repapering (https://www.afme.eu/en/reports/publications/how-might-wholesale-financial-services-contracts-be-impacted-by-brexit/). This set out a number of FAQs as to how contracts could be impacted.

f. How will insurance contracts be affected?

- *Will my existing insurance contract with an EU27 FI continue without intervention from me?*

- *Will my insurance policy issued by a UK insurer to cover my EU27 activities remain valid?*

- *If my insurer does not receive permission to operate in the UK, will my policy become null and void?*

UK customers of EEA firms

The TPR is designed to help firms and investment funds continue their UK business with minimal disruption when the passporting regime ends at the end of the transition period.

If you're an inbound firm, the TPR will allow you to continue operating in the UK within the scope of your current permissions for a limited period after the end of the transition period, while you seek full UK authorisation, if required. The TPR covers both your firm's pre-existing business and any new business entered into during the TPR.

Alongside the TPR, the Government has introduced legislation to create the FSCR which will allow, for a limited period of time, EEA passporting firms that do not enter the TPR to continue to service UK contracts entered into prior to the end of the transition period (or prior to when they enter FSCR) in order to conduct an orderly exit from the UK market once the transition period has ended.

The FSCR will be time-limited depending on the type of regulated activity being performed. It will apply for:

- a maximum of 15 years for insurance contracts, and
- 5 years for all other contracts

These periods are maximum periods and a firm's permission (or exemption) under FSCR applies only to the extent that it is necessary for the performance of a pre-existing contract plus certain limited specified activities.

EEA customers for UK firms

If you have customers based in the EEA, you should already have decided on your approach to servicing your existing contracts with them. For example, many firms have moved or are

moving EEA customers' policies to an EEA entity, for example by means of a Part 7 transfer. You should take the steps available to you to continue to service customers in accordance with local law and national regulators' expectations.

The European Insurance and Occupational Pensions Authority (EIOPA) has published recommendations for the insurance sector in light of the United Kingdom withdrawing from the European Union. The recommendations are addressed to national regulators and aim to minimise detriment to policyholders and beneficiaries once EU law no longer applies in and to the UK.

EIOPA recommends that for insurance firms with EEA consumers (including UK expats) who took out certain types of general insurance contracts while resident in the UK and have since moved to the EEA, those contracts should not be regarded as cross-border business. We welcome this recommendation. However not all Member States are in accord with the recommendation – see the EIOPA website.

However, firms should be aware that not all transitional measures that EEA regulators took (or planned to take) in response to EIOPA's recommendations may apply at the end of the transition period, particularly those put in place for a 'no-deal, no transition' scenario, and a number of countries did not commit to putting transitional regimes in place. Whether you need regulatory permissions in a local EEA jurisdiction will depend on local law and the approach of the local authorities in that jurisdiction, which means it is important that you are discussing your plans with them.

The FCA expect firms to act in accordance with local laws and local regulators' expectations, and make sure their decisions are guided by obtaining appropriate outcomes for their customers. They recognise that this may involve different considerations in different circumstances. It would clearly be a bad outcome for a consumer not to receive the payment of a valid claim or any other payments they're entitled to.

3. CASH AND LIQUIDITY MANAGEMENT

Will UK and EU27 SMEs be able to continue to access trade finance credit and support for cross border transactions?

At the end of the transition period UK firms will be able to continue to access trade finance credit for cross-border transactions from their UK based service provider. Trade Credit Insurance will continue to be available for UK Exporters under their existing UK Issued Policies for all Overseas debtors including those in the EEA – nothing changes.

Where the UK Insured entity has a 'joint insured' from an EEA Territory named on their policy – eg they have a subsidiary based in the EEA which benefits from the credit insurance issued to the UK 'Lead' Insured the Insurer will likely have to issue standalone policies for the EEA Subsidiary/ies. It is expected that in such situations the same terms will be maintained – but this is of course subject to agreement from the Credit Insurers issuing the policies who will be located in the EEA.

Firms are advised to contact their trade finance providers to understand how they are managing the process.

4. PAYMENTS

Can a UK business continue to make and receive euro payments between the UK and the EU?

Yes, the European Payment Council has confirmed continuing membership of SEPA.

Cross-border payments

After the end of the transition period, banks and payment service providers will have to provide the name of the payer and payee, and address of the payer, when making payments between the UK and the EEA. These requirements are set out in the Fund Transfer Regulation (FTR).

The FTR is a subset of European legislation that supports efforts to combat money laundering and terrorist financing. The requirements have been 'onshored' (and amended) in UK legislation in preparation for the end of the Brexit transition period. It means that banks and payment service providers must include name and address information where one party is outside of the UK or Gibraltar.

Processing payments with missing information

After the end of the transition period, and until March 2022, UK PSPs will be able to rely on our use of the temporary transitional power (TTP). This will allow firms to continue to comply with the existing requirements of the FTR and process payments initiated by EU PSPs, even if the EU PSP hasn't provided the full name and address details. The TTP is intended to minimise disruption for firms, consumers and other regulated entities, as UK firms phase in regulatory changes as a result of 'onshored' EU legislation.

In addition, and in line with Article 8 of the FTR, we expect UK PSPs to have effective risk-based procedures that apply where the transfer of payments lacks the information needed on the payer or the payee.

After the end of the TTP period, UK firms acting as recipient PSPs can credit a payment with missing information or make the funds available to the payee, on a risk-sensitive basis.

If your firm uses the SEPA payment schemes, the European Payments Council published a Brexit reminder on 3 November 2020 with more information about getting ready for the end of the transition period. We're not responsible for compliance with SEPA scheme rules and can't comment on their operation or impact.

Remember, the UK's TTP only impacts compliance with UK requirements. It can't assist EU PSPs with their compliance with EU or local requirements. To avoid disruption to customers, when making payments, we expect firms to be ready to provide the name of the payer and payee, and address of the payer, for all transactions initiated after the end of the transition period, including SEPA direct debit transactions.

If any payments are disrupted, we expect firms to communicate promptly with any affected customers, to make them aware of the disruption and give them the opportunity to make the payment in another way.

I*mplementing strong customer authentication*

In the exceptional circumstances of the Covid crisis, FCA announced it is giving the industry an additional 6 months to implement strong customer authentication (SCA) for e-commerce. This will minimise potential disruption to consumers and merchants. The new timeline of 14 September 2021 replaces the 14 March 2021 date.

For further information:https://www.fca.org.uk/firms/strong-customer-authentication

5. CAPITAL MARKETS

Will existing debt programmes (for example, Euro Medium Term Note programmes) approved either in the UK or in the EU27 remain fully operative?

Will there be new "frictional costs" of operation? Will securities issued thereunder continue to be eligible for any index or receive the same regulatory treatment as they do now?

A new Prospectus Regulation (PR) came into force on 21 July 2019. The outcomes will differ depending on whether the debt issue is exempt or non-exempt: exempt being bonds issued in denominations of €100,000 or greater. Smaller denomination bonds are colloquially known as Retail Bonds marketed to retail investors.

- We would expect that most members are engaged in the issue of exempt bonds and that their outstanding issues are exempt bonds.
- Issuers will continue to be able to make *exempt* offers of bonds in EEA Member States without needing to publish an approved prospectus in accordance with the PR, so issuers with prospectuses approved by the FCA in the UK will be able to make *exempt* offers of bonds in EEA Member States after Brexit.
- In the event of a no deal Brexit and no other transitional or other arrangement, issuers would need to have a prospectus approved by an EU27 national competent authority and published in accordance with the PR in order to make a *non-exempt* offer of bonds to the public in one or more EEA Member States after exit date.
- The PR also prohibits the admission to trading on a regulated market situated or operating within the EEA unless a prospectus has been published in accordance with the PR.
- So, absent any transitional or other arrangement, an issuer's non-exempt securities could not be admitted to trading on a regulated market situated or operating within the EEA after exit date unless the issuer has published an approved prospectus in accordance with the PR.

Frictional costs

Indices are a matter for index operators. Otherwise, FCA would expect that these securities would generally continue to receive the same regulatory treatment as they do now – FCA are not making policy changes to their rules beyond what is necessary to ensure rules are functional as a result of Brexit.

The government and regulators are seeking to ensure as much continuity in the UK as possible after exit. Any frictional costs in the EU are a matter for EU27 governments and regulators. The onshoring process under the WA seeks to remove or minimise 'frictional' matters by 'onshoring' EU-derived domestic legislation and directly applicable EU legislation.

6. CREDIT RATINGS

Can my company continue to use credit ratings issued in the UK or the EU?

Use of ratings in the UK
Firms that are using credit ratings, but not for regulatory purposes may continue to use credit ratings issued in the UK and EU27. It covers credit institutions, investment firms, insurance undertakings, reinsurance undertakings, IORPS, fund managers and CCPs and covers the use to comply with Union law or MS law implementing Union law.

Firms using credit ratings for regulatory purposes will only be able to do so where they are issued or endorsed by credit rating agencies (CRAs) registered or certified with the FCA.
To support a smooth transition to the new regime for CRAs in the UK, and minimise disruption to the users of credit ratings, the CRAR SI prescribes several transitional processes for existing CRAs. The CRAR SI introduces both a conversion and temporary registration regime available to CRAs wishing to issue ratings in the UK after 31 December 2020
These CRAs will make system changes to flag ratings that are available for regulatory use in the UK. Firms using credit ratings for regulatory purposes should therefore also ensure they are operationally ready to use credit ratings issued or endorsed by FCA-registered CRAs after the end of the transition period. You may wish to contact the relevant CRAs whose ratings you use in order to understand the systems changes they are planning to make.
See here for further information from the FCA.

Use of ratings in the EU
Firms using credit ratings for regulatory purposes in the EU will only be able to do so where they are issued or endorsed by CRAs registered or certified with ESMA.
https://www.esma.europa.eu/sites/default/files/library/esma80-187-149_public_statement_brexit_cras_trs.pdf

Both ESMA and FCA have announced that they deem each other's regulatory and supervisory regime 'as stringent as' their own for the purposes of allowing registered CRAs to endorse ratings into the UK / EU from affiliated EU / UK CRAs for regulatory purposes.

https://www.fca.org.uk/news/statements/endorsement-eu-credit-ratings-no-deal-brexit

https://www.esma.europa.eu/sites/default/files/library/esma33-5-735_public_statement.pdf

7. RELATIONSHIP WITH PROVIDERS

How will the pricing and availability of products be impacted post-Brexit? When will I be informed by providers of these changes?
We recommend a proactive relationship with service providers. Define the services you use and seek confirmation from your service providers that they will continue to offer those services or the alternative arrangements they can offer within their group.

Providers are generally seeking to ensure continuity for their clients. In the FCA's Dear CEO letter, FCA have said that when providers are designing structures they should assess whether the proposed changes are in the best interests of their clients and where providers intend to make changes to existing contractual agreements with clients, they should make clients aware in good time, in line with the relevant regulatory obligations.

Corporates should seek advice from their financial services providers as to how they expect to service extant issues: for example, for periodic settlements.

9.TAXATION

What effect will any changes in payment and timing of payment of VAT will have on my business and cash flow?

The government guidance on payment and timing of payment of VAT around transactions with the EU is available here:

https://www.gov.uk/prepare-to-import-to-great-britain-from-january-2021 - This guidance provides details about payment, how to set up a duty deferment account for monthly payment and how payments can be delayed in some situations.

https://www.gov.uk/prepare-to-export-from-great-britain-from-january-2021 - This guidance highlights that most exports can be charged at 0% VAT and how to check that you will satisfy the criteria.

10.REGULATION

What EU legislation is brought into UK law under the Withdrawal Act and what changes will there be to the role of UK regulators?

The European Union (Withdrawal) Act 2018 will generally convert into UK law existing EU legislation which has a direct effect in the UK at the end of the transition period. It will also preserve existing UK laws which implement EU obligations. The Government has made numerous statutory instruments to ensure that retained EU financial services legislation works in a UK-only context through the process known as "onshoring".

We have also prepared to take on additional functions at the end of the transition period. These include the new systems needed to run our own MiFID/R regime and supervising credit rating agencies (CRAs) and trade repositories (TRs), all functions previously exercised by ESMA. We will also be responsible for making and amending binding technical standards from the end of the transition period.

If I have a complaint about an EEA firm, who can I speak to?

We advise checking with the relevant regulator of the firm in question.

11. GLOSSARY

ACT	Association of Corporate Treasurers
AIFs	Alternative Investment Funds
BoE	Bank of England
CBI	Confederation of British Industry
CRO	Contractual Run-off
CVA	Credit Valuation Adjustment
EBA	European Banking Authority
EC	European Commission
ECB	European Central Bank
EEA	European Economic Area
EIOPA	European Insurance and Occupational Pensions Authority
EMD	Electronic Money Directive
EMIR	European Market Infrastructure Regulation
EPC	European Payments Council
ESMA	European Securities and Markets Authority
EU	European Union
FCA	Financial Conduct Authority
FSCR	Financial Services Contracts Regime
HMT	HM Treasury
LMA	Loan Markets Association
NCA	National Competent Authorities
NCB	National Central Bank
NFC	Non-Financial Counterparty
PD	Prospectus Directive
PRA	Prudential Regulation Authority
PSD	Payment Services Directive
SEPA	Single Euro Payments Area
SI	Statutory Instrument
SRO	Supervised Run-Off
SSM	Single Supervisory Mechanism
TP	Transition Period
TPR	FCA/PRA Temporary Permissions Regime
UCITS	Undertakings for Collective Investment in Transferable Securities
UK	United Kingdom
WA	Withdrawal Agreement
WHT	Withholding Tax
WTO	World Trade Organisation