

Stakeholders' Newsletter

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Brexit-related Statutory Instruments ("SIs")

The FMLC has resolved to identify legal uncertainties arising from the published and anticipated SIs.

Should you or a colleague be working on SIs and like to suggest issues of legal uncertainty on which the FMLC might usefully contribute, please contact Venessa Parekh at: research@fmlc.org.

FMLC Paper on the European Market Infrastructure Regulation ("EMIR")

A substantial volume of financial instruments denominated in the currencies of Member States are currently cleared by central counterparties ("CCPs"), established in, and regulated by, Third Countries. This number is expected to increase upon the U.K.'s withdrawal from the E.U. ("Brexit"). On 14 June 2017, the European Commission adopted a proposal to alter the processes for authorisation and recognition of CCPs as well as the framework for monitoring and supervising CCPs under EMIR (the "Proposal").

The FMLC has published a paper identifying legal uncertainties arising from the proposed changes to the arrangements for Third Country CCPs. The paper outlines uncertainties which include: i) a lack of clarity in the recognition process for Third Country CCPs; ii) concerns regarding the mechanics of relocation for systemically important Third Country CCPs; and iii) conflicts of law and regulation that might arise from the expanded investigatory powers bestowed to regulatory authorities. To address the uncertainties, the FMLC has made recommendations for solutions and mitigants that promote further clarity and transparency in the Proposal to amend EMIR.

[\(Read / download the paper here\)](#)

Coming Soon: FMLC Paper on the U.K. Data Protection Act ("DPA 2018")

Rapid and substantial developments in technology and the way organisations collect, store and use data have resulted in efforts to modernise and harmonise the current legal and regulatory framework for the protection of rights of data subjects. The E.U. General Data Protection Regulation ("GDPR"), which has been directly applicable in the U.K. since 25 May 2018, is an example of such efforts. Following the U.K.'s withdrawal from the E.U. ("Brexit"), provisions of the GDPR will be incorporated into U.K. domestic law by virtue of the operation of the European Union (Withdrawal) Act, in addition to the DPA 2018.

The DPA 2018 itself has been criticised for its length and complexity, the extent of the derogations, the exemptions it contains and the breadth of the powers it grants to the U.K. Government. Concerns have been raised as to whether, given these supposed lacunae, the DPA offers sufficient safeguards from the perspective of the GDPR to allow data transfers from the E.U. to the U.K. to continue unimpeded after Brexit, when the U.K. becomes a Third Country. In light of the importance of the continuing international flow of data to businesses and authorities, this shortly-to-be-published FMLC paper examines the legal uncertainties arising from the DPA 2018, in particular with regard to supervision of the flow of personal data between the U.K., the European Economic Area ("E.E.A.") and/or Third Countries, post-Brexit. The paper will be soon be available on the FMLC website.

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