

The U.K.'s Withdrawal from the E.U.

On 29 March 2017, HM Government wrote to the European Council under Article 50 of the Treaty on European Union notifying it of the U.K.'s intention to withdraw from the E.U. (this process is known colloquially as “Brexit”) Article 50 provides for a two-year “notice” and negotiation period, which will come to an end on 29 March 2019.

Currently, the U.K. is scheduled to withdraw from the European Union on that date without an agreement as to a post-Brexit relationship between them. Should this happen, U.K. market participants will be unable to depend upon the E.U. “passport” to continue providing services in the E.U. and will have to apply for authorisation under various regulatory frameworks. E.U. firms will be in a similar position in respect of providing services in the U.K. Both the U.K. and the E.U. have put in place legal and regulatory regimes to come into effect in such a “no deal” scenario which will enable the continued provisions of some activities and services for the short term. The U.K. has also incorporated into U.K. law—by way of the European Union (Withdrawal) Act 2018 and secondary legislation published under it—all E.U. law which is “operative” (a process labelled “onshoring”). These are, however, domestic preparations; the future of the U.K.-E.U. relationship remains unknown.

Two other options remain on the table. The first is the acceptance by Parliament of an amended version of the draft Withdrawal Agreement which was agreed between U.K. and E.U. negotiators late last year and which was rejected by Parliament by a record majority on 15 January. Parliament will vote on the deal again on 13 March 2019. The draft Withdrawal Agreement provides for a 21-month transition or implementation period during which the U.K. will continue to apply E.U. law while, as far as financial services are concerned, regulatory authorities will commence equivalence assessments.

Should the draft Withdrawal Agreement be rejected again, Parliament will vote on whether the U.K. should leave without a deal. In the event Parliament rejects the deal and a “no deal” Brexit, it will vote on whether it should ask the E.U. to delay exit day by extending the Article 50 notice period. If this is to be agreed, however, all 27 E.U. Member States must first acquiesce.

The FMLC has published papers and letters examining issues of legal uncertainty which might arise in a no deal scenario, including reviewing the onshoring statutory instruments. At the moment, the Committee is scheduled to meet on the eve of exit day (28 March). It will discuss at that meeting whether the gravity of the legal complexities require the Committee's full attention and whether, therefore, it should meet again in short order. In a no deal situation or if the draft Withdrawal Agreement is accepted, the FMLC's Brexit Advisory Group—composed of experts in financial services and in law and established to guide the FMLC's work on issues of legal uncertainty arising from Brexit—has also agreed to meet in early April.

In the meanwhile, should you wish to raise any legal uncertainties or questions related to the interpretation of (retained) law and/or contracts, please do contact Venessa Parekh at research@fmlc.org.

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