

25 November 2020

Department for Business, Energy & Industrial Strategy  
1 Victoria Street  
Westminster  
London  
SW1H 0ET



Dear Sir or Madam

## Call for Evidence on the U.K.'s International Regulatory Cooperation Strategy

The role of the Financial Markets Law Committee (the "FMLC" or the "Committee") is to identify issues of legal uncertainty, or misunderstanding, present and future, in the framework of the wholesale financial markets which might give rise to material risks, and to consider how such issues should be addressed.

In December 2018, the U.K.'s Better Regulation Executive invited the Organisation for Economic Cooperation and Development ("OECD") to conduct a review into the U.K.'s international regulatory cooperation practices. The OECD published a report in May 2020 recommending that HM Government ensure more systematic consideration of international regulatory cooperation across government and regulatory bodies.<sup>1</sup> In response, HM Government has published a planned programme of work as well as a Call for Evidence to help identify priorities for regulatory cooperation. The FMLC is grateful for the opportunity to draw attention to the integral role played by international coordination in the context of the financial markets.

From 2012 to 2015, the FMLC undertook a series of seven panel discussions and seminars to examine the inter-jurisdictional aspects of countries' implementation of certain G20 commitments in the field of financial services regulation, adopted in the aftermath of the Global Financial Crisis, and the possibility that divergent implementation may give rise to uncertainty in the legal framework of the global financial markets. The FMLC published a Discussion Paper in 2015, setting out the many issues of legal uncertainty which arise in this context.<sup>2</sup> Divergent national approaches and differences present a serious challenge to effective cross-border regulation. Regulation itself is becoming vastly more complex and, in consequence, the challenges of supervision have also increased substantially. The Discussion Paper concluded that action was required to address the legal uncertainty arising from inconsistent implementation of international commitments in this area.

More recently, in the context of the U.K.'s withdrawal from the E.U., the FMLC has drawn attention to the legal and operational complexities which may arise when authorities in the U.K. are no longer party to cooperation arrangements with European authorities.<sup>3</sup> This is exemplified in relation to the international coordination necessary, for instance, in the context of bank recovery and resolution. One of the challenges of the Global Financial Crisis was the legal and operational complexity arising from regulatory fragmentation across key jurisdictions around the world. This was most obvious in the context of the recovery and resolution of failing banks. After the Global Financial Crisis, the E.U. adopted Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms (the "BRRD"). The BRRD established a common approach in the E.U. to the recovery and resolution

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of banks and investment firms. The main themes of the BRRD are to preserve important functions on failure of a bank and to ensure that on insolvency/resolution, shareholders and creditors, rather than taxpayers, bear the losses.

The U.K. currently benefits from mutual obligations (e.g. of recognition, notification and consultation) between E.U. Member States and, in particular, will withdraw from regional and international collaboration arrangements agreed in the aftermath of the financial crisis. The operational impact which is likely to result from the wholesale loss of the rules on coordination (e.g. between authorities participating in resolution colleges and/or colleges of supervisors), cooperation (e.g. between authorities fulfilling responsibilities under the Securitisation Regulation),<sup>4</sup> consultation and/or notification (e.g. with/to other E.U. national authorities via the European Banking Authority under Article 16 of the BRRD) and of the provisions on reciprocity is likely to be significant. Market participants now rely on the harmonised E.U. regulatory framework and the duties of coordination and mutual recognition to which it gives rise. In respect of resolution, market participants will consider the efficacy of these arrangements as part of their credit planning in relation to counterparties. If the resolution of a European bank with cross-border operations becomes necessary, the impact of any coordination and recognition failures will be exacerbated given that resolution action in the U.K. and E.U. may involve property transfers, asset separation and bail-in, rather than, for example, the old choices between sale or liquidation. In this regard, in the event of a “hard” Brexit, the Committee considers that it would be very helpful if HM Government were to consult on a framework of standards to facilitate and regulate the means by which the financial regulators in the U.K. enter into bilateral and multilateral cooperation arrangements with other authorities.

It is likely that the U.K.’s withdrawal from the E.U. will give rise to many such questions. Given that the challenges facing the financial services—whether arising in the context of, for example, the Covid-19 pandemic or the advent of cryptocurrencies—are characterized by their cross-border nature and the requirement for multijurisdictional solutions, the FMLC would urge HM Government to prioritise coordination with authorities around the world.

I and Members of the Committee would be delighted to meet you to discuss the issues raised in this letter. Please do not hesitate to contact me should you wish to arrange a meeting or if you have any questions.

Yours sincerely,

A handwritten signature in black ink that reads "Joanna Perkins". The signature is written in a cursive style with a large initial 'J'.

Joanna Perkins  
FMLC Chief Executive

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- <sup>1</sup> OECD, *Review of International Regulatory Co-operation of the United Kingdom* (4 May 2020), available at: <https://www.oecd.org/unitedkingdom/review-of-international-regulatory-co-operation-of-the-united-kingdom-09be52f0-en.htm>.
- <sup>2</sup> FMLC, Report: Reform of International Financial Regulation (2 February 2015), available at: <http://fmlc.org/report-international-coordination-of-law-and-regulation-2-february-2015/> .
- <sup>3</sup> The FMLC's work on Brexit is available at: <http://fmlc.org/fmlcworkonbrexit>.
- <sup>4</sup> Regulation (EU) 2017/2402 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation