Comment & Analysis, What now for the UK in achieving a calm and measured disentanglement from the EU framework? – Steve Blackbourn, (Jun. 27, 2016)

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In the immediate wake of the EU Referendum outcome in the UK, it is important that media and political commentators and speculators refrain from talking-up any financial meltdown scenarios or indeed talking-down levels of confidence in the UK economy, market and financial systems. And even those in senior positions of power and influence across Europe have responded quickly in appreciating and advocating this is not now the time for inappropriate reactions and hysterics.

But the history making events of the 23 June 2016 will now ultimately see the UK move into many aspects of unchartered territory, taking a path where it will be walking away from its EU membership and the obligations brought about by that membership, at some point in the now foreseeable future. And regulated financial firms will need to ensure they remain alert and can effectively react to how this will come to change both the future commercial and regulatory landscapes in the UK.

Preparations and reassurance

There are currently a lot more questions than answers in the immediate wake of the final result, but for regulated financial services firms it has long been recognised and accepted that much of the UK's financial regulatory systems and requirements are inherently driven by and derived from the output of the European law and regulations framework. This means that the ramifications and fall-out of the EU Referendum in the UK, for firms subject to the UK's financial regulatory systems and structures, have the potential to be material and significant.

The Bank of England (BoE) has necessarily been quick in offering and setting-out a measured and stoic approach to its oversight and intervention capabilities to address market risks and volatility. This is an important step and measure, given the need for stability and confidence in financial markets and systems for the benefit of all stakeholders from investors, firms and customers. Nevertheless, there has been early and initial currency and equity asset and indices volatility across global markets, which requires close monitoring and hopefully some rebalancing in the longer-term.

EU exit mechanisms and planning

The well-quoted 'Article 50' provides for the formal notification of withdrawal process to be officially begun, and is broadly estimated to take two years+ once it has been initiated by a Member State. But this process and timeline has had little actual history to suggest it remains little more than a probable ambitious if not wholly optimistic proposal.

A priority matter for the UK, and individual organisations, is now to plan for the continued viability and sustainability through any change and transition processes, with an expectation of clear leadership and direction in terms of timely decision-making and the resolution of critical-path issues. Inevitably in the first instance, many financial services firms will look to take a strong lead from UK Government and other relevant industry bodies/agencies, in terms of identifying and responding to emerging and evolving actions and decisions. Until a clear path emerges from the UK Government and Parliament firms should concentrate on identifying and understanding how this national decision will impact them directly in terms of them continuing to conduct business and to deliver compliance with existing and applicable laws and regulations.

Immediate issues whilst keeping the status-quo

Clearly there remains an expectation of volatility to markets and specific business sectors, at least in the short-term e.g. banking and business/transactions involving currency-trading etc.

But any eventual removal from the EU will mean the UK steps-out or away from any obligations in having to follow/comply with harmonised standards and practices across the EU e.g. on how goods are offered or sold, how business is conducted, how business is recorded and reported and how associated business and consumer risks and rights are secured and/or provided e.g. the provisions relating to the current Markets in Financial Instruments Directive (MiFID) etc.

Perhaps most importantly, in any interim period firms have to continue to carry-out and conduct business activity to meet and comply with all existing UK laws and regulations including those which might have originally emanated from European Directives and Regulations. Indeed, the UK FCA in its own early statement on the referendum result has also made clear the need and expectations for firms to continue to plan for known future rule implementation plans that are yet to take effect too e.g. the continuing revisions to MiFID II.

Financial organisations using or relying on access to the EU market for significant and strategic business will have to assess, identify and plan on how it may need to adjust or re-structure itself and/or its business-model approach in order to maintain, preserve or deliver its required future strategic business goals and objectives. In the longer term, this may introduce operational variances, complexities and even conflicts as to how firms need to solicit, handle and process business from inside and outside the EU.

Other challenges ahead

Into the longer-term it might reasonably be expected that a lot of the existing EU-based financial services framework and regime requirements could simply be effectively retained and just regarded as 'grandfathered' forward into the future UK environment in principle. After all, they've already been successfully transposed, adopted, implemented and established as part of the UK's own internal legal and regulatory landscape. But a number of other material and key 'future' reform areas could yet be impacted in the longer-term, such as planned Data Protection Law/Regulation reforms, new and revised Money Laundering requirements (MLD4), and updates to various existing Directive provisions including MiFID II & IORPS II etc.

Other practical issues could involve and rely on clarifications around 'residency' and 'nationality' status for affected existing and future clients, and touch upon the documentation, processes and likely due-diligence controls for conducting and carrying on proper and legitimate business relationships. In addition, moving forward firms will need to maintain effective communications both internally and across a range of external partners as inevitable direct and indirect impacts and changes are identified, assessed, considered and then applied, and this is especially true for any regulator(s) and of course customers etc.

But in addition, other consequential impacts and ramifications that are only now emerging e.g. a possible second independence referendum for Scotland, may also require firms to engage in similar revisions to their operational and strategic processes if these were to also transpire too!

The picture for progress remains in motion

The UK Referendum outcome is an event that is likely to test the foresight of, and warrant some active level of contingency, resilience and potential risk and recovery planning by firms. It is also a timely opportunity to ensure any such arrangements remain up to date and fit-for-purpose, and it could even be expected these might be perhaps more closely 'tested' or' 'scrutinised' by any regulatory supervisor(s).

For those firms whom an EU exit cuts across their current business profile(s) and/or future ambitions, they will need to now sufficiently develop and mobilise any internal process and mechanisms necessary to effectively manage their way through the repercussions and consequences of both known and any realistically probable or likely future events and developments as the UK's road-map for exit from the EU progresses over the coming weeks and months.

About the author: *Over a 25-year career Steve Blackbourn has undertaken various operational and regulatory roles at senior-management level in a range of international financial services organisations before becoming established as a U.K.-based compliance and financial crime consultant in 2008. Steve has held key positions* *within a global bank assurance group, an Advanced Risk-Responsive Operating FrameWork (ARROW) supervisory inspection team at the UK FSA and an international life/pensions and investment organisation. Steve has worked and continues to work alongside Wolters Kluwer in delivering project-specific as well as rolling consultancy support services with mutual clients. He is also a regular monthly contributor to Wolters Kluwer Financial Services' Compliance Resource Network. In addition, he also works with a range of direct clients applying his broad scope regulatory-compliance and financial-crime background and skills to deliver a reliable and quality service with an emphasis on practical approach and commercial orientated solutions.*