

## **Comment & Analysis, Panic and surprise in a perfect storm: Disentangling the UK from the EU framework – Steve Blackbourn, (Jul. 1, 2016)**

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No sooner had the UK's decision been verified and announced early on the 25th June, a tone of disbelief, divide, anger and recrimination gripped the wider social, political and media networks of the UK. This has now probably just added to the number of new and further difficulties and hurdles to be met by the UK before a clear path forward is established to return confidence and trust in the economy, markets, business organisations and their participant stakeholders, consumers and investors. However, it cannot be allowed to unduly distract decision-makers from the priorities of now re-establishing and securing the necessary stability and confidence in the core underpinnings of the UK's economy, and the critical contributions of the financial-services industry and systems.

The basic premise and concept behind the EU structure and regime(s) have been the increased harmonisation of requirements, standards and practices, which support the ability and freedom's of organisations to effectively treat the EU member jurisdictions as a borderless and therefore 'common' market. And in >40 years of UK membership its various adopted 'Directives' and 'Regulations' have obviously become entrenched across so many areas of UK commercial and business law and regulation, and not just financial-services, but including many other ancillary areas such as data protection, environmental protection and working rights etc. But for financial-services the core basis and aims of the EU approach has been to apply and achieve common standards for EU consumers, to deliver market efficiencies, competition and innovation and to build effective consumer protections. More latterly it has also focussed on enhancing and bolstering the prudential and governance arrangements of firms, and prominent products and services, from systemic and integrity risks in the wake of the past global financial-crisis.

### **A growing basis for reassurance**

Shortly after the UK exit result being known other local jurisdictional regulatory bodies were keen to publish short statements to reinforce and echo messages of general market stability and resilience and the liquidity contingencies already being responsibly expressed by the UK Bank of England. But also to point out the fluid and longer-term nature of any impacts occurring once the UK officially ceases to be an EU Member State. This was particularly the case for the central bank in Ireland, but also the other closer crown territories too such as the Jersey Financial Services Commission (JFSC) which was keen to stress that it was itself already treated as a 'third-country' by the EU for market access purposes.

### **The challenges on regulated business**

The cold reality is that there remains at least as many 'unknowns' as 'knowns and beliefs' out there at the moment, and as oft quoted during the campaign the 'devil-will-always-remain-in-the-detail'. But this means that firms, and however reluctantly, are faced with having to try to anticipate and plan around a reasonable range of risks and scenarios but also to take decisions and to mitigate around such a range of possible outcomes whilst showing a dynamic capability to respond to changing and moving developments. In itself this will stress and test business and management resolve, but also corporate tenacity, flexibility and prudence.

Regulators will continue to expect firms' reactions, plans and arrangements to remain reasonable, appropriate, proportionate and effective in properly managing the affairs and risks of the business. And until something can be definitively ruled in or out in applying this approach and process, then organisations and senior-management might expect to be tested as to the adequacy, proficiency and suitability of their stance, conduct and arrangements on such matters as viability, resilience and contingency etc. as well as of course the continued delivery of the required threshold conditions for authorisation.

Ultimately, all firms with any non-UK interests or client relationships and activity could be expected if not compelled to adjust their business-model and objectives, risk appetite and its overall risk based framework in the light of the UK's exit decision and its eventual outcomes on their organisation and structures. This is likely to have ramifications spreading to all functions and processes from legal and internal structures to resource

allocation, through to technologies, and across product/service documentation and communications. And through any change process firms and senior-management will need to ensure they engage and keep informed both internal and external parties and partners in any material changes.

### **An intrinsically wide range of dilemma and effects**

Given the scope and depth of EU law and regulations of relevance and engrained within the current UK financial services framework, the following aspects of business conduct and practices are obvious areas of potential future change or even removal for UK based entities:

- a. **Open access for business across the EU markets** – which is one of the central tenants offered with EU membership, allowing financial-services firms to conduct and carry-out business into and the right to ‘passport’ UK authorised permissions into other EU jurisdictions.
- b. **The provision of services** – with the provisions of the Markets in Financial Instruments Directive (MiFID II) already due to be updated into the UK from January 2018 and covering various activities concerning business involving ‘financial instruments’ such as the allowable venues and organised trading in such instruments.
- c. **Other specialist provisions impacting certain business services related activities and standards, or products and industry sectors** such as (but not limited to):
  - the controls over payments and associated transaction providers, platforms and institutions(PSD2)
  - the market infrastructure requirements concerning the derivatives market (EMIR)
  - the arrangements concerning transaction reporting and the framework for alternative investment fund managers (AIFMD)
  - controls and measures to deal with the risk and incidence of various forms of Market Abuse (MAR)
  - standards and framework the various regime provisions governing the offering and management of undertakings in collective investment in transferable securities (UCITS V)
- d. **Capital adequacy and resilience** – with various rules and requirements applied to banks and investment firms etc. (CRD IV/Basel III) as to the prudential quality and quality of capital to achieve and deliver protections from both specific and systemic risks, and to instil robust corporate governance, and associated reporting (COREP/FINREP)
- e. **Other additional specialist area of law and regulation** – including (but again not limited to):
  - standards and framework to meet anti-money laundering and terrorist financing obligations (AML4)
  - provisions relating to matters and rights concerning the protection and security of personal data and sensitive information
  - sector specific arrangements applied to certain industry sectors or product markets e.g. electronic money directive and regulations.

### **Creating a strong foundation for change-management**

Any regulated firm(s) could be wise to revisit and ensure it understands its current regulatory authorisations and how any relevant permission(s) actually correlate and map-over the actual business operations and profile. In particular, consideration needs to be made as to the status and application of any ‘passport rights’ that are being exercised or relied upon.

Difficulties might well arise for those firms who might have been in the process of planning or intending to pursue and/or expand any business model and/or strategy that would involve cross-border consumers and working partners etc., as they and regulators await to hear and see how the desired outcomes of the UK Government legal and political process begins and proceeds. However, a guiding principle of ‘nothing changes until it actually changes’ seems a probable and practical continued stance for UK regulators in terms of both day-to-day expectations and decision-making during any interim period leading to a formal EU exit.

As well as suitably initiating any internal change-management processes, firms will also have to contemplate the impacts and engagement of any other global business partners be they representatives, agents or outsourcing partners etc. who may themselves be EU focussed or based or nevertheless have vested interests which will need addressing. But firms should also ensure any internal planning also embraces and reflects a suitable approach for also engaging and communicating with all relevant external parties, including clients and investing consumers, whose relationships (and their working criteria and expected outcomes) might be impacted or require revision.

### **Setting the route and pace for change**

During a time of uncertainty and prediction, in what is largely an uncharted environment, it shouldn't be about spooking the strategies and goals for firms and markets into unnecessary reaction. But more about encouraging and informing them and senior-management to keeping a structured, methodical and observational process of evaluation and the initial identification of realistic scenarios, options and choices ahead. There is likely to be a little time to marshal resources, and the associated knowledge and experiences to drive decision-making, but an acceptance, commitment and visibility on engagement in starting a change management process is likely to be expected by any regulator(s).

Until the shocks to the UK political process and systems have necessarily resolved themselves, and until the mechanics and broad boundaries of the UK's position in relinquishing its EU membership are realistically and credibly identified, then firms not wanting to indulge in too much speculative planning will have to keep a close eye-and-ear across all relevant bodies and participant agencies in the UK financial services landscape so they can monitor and assimilate how best to proceed.

**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 organizations 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 organization. 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. 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.*