

ECONOMIC AND MONETARY AFFAIRS

THE UK'S POTENTIAL WITHDRAWAL FROM THE EU AND SINGLE MARKET ACCESS UNDER EU FINANCIAL SERVICES LEGISLATION

BACKGROUND

In the wake of the UK's vote to leave the EU, the issue of market access has a particular significance for the financial services sector. Ensuring continued access to each other's markets is one of the big issues in the exit negotiations. At present, the UK's full access to the EU single market is conditional upon its EU membership. Preserving the benefits of the single market in financial services would require the adoption of an alternative framework. From the perspective of EU financial services legislation, benefiting from the single market will depend on the option chosen. Two alternatives are discussed: either the UK seeks membership of the European Economic Area or becomes a third country outside the EU/EEA.



FOCUS OF THE STUDY

Against this background, the study examines how the current EU financial services legislation ensures or facilitates access to the EU single financial market for EU/EEA Member States and third countries. It focuses on passporting and mutual recognition regimes on one hand and third country equivalence regimes on the other hand. The aim of this legal assessment is threefold:

- to provide a general overview of the most important rules allowing or facilitating market access;
- to compare related regimes for EU/EEA Members with those for third countries in terms of the level of market access; and
- to discuss these regimes with the focus on five specific areas of financial services presented in tables, and accompanied by explanatory notes (banking, payments, capital markets, insurance, financial market infrastructure).

KEY FINDINGS

1. Passporting and mutual recognition arrangements

These kind of arrangements are available under EU financial services legislation. Such regimes offer major advantages to EU/EEA financial institutions in terms of the provision of financial services directly cross-border or via branches. The impact of a loss of the EU passporting rights and related benefits could be mitigated through recourse to third country equivalence regimes. Advantages of a such regime would be:

- freedom to provide cross-border financial services across the EU or establish branches;
- single authorisation provided by home Member State competent authority;
- mutual recognition arrangements facilitating market access; and

- simplicity and cost-efficiency of cross border business.

2. Third country equivalence

While third country equivalence regimes that are currently in place open up some possibilities for financial institutions based in third countries to provide cross-border services, such regimes do not grant third country based firms the same level of access to the EU single market. In particular, the existing EU financial services legislation does not reveal a consistent approach to this issue. The third country regimes that could allow financial institutions a secure access to the single market are almost non-existent in the area of banking, and hardly cover non-bank payment service providers.

The disadvantages this approach would encompass are:

- limited scope of third country access in some areas of financial services; and
- inherent uncertainty of market access under third country regimes, in particular as a result of a high level of discretion enjoyed by the European Commission in applying such regimes.

3. Specific areas

After a description of the characteristics of the general aspects of both regimes, the study examines the specific areas of EU financial services legislation in more detail, such as:

- banking;
- payments;
- capital markets;
- insurance; and
- financial market infrastructure.

The analysis is supported by overview tables, in which the specific rights granted by EU legislation are listed. Each table is also meant to allow comparison of the possibilities for and reach of market access for the EU/EEA Member states with that for third countries under each relevant EU legislative act.

Annexes

In two annexes the selection of EU legislation that was examined by the study is listed; as well as an overview of how this legislation was transposed into UK national law.

Scan QR code to access the study:



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Contact: Poldep-Economy-Science@ep.europa.eu; This document is available on the Internet at: www.europarl.europa.eu/supporting-analyses

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