

BOOK REVIEWS

Brexit and Financial Services: Law and Policy, by Kern Alexander et al, (Oxford: Hart Publishing, 2018), 240pp., £51.41, ISBN: 978-1-509-91580-4.

This is the first edition of a book that provides a comprehensive view of Brexit's implications for financial services. This work reflects the political and institutional changes related to the 23 June 2016 Brexit referendum and offers an analysis of the future relationship between the UK and the EU on financial markets. It explores policy and regulatory perspectives in light of the governance for securities products. This book takes various angles in discussing the effects of Brexit and includes distinguished scholars in the field. The book advances different solutions regarding the suitable model to apply for trading arrangements as well as insightful reflections to understand the position of the UK with respect to market access and investor protection. The approachable style and accurate debate among the authors are engaging and make the book a leading point of reference for practitioners and academics. This approach results in a rigorous text with analysis on a number of recent regulatory developments. The main area of discussion refers to the legal effect of the impact of Brexit, particularly how the applicable agreement would affect certain pieces of EU legislation such as the banking union and the Single Supervisory Mechanism (Ch.1). The regulatory reforms are canvassed along with the potential new forms of EU/UK interaction, however, the complexities of negotiations raise policy issues that are likely to drive the final agreement.

This book aims to answer several questions, such as how to regulate a single banking licence, mutual recognition and home country control. It also answers the question on how to regulate the EU requirements for equivalence determinations in the financial sector. The various comments focus on the withdrawal of the UK from EU rules for financial services according to art.50 TEU (Ch.2). After Brexit, the UK will become a "third country" within the current European financial regulatory

structure, which implies that future access to the EU's single market for UK-based financial institutions may be very limited. In this context, the rise of technocracy is therefore likely to be the most significant influence on how EU financial governance develops over the period when the UK leaves the EU (Ch.3). The uncertainty created in the aftermath of this controversial vote will impact any plans among international financial institutions to expand their UK-based operations. In addition, the effect of Brexit on transaction costs and financial regulation will change the EU legislative framework. On this view, several proposals have been put forward, such as co-operation agreements, bilateral agreements, reciprocity and substantive compliance: e.g. "Norway model" based on the European Free Trade Association (EFTA), Member State of Reference and subsidiary versus branch to establish common requirements for the recognition of third-country regulatory regimes (Ch.4). Articles 46(2)(a) and 47 of the Markets in Financial Instruments Regulation (MiFIR)¹ address the "third-country firms" regime and clarify that central to the requirements is the equivalence decision adopted by the European Commission.

The equivalence-based approach seems the way forward to maintain access to EU markets as it is unlikely to apply the passporting solution because it would require concessions on UK sovereignty. If the UK leaves the EU, UK-based banks (including non-EU banks operating through UK subsidiaries) risk losing the passport regime. If a European Economic Area (EEA) model is adopted in the outcome of the Brexit negotiation, the UK will have an observer status, basically, the UK will lose a channel for influencing international financial governance. However, the EEA model may not be suitable for the fast-changing regulatory challenges of the financial sector, this means that, if the UK seeks to join the EEA, it would need to ensure at least some mechanism to improve implementation speed for financial services measures. The equivalence arrangements will give the possibility to remove and remodulate EU laws: a solution that would allow the UK to establish a new regulatory framework or a "Financial Centre" model. A new financial platform poses risks in terms of supervision as home supervised "systemic branches" to the host market are all the greater where the branch is of a third-country firm, such as a post-Brexit UK firm, which operates outside the EU's supervisory governance and co-ordination requirements. This framework shows a grey area on which the City might continue to thrive as a global financial hub in Europe. This scenario demonstrates how Brexit will manifest more in form than in substance.

The Brexit negotiation process can determine the relocation of some of the banking activities to other financial centres in the EU. Most interestingly, there will be costs associated with the Brexit transition and several banks will be facing similar cost shocks, a large proportion of the additional costs are likely to be covered

¹ Regulation 600/2014 on markets in financial instruments and amending Regulation 648/2012 [2014] OJ L173/84.

by the customers rather than having a long-term impact on profitability. The equivalence model based on a mutually reciprocal arrangement can provide a fair agreement in providing access to the EU markets for branches in the UK of EU credit institutions. In this context, the European Securities and Markets Authority (ESMA) has taken initiatives in the areas of investment firms, investment management and secondary markets, aimed at fostering consistency in authorisation, supervision and enforcement related to the relocation of entities, activities and functions from the UK.

The introduction of a third-country equivalence regime in the Markets in Financial Instruments Directive (MiFID)² activities would ensure that UK banks would be able to carry on investment business activities—including wholesale investment services cross-border to professional clients and eligible counterparties—under an equivalence decision. In terms of retail banking and private wealth management, UK banks will be able to carry on providing services which are MiFID activities to professional clients and eligible counterparties under the equivalence regime in MiFID II.³ However, the success of the equivalence-based model faces some doubts because of different incentives of the UK and the EU: different public policy objectives and uncertainties on supervisory powers are the main concerns at stake.

This book examines how MiFID constitutes the legislative framework to achieve mutual recognition among banks and to avoid the risk of deregulation in the UK financial markets. There are so many insightful points in this book that open further debates on how Brexit might best be regulated if the UK remains within the EEA. The post-Brexit scenario may change the regulatory approach towards the financial services sector, entailing a risk of disruption in trading the securities products. To the extent that Brexit will have an impact on EU/UK trade agreements, this can be seen as a missed opportunity to complete the process of harmonising the rules to which the European single market is subject. The possible dismantlement of EU legislation could leave financial services completely unregulated which would exacerbate the problems with the liability of intermediaries and the governance of the securities industry. In the post-Brexit scenario, the UK Government might be moved to implement a new regulatory regime for financial services, which could impact users of market venues in non-convergent rules and the absence of adequate protection. The result of Brexit changes could be to undermine oversight over financial activities and weaken supervisory practices: this in turn could lead to disruptive consequences, i.e. deregulation of investment operations and regulatory arbitrage.

The systematic approach adopted in this book permits the reader to navigate through the text with a good overview of the fundamental aspects of the subject, particularly the technicality of regulatory changes in the aftermath of Brexit which is treated rigorously and methodically.

Notwithstanding the numerous developments in the financial services and recent negotiations, this book maintains a practitioner lens that complements the relevant scholar views. This book aims to shed light into the potential developments of integration and harmonisation of the EU financial markets; a process that seems unlikely. The authors have coherently organised the huge amount of materials with a dedicated focus to the legal and regulatory literature. The different voices grouped in this book result in a detailed and authoritative analysis of the major legal spheres in which Brexit has significant implications for the international financial system.

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Sovereign Debt and Human Rights, by Ilias Bantekas and Cephias Lumina (eds), (Oxford: Oxford University Press, 2019), 640pp., £125, ISBN: 978-0-198-81044-5.

The impact of the global sovereign debt crisis has featured prominently in recent academic scholarship. *Sovereign Debt and Human Rights*, a new collection published by Oxford University Press and edited by Ilias Bantekas and Cephias Lumina, provides an insightful and worthy addition to this literature. The 28 contributions offer expert accounts on the links between policies adopted to address sovereign debt and the protection of human rights, with a particular focus on socio-economic rights. The purpose of this ambitious collection is to address what the authors identify as “cultural fragmentation”¹ between commercial or investment law and human rights law. Each of these disciplines, according to the editors, can be faulted for being insular and it is this compartmentalisation of disciplines the book seeks to overcome. The editors illustrate the pressing need for adopting a common framework or a common language which will serve to bridge the gap between these “opposing camps”.² The collection is ultimately successful in achieving this aim and provides a timely addition to the ongoing debate on how states can recover from a debt crisis without undermining human rights.

The analyses provided in the collection rest on underlying arguments that the editors develop in their introduction. First, it is argued that responses to sovereign

² Directive 2004/39 on markets in financial instruments amending Directives 85/611 and 93/6 and Directive 2000/12 and repealing Directive 93/22 [2004] OJ L145/1.

³ Directive 2014/65 on markets in financial instruments and amending Directive 2002/92 and Directive 2011/61 [2014] OJ L173/349.

¹ I. Bantekas and C. Lumina, *Sovereign Debt and Human Rights* (Oxford: Oxford University Press, 2019), Introduction, p.1.

² Bantekas and Lumina, *Sovereign Debt and Human Rights* (2019), Introduction, p.1.