

VALDIS DOMBROVSKIS

Vice-President of the European Commission

Mr Martin SCHECK
Chief Executive
International Capital Market Association (ICMA)
E-mail: Caroline.Caswell@icmagroup.org

Brussels,
Ares (2018)

19 JUL. 2018
3847619

Dear Mr Scheck,

President Juncker thanks you for your letter of 22 June 2018. He has asked me to reply on his behalf. The Commission is committed to ensure that a fair and balanced agreement is concluded between the United Kingdom and the European Union that can form the basis of an ambitious framework for the future relationship between the EU and the UK.

The Commission also attaches great importance to further strengthening the EU27's strong, competitive and open financial sector and to ensuring that the EU economy can grasp the benefits of market integration at international level. The Commission has, amongst others, proposed to develop further the Capital Markets Union and to improve our equivalence framework in a number of areas, so that the EU economy can rely on the most efficient and sustainable provision of financial services. Our equivalence framework is the most developed in the world, and benefits both the EU economy and our international partners. Decisions have already been taken with regard to more than 30 jurisdictions: our experience with equivalence has been very positive so far, and has shown that this mechanism is able to balance the requirement of democratic accountability with economic efficiency and financial stability.

In view of the UK's decision to leave the EU's Single Market, it is inevitable that UK financial institutions will not have passporting rights anymore after the UK's withdrawal from the EU. Passporting rights are created by Single Market legislation and outside the Single Market such rights are not available, also because of their intrinsic link to the Union's common regulatory, supervisory, enforcement and judiciary framework.

We would like to thank the financial services industry for its significant efforts in preparing for Brexit. You rightly note that while we hope for quick finalisation of the Withdrawal Agreement which provides for a transition period until the end of 2020, there will not be legal certainty about the transition period until the withdrawal agreement is ratified. Therefore, market participants should continue to prepare for all scenarios, including a no agreement (hence no transition) scenario.

Your letter raises a number of issues that may have substantial implications for industry and the economy more generally. I would like to reassure you that we are very much aware of these issues and I and my services have been in continuous contact with stakeholders, including your members, from the start of the negotiations. Based on those discussions and our own analysis I have at this stage the impression that most of those risks can be addressed through timely adaptation by the industry.

The Commission has published various notices to inform stakeholders about the consequences of the withdrawal of the United Kingdom in the field of financial services as well as of data protection. These are available on the Brexit preparedness website of the European Commission (see https://ec.europa.eu/info/brexit/brexit-preparedness_en). The European Supervisory Authorities, the European Central Bank and the Single Resolution Board have also published a number of opinions and provided guidance to the industry in their respective sectors.

We will continue to analyse those issues, together with European supervisors and national authorities. In addition, the European Central Bank and the Bank of England have recently announced that they will convene a technical group to work on risks arising around 30 March 2019.

On insurance and Over-the-Counter (OTC) derivative contracts I would note that while every type of contract needs to be looked at separately, at this juncture, there does not appear to be an issue of a general nature linked to contract continuity as even after Brexit the performance of existing obligations can generally continue to take place. Of course, when the parties to the contract decide to create new rights and obligations by, for instance, concluding new contracts or amending contracts, an authorisation may be required under Union or national law.

As regards possible cliff-edge risks related to non-recognition of EU27 and UK Central Counterparties (CCPs), the EU has in this area the tools necessary to deal with different scenarios. In this context, the Commission proposal to amend the European Markets Infrastructure Regulation (EMIR) is important, as it would make relevant changes to the EU's third country framework. We hope it will be rapidly agreed by the Union legislator.

You also mention the issue of cross-border data-flows. As you certainly know data controllers have a series of instruments available to ensure legal data transfers to third countries, even in the absence of continuation of the current situation or an adequacy decision. The Commission has highlighted the various tools that are available to data controllers in a notice to stakeholders of early January 2018.

With regard to the resolution dimension you mention both the eligibility of minimum requirement for own funds and eligible liabilities (MREL) and the recognition of resolution actions under the Bank Recovery and Resolution Directive (BRRD). As on the other issues, the UK's withdrawal from the EU will have an impact on the legal situation which resolution authorities need to take into account in their work to ensure banks can be effectively resolved

without impact on financial stability. The Single Resolution Board has issued guidance on these issues, to allow credit institutions to prepare in the best possible manner for the new situation.

Finally, on the issue of delegation of portfolio management, the Commission's proposal for the review of the European Supervisory Authorities simply contributes to supervisory convergence, which is of the utmost importance for Capital Markets Union and will help your members to do business in the EU. Our proposal does not change the substantive rules applicable to delegation. We are proposing to promote transparency among supervisors within the European Supervisory Authorities on certain delegation arrangements, in particular cases where firms engage in very substantial outsourcing with the objective of being active in the EU only by way of letter-box entities. In this context, it is clear that supervisors will take into account the particular situation in the asset management sector - where many firms have recourse to outsourcing not to avoid EU supervision but to provide EU clients with the highest quality of service.

We remain interested in further discussing those matters in detail with all stakeholders concerned in light of further developments, and we hope for continued constructive cooperation.

Yours sincerely,



Valdis DOMBROVSKIS