Brexit: Challenges for Banks and Supervisors - A Supervisor's Perspective

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BaFin

IMFS Working Lunch
Brexit

Potential cliff effects

Market access after lapse of EU-Passport
- licensing requirement
- reshuffle business allocation inside a group

Contract continuity
- contracts remain in force
- winding down or licence required

Financial Market Infrastructure
- securities settlement systems; central counterparties (CCP)

Co-operation between authorities
- MoU

Equivalence decision
- financial regulation, data protection ...

Macroeconomic impact
Objective of BaFin...

- to ensure the proper functioning, stability and integrity of the German financial system
  - reliable and professional partnership
  - minimising the operational risk with respect to and for institutions applying for a banking licence in Germany
    - compliance with existing prudential & conduct framework
    - honouring the institutional division of tasks in the SSM
    - taking into account banks’ well established risk management and servicing processes and demanding it for the new EU27 entity
  - in good co-operation with EU 27 and UK authorities
...resulting in 3 key questions and several responses ...

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<th>How can we avoid arbitrage?</th>
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<td>• Raise issue at EBA and SSM level</td>
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<td>• SSM Brexit WG</td>
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<td>• BaFin internal regular information exchange</td>
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<th>How can banks/competent authority achieve finalization of approval processes in time?</th>
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<td>• Transparency about requirements</td>
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<td>• Form dedicated teams at BaFin</td>
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<td>• Regular exchange about status of project</td>
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<th>What are the operating models / governance arrangements we want to be in place in which time?</th>
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<td>• SSM Brexit policy fiches</td>
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<td>• Accepting build-up phase</td>
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Authorisation is an SSM common procedure

Quasi-licensing if change of business model / scope

BaFin: dedicated teams
cooperation with Deutsche Bundesbank and ECB case handler

Pre-application phase
Draft application
Official approval process

ECB involvement depending on SI/LSI status
Operating model

Frequent issues of discussion

No letterbox
- Adequate management & control functions
- Staffing

Booking model
- Remote booking
- Intragroup back-to-back hedging
- Split hedging

Dual hatting
- Cross border
- Domestic

3rd country branch in UK
- Passporting back to EU 27?
- Providing service functions
Brexit approval decision under time pressure

Keeping supervisory balance:
- Equal treatment, maintaining level playing field
- Being reasonable, making allowances for Brexit being an external effect

Efficiency Measures
- Utilizing preparatory pre-application phase
- Leveraging on track record
- Targeted on-site phase
- Minimum requirements

Prudence
- “temporary tolerance confirmation – non objection declaration”
- Conditions and obligations
- Floors/capital add-ons
- Restricted scope of model usage
- Follow-up audits + intense model monitoring
Treatment of derivative contracts

**Uncleared contracts**
- Need for a licence?
- Phasing out
- Lifecycle events „Repapering“

**Cleared contracts**
- 3rd country CCP needs to be recognised by ESMA [Art. 25 EMIR]
- Change of CCP necessary
- Increase in capital requirements due to CRR
How well prepared are we?

Overarching issue is the still missing agreement

- **Outgoing banks**
  - EU 27 banks with a physical presence in UK have or are going to apply for a license

- **Incoming banks**
  - Licensing processes or corresponding procedures although being late can still be finalized in time

- No significant impact on funding to be expected

- Co-operation agreements waiting for Brexit agreement

- Contract Continuity and CCP might need some legislative measures in addition to private solutions