

AMAFI POSITION PAPER

BREXIT

Since June 2016, and the decision by the United Kingdom to leave the European Union, AMAFI has been constantly advocating, be it for the definition of the withdrawal agreement or for the set-up of the future relation, for solutions that will preserve the effectiveness of EU financial markets for the financing of the EU economy, ensure a regulatory and supervisory level playing-field as well as the integrity of the EU financial markets.

Less than 7 months before the UK leaves the EU, and given the uncertainties on the progress of negotiations, the EU-27 needs as a matter of urgency to anticipate and prepare for the potential impacts a “hard” Brexit could have on market efficiency and financial stability.

While considering that a significant proportion of issues can and have to be managed by financial firms themselves, in the frame of their contingency and preparation plans, AMAFI is willing to highlight five points that it considers key and that would require legislative action at the EU-27 level.

1. CCPs recognition: supporting a transitional grandfathering approach and overnight recognition

Most derivatives regulations developed since the financial crisis have tended to favour clearing, making CCPs one of the cornerstones in reducing systemic risk. It is hence of paramount importance to ensure that Brexit, even in the scenario of a “no-deal”, does not lead to a disruption in the access of financial firms to clearing services.

Yet, as things currently stand, UK CCPs will receive a third-country status on the next day in case of a hard Brexit. This means that they will have to apply for recognition under EMIR to be able to offer their services to financial firms based in the EU. If no arrangements are made to facilitate the transition between regimes there is an important risk of market disruption and financial instability, because of the inability of EU firms to manage legacy cleared transactions, or the need to make disruptive relocation decisions.

Therefore, **a transitional arrangement appears necessary** to enable markets to operate as they used to on Brexit Day. As such, notwithstanding the need for future changes in the way EU authorities can exercise some control on the most systemic ones, **AMAFI calls for a transitory grandfathering agreement and an overnight recognition of UK CCPs to ensure the continuity of clearing operations.**

2. Continuity of cross-border contracts: a call for grandfathering of EMIR status

Considering cross-border contracts concluded before Brexit, the main issue revolves around their continuity on day one after the UK leaves the EU. Generally speaking, AMAFI considers that the risk of a wide-spread disruption is limited with regard to their execution and in particular with regard to derivatives contracts.

Still, some life cycle events may require the transfer of derivative contracts from UK entities to financial services entities located within the EU-27.

One impediment to such transfer is that some contracts that historically benefited from an exemption to clearing or were concluded before the entry into force of derivatives regulations may fall under EMIR rules, which would drastically modify their characteristics. In order to ease the transfer of cross-border contracts, **AMAFI calls for the conservation of the EMIR original supervisory treatment for cross-border contracts concluded before Brexit and transferred to an EU entity.**

3. Data transfer: a demand for transitory measures to support cross-border transactions

Data flows play a key role in supporting financial services transactions between EU and UK financial services businesses. In particular, the General Data Protection Regulation (GDPR) enables businesses to transfer and process personal data. A hard Brexit could be detrimental for businesses to continue their operations cross-border and be harmful to financial stability.

As such, **AMAFI would like to stress the importance for EU and UK authorities to agree on transitory measures to support the good functioning of EU and UK financial markets.** Financial firms cannot wait three years for a similar deal as the Privacy Shield to be agreed between the EU and the UK. For the EU part, in the absence of an equivalence process in GDPR, such transitory measure could take the form of an adequacy decision by the European Commission.

4. Fulfilling MREL requirements: the non-recognition of EU banks debt issued under UK law

As provided under the Bank Recovery and Resolution Directive (BRRD), EU banks have to issue a specific type of bonds that can be written down in a crisis to avoid a bailout by taxpayers. **In the case of a hard Brexit AT1 and T2 instruments issued under English law would no longer be recognized as MREL under EU law.**

Generally speaking, the exclusion of bonds issued under English law very much echoes a global tendency for regulators and supervisory authorities to favour national law.

In that context, **it is necessary for the Single Resolution Board's (SRB) to bring clarity on which instruments can qualify as MREL and to set on an individual basis the transition period for each bank towards completing MREL requirements.**

5. Recognition of trading venues: potential systemic implications

Similarly to CCPs, UK based trading venues will have a third-country status if no agreement is reached. Nevertheless, while CCPs non-recognition would have systemic implications from day one of Brexit, **AMAFI believes the case for trading venues is more nuanced.**

With regard to UK platforms trading equities, **AMAFI considers that their non-recognition would have no systemic implications for the functioning of financial markets** since (i) for stocks that are primarily listed in the EU-27 and also traded on UK-based MTFs, the liquidity on EU-27 platforms and on MTFs relocating from the UK should be sufficient to ensure the orderly execution of orders, (ii) for stocks that are primarily listed in the UK but have a secondary listing in the EU-27, the execution on UK venues is permitted as long as the trading in the EU-27 is not systematic, regular and frequent ([ESMA's November 13, 2017, Q&A](#)) and (iii) stocks solely listed in the UK are not subject to the trading obligation, so that execution on UK venues raises no difficulty.

On the other hand, for derivative products subject to MiFID II trading obligation, **the non-recognition of UK platforms could have some systemic implications** for EU-27 entities serving UK clients from local branches. Therefore, **AMAFI calls for a transitional arrangement in order to avoid any potential disruption in the functioning of financial markets on Brexit day.**

About AMAFI

Association française des marchés financiers (AMAFI) is the trade organisation working at national, European and international levels to represent financial market participants in France. It acts on behalf of credit institutions, investment firms and trading and post-trade infrastructures, regardless of where they operate or where their clients or counterparties are located. AMAFI's members operate for their own account or for clients in different segments, particularly organised and over-the-counter markets for equities, fixed-income products and derivatives, including commodities. Nearly one-third of members are subsidiaries or branches of non-French institutions.

