

UK-EU memorandum of understanding on financial services cooperation

Service area / [Corporate, Investment Funds, Regulatory](#)

Legal jurisdictions / [Guernsey, Jersey](#)

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In our briefing on the [UK-EU Trade and Cooperation Agreement](#) (the “TCA”) in January 2021, we noted that ... *the UK and the EU have made a political declaration with respect to financial services, agreeing both “to establish structured regulatory cooperation on financial services, with the aim of establishing a durable and stable relationship between autonomous jurisdictions” and to “by March 2021, agree a Memorandum of Understanding (the “Financial Services MoU”) establishing the framework for this cooperation ...”.*

The Financial Services MoU was finally signed on 27 June 2023, having remained unsigned for over two years due to political tensions between the EU and UK (which seem to have been sufficiently alleviated by the Windsor Framework’s amendment to the Northern Ireland Protocol).

Prior to the TCA

Prior to the entry into force of the TCA, the UK’s financial services trade with the EU was based on “passporting”, which permitted UK firms to establish branches elsewhere in the EU / EEA and trade across borders with minimal further regulatory permissions.

Passporting for UK firms came to an end at 23:00 GMT on 31 December 2020.

What did TCA say about financial services?

Not a great deal. The EU was unwilling to offer any arrangement which went beyond standard arrangements offered to third countries, and there was certainly no question of passporting being retained.

Given the significance of the UK’s financial services to its economy, this was less than ideal.

What does the Financial Services MoU say?

The Financial Services MoU is an arrangement to cooperate around the objectives of:

- preserving financial stability;
- market integrity; and
- the protection of investors and consumers.

These objectives will be achieved through:

- bilateral exchanges of views and analysis relating to:
 - (a) regulatory developments and other issues of common interest; and
 - (b) market developments and financial stability issues;
- transparency and appropriate dialogue in the process of adoption, suspension and withdrawal of equivalence decisions; and
- enhanced cooperation and coordination.

The Financial Services MoU also establishes the “Joint EU-UK Financial Regulatory Forum” (the “Forum”). The purposes of the Forum are to represent the views of both the Commission and HM Treasury, and to enable cooperation and discussion on regulatory matters. The Forum will convene at least biannually.

The Forum’s objectives are to:

- improve transparency;
- reduce uncertainty;
- identify potential cross-border implementation issues;

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- consider working towards compatibility of UK/EU standards;
- promote domestic implementation consistent with international standards;
- share knowledge to facilitate a common understanding of the EU and UK's regulatory frameworks; and
- exchange information and views on other issues of common interest within the scope of these regulatory cooperation arrangements.

Carey Olsen's View

The Financial Services MoU, and in particular the Forum, is perhaps best viewed as a symbolic step in the right direction. Although no substantive matters have been decided (it is not a formal agreement, let alone a plan for the return of the passport), and there is still no progress on the commitment set out in the "Political Declaration" (which accompanied the TCA) to carry out mutual equivalence assessments as soon as possible following the UK's exit from the EU, the Financial Services MoU nonetheless represents some post-Brexit progress in relation to financial services, demonstrating an intention to cooperate and improve post-Brexit financial relations between the EU and the UK. This can only be a welcome development following the political tensions of recent years.

It is interesting to note that two days after the signing of the Financial Services MoU, the UK's Financial Services and Markets Bill received Royal Assent. This aims to amend, repeal or replace most of the retained EU law relating to financial services, increasing the likelihood of divergence between UK and EU financial services regulation and would appear to make the Forum's objectives far harder to achieve.

How this will impact Guernsey and Jersey is – unsurprisingly – difficult to predict. Guernsey and Jersey were in the first wave of third countries approved by the European Securities and Markets Authority to benefit from the [extension of the passporting regime under AIFMD](#). This process came to an abrupt halt in 2016 when the UK voted to leave the EU.

The Financial Services MoU does not appear to increase the likelihood of an immediate breakthrough in this area. Our view is that this is no bad thing. The current approach, under which Guernsey and Jersey funds can be marketed into the EU on a Member-State-by-Member-State basis through individual national private placement regimes ("NPPR"), works well.

At Carey Olsen, we advise 81.2% of funds domiciled in Guernsey (by asset value) with a combined AUM of \$324 billion, and 42% of funds domiciled in Jersey (by asset value) with a combined AUM of \$181 billion. Our clients are, with very few exceptions, able to access the EU markets they wish via NPPR without the significant additional burdens which substantive compliance with the AIFMD (required to be able to utilise the AIFMD passport) brings. It remains the case that only a very small percentage of funds are registered for sale in more than three Member States. Hence, in our view, the current NPPR approach remains the most efficient means for Guernsey and Jersey funds to raise capital in the EU.



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