

**Briefing Note**

**February 2017**

Unchartered change, increasing uncertainty and fragility in economic markets, is certain to raise questions about additional costs and added burdens from Brexit. The rule of law provides an essential framework for the discussion of many aspects of Brexit including the role of Parliament, the importance of the courts and the values of justice and fairness. Asserting fundamental values of justice and fairness will help set priorities and provide a guide to how the future might be enjoyed in a tolerant society that lives up to the spirit of the law.

The full paper for this briefing was produced by Professor John McEldowney, School of Law, University of Warwick with Professor Rosa M. Lastra, CCLS, Queen Mary University of London and is available at: [www.biiicl.org/bingham-centre/projects/brexitandfinancialservices](http://www.biiicl.org/bingham-centre/projects/brexitandfinancialservices)

## What will the implications of Brexit be on financial services?

The financial services sector is inextricably linked to the economic wellbeing of the country. Significantly there is a large element of “inter-linkage” between London and the financial sectors across the EU. The EU single financial market provides financial integration and the removal of barriers has benefitted the City of London particularly. It has become a key exponent of the advantages of such a single market. These advantages include the single passport, under which a financial service provider authorised in one Member State may provide such services in any other Member State via branches and other forms of provision of services, including online.

If Brexit results in a lack of access to passport arrangements, many firms will face considerable uncertainty, with their retreat from London a likely consequence. At risk are many of the UK’s most important financial firms and economic relations.

Brexit negotiations will need to address how UK firms have access to EU markets as well as those firms from third states (non-EU countries) that use London as a platform and legal basis to access the whole European financial market.

Another important, often overlooked, consequence is on regulatory cooperation. Continued cooperation is likely to be essential not just for the effectiveness of regulation but also for any prospect of influence over financial standards globally. The EU has played a key role in the development of standards formulated by the Financial Stability Board and the Basel Committee on Banking Supervision. The role of these international standard setting bodies is critical in the continuation of systems of adequate prudential regulation, including markets which are fundamental for the City of London. Changes in the UK’s relationship with the EU are likely to lead to a lessening of the UK’s influence in the way rules are written and created.

### Key findings

- Brexit must be based on the rule of law so that it promotes economic wellbeing.
- Parliament’s scrutiny and oversight role is essential to maintain the rule of law through Brexit.
- Rule of law values will help guide a fair and reasonable outcome that is mutually beneficial to the EU and the UK.
- Loss of access to the single market and the benefits of passporting will have a detrimental impact.
- Future regulatory cooperation and continuity is essential.
- Options for future UK and EU relations:
  - EEA membership
  - A Free Trade Agreement
  - WTO rules
  - Customs Union membership

## What are the primary options for UK and EU relations after Brexit?

1. **European Economic Area (EEA) membership** would enable the UK to continue to provide services to other Member States without having to be concerned about regulatory equivalence, thereby ensuring that the UK will be able to maintain financial services. However, EEA membership requires acceptance of free movement.
2. **A Free Trade Agreement** would involve several different permutations and settling on the appropriate arrangements for financial services would take some time and effort to finalise.
3. **World Trade Organisation (WTO) rules** would be relied on in the event of a “hard Brexit”. If the UK loses its passporting rights, “authorisation” from each individual Member State will be required.
4. **Customs Union membership** offers restricted benefits as it is confined to trade in goods and does not give any preferential access to the EU’s services market. Nevertheless, an early decision should be made about the value of a Customs Union as trade arrangements under WTO rules will take time to finalise.

## Why is the Rule of Law so important in this context?

All of this raises important legal and constitutional issues, not least in terms of the procedures for scrutiny of the process of Brexit. The main benefit of **parliamentary scrutiny** of the negotiations and their completion is that the full significance of the many complex areas of discussion, particularly financial and economic, will receive a wide canvass of expertise and analysis. Parliamentary scrutiny will also enable the final agreement to have the benefit of legitimacy leading to its eventual ratification by the UK Parliament.

The outcome of the negotiations will have implications for the long-term outlook of the UK economy as well as the stability of its constitutional and political institutions. Estimates of the economic impact of leaving the EU are hard to make but it is commonly assumed that the sensitivity of the UK financial sector is greater than other parts of the economy. Lord Bingham noted that the business and economic community requires certainty and predicatability, values that are underpinned by the rule of law. All too frequently, the rule of law has been too narrowly confined to political or ‘pure’ legal issues. But adherence to the principles of the rule of law in all aspects of public life and economic development is essential for the future of the UK’s financial relationship with the EU, for securing the stability of the UK economy and for sustainable economic growth. Under the UK’s constitutional arrangements, Parliament plays a central role in securing the rule of law during Brexit and into the future.

### The Bingham Centre for the Rule of Law

The Bingham Centre is part of the British Institute of International and Comparative Law (BIICL), an independent research institute established in London over 50 years ago. The Centre was launched in 2010 to honour the work and career of Lord Bingham of Cornhill, a great judge and passionate advocate of the rule of law. The Centre is dedicated to the study, promotion and enhancement of the rule of law worldwide.

- Defining the rule of law as a universal and practical concept;
- Highlighting threats to the rule of law;
- Conducting high quality research and training;
- Providing capacity-building on the rule of law to enhance economic development, political stability and human dignity.

The Centre helps countries, international organisations, corporations and legal bodies to build rule of law commitments, whilst improving the skills and abilities of legal practitioners and governments around the world to secure access to justice for their populations.

The Centre is a charity funded by donations. It needs to raise further funds in order to respond to the growing demand for the Centre’s work. If you or your organisation would like to help, please contact: Sarah Taylor, Development Director, on 020 7862 5433 or email [s.taylor@biicl.org](mailto:s.taylor@biicl.org)

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