

The EU Referendum and its Impact on Legal Relationships

Joint Event between the Bingham Centre for the Rule of Law and the
Financial Markets Law Committee*

3 March 2016

SUMMARY OF PROCEEDINGS

As the UK referendum on membership in the European Union (EU) draws near, the uncertainty surrounding Britain's future relationship with the EU has given rise to much debate. Hosted in partnership with the [Financial Markets Law Committee](#), this event focused on the impact of a Brexit on financial institutions and legal arrangements. Chaired by Lord Walker, the FMLC Chairman, this event featured remarks by Jonathan Faull, Director General of the Task Force for Strategic Issues related to the UK Referendum in the European Commission, Professor Takis Tridimas, Professor of European Law at King's College London, Diana Wallis, President of the European Law Institute and Professor Sir David Edward KCMG QC, former judge of the Court of Justice of the EU, and Vice President of the British Institute of International and Comparative Law.

This is a summary of those proceedings. Although the meeting was held under the Chatham House Rule, we must make clear that remarks by Jonathan Faull are restricted to the first paragraph below.

The evening began by tracing the steps that have led to the referendum, scheduled for 23 June 2016, from Prime Minister David Cameron's [letter](#) in November 2015 to President Donald Tusk of the European Council setting out potential areas for reform to address the concerns of Britain, to the European Council [meeting](#) on 18-19 February at which a "New Settlement for the United Kingdom within the European Union" was agreed which will apply if the UK chooses to remain part of the EU. As an instrument of international law the Decision of Heads of State or Government is legally binding and has been lodged with the United Nations. It is not an amendment to the EU Treaties, but rather sits alongside and complements them. Should the UK remain a member state of the EU, the agreement will take effect and will require the adoption of some secondary legislation, while other parts stand alone.

It was acknowledged that leaving the EU would be a great constitutional reversal, especially in the sense that EU law has had a monumental impact on the UK's legal system for years, but also with respect to the great economic, social and cultural implications a Brexit would have. Though there is much uncertainty as to what would happen should a Brexit occur, and how the secession provisions of Article 50 of the Treaty on European Union would play out in practice, there are some certainties. First, there is no consensus on the exit model that would arise should the UK choose to leave Europe. The UK wants access to the internal market, but the extent to

* *The views expressed by speakers at Bingham Centre and FMLC-hosted events do not necessarily reflect the views of those organisations or their members.*

which this is granted will depend on a number of factors, including whether the UK will accept the EU *acquis* and a system of judicial control. Second, the separation of the free movement of goods, services, capital and corporate establishment from the free movement of workers is not an option. With regard to the impact on financial services, financial law has been the fastest growing area of EU law since the late 1990s, and the UK has had much influence in its development. The extent to which this influence will persevere will, of course, depend on the outcome of the referendum and the extent to which the UK aligns itself with EU financial legislation, should the referendum result in a Brexit. In terms of financial services, none of the [alternatives to EU membership](#) are particularly attractive. It is important to consider whether, in the event of an Brexit, we would have less regulation and more democracy, which is the claim of some members of the 'Leave' campaign, or whether it is preferable to remain part of the EU and consider to influence the development of its financial services law and policy.

The subject of the benefits in continued participation in the EU was highlighted often throughout the evening. We were reminded that, though cross-border disputes might benefit lawyers in the EU, they are a hardship on clients, who have largely benefitted from EU regulation in the field of civil justice. Moreover, it was underlined that the UK has a democratic voice in the European Parliament, which, even more since the entry into force of the Treaty of Lisbon in 2009, can influence the development of law, and can be quite active in initiating legislative change. Britain's influence should not be understated. A Brexit will change the nature and extent of this influence, and may decrease the UK's attractiveness as a forum and law of choice in international contractual relationships. Should the UK decide to remain part of the EU, there is a chance that the referendum experience and the negotiations leading up the agreement in February 2016 will have damaged our relationship with the other member states, and our influence with them, but it was felt that the damage would be repaired over time. The key message was that remaining a member of the EU not only benefits the development of EU law and policy, but would also benefit the UK, particularly in light of the fact that alternatives to EU membership leave Britain with little to no influence over the future development of EU law, with which Britain will still be required to comply if it wishes to continue being part of the internal market.

Presentations concluded with a reminder of how we often forget that, under the EU Treaties, rights have been acquired by individuals and that they are reciprocal in nature. In the event of a Brexit, one element of negotiations for future relations must be how to deal with the rights acquired by other EU citizens which will be impacted by Britain's withdrawal from the EU. It may be the case that a failure to take individual rights into account during negotiations becomes the subject of a case before the EU court, which will add to the uncertainties regarding timing following a decision to leave the EU, and the outcome of negotiations for Britain's future relationship with the EU.

The presentations were followed by questions from the audience and discussion.