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12 December 2017

Financial Services EU Exit – roles and responsibilities of HM treasury and UK regulators

Thank you for meeting with me yesterday, 11 December, to discuss how HM Treasury intends to use the European Union (Withdrawal) Bill (EUWB) to domesticate the body of EU Financial Services legislation and the responsibilities of the European Commission and the European Supervisory Authorities, in order to provide a UK regulatory regime which delivers financial stability and certainty for firms and consumers from day one of exit. I promised to write, summarising the proposed approach and our discussion.

As you know, the EUWB will incorporate directly applicable EU law into UK law, save relevant domestic legislation as we leave the EU, and provide Ministers with powers to 'fix deficiencies' in that law using secondary legislation. In Financial Services, a significant amount of the regulatory framework is within EU law and we intend to domesticate this framework in a way that aligns with the UK's existing regulatory framework, as approved by Parliament in successive pieces of legislation.

The cornerstone of our framework is the Financial Services and Markets Act 2000 (or FSMA) which establishes the objectives, functions and responsibilities of our financial regulators – the Bank of England, including the Prudential Regulation Authority, and the Financial Conduct Authority. FSMA then delegates responsibility to the regulators for making the detailed rules that apply to firms within the framework which Parliament has set. We propose to broadly follow this model as we onshore EU financial services legislation.

The Government's proposal is that, under the EUWB, 'Level 1' and 'Level 2' legislation, with the exception of Level 2 Binding Technical Standards (and certain highly technical detailed elements of one Delegated Act), will become the responsibility of UK ministers and Parliament on exit. This EU legislation sets the policy direction for financial services, so it is right that, once onshored,

responsibility for this legislation should rest with ministers and Parliament. HM Treasury will be laying fixes to this legislation in secondary legislation (the majority being affirmative statutory instruments) under the EUWB, ensuring that Parliament has oversight of all changes that are needed to such legislation.

For certain 'Level 2' technical rules, known as Binding Technical Standards (BTS), we propose to transfer responsibility from the European Supervisory Authorities (ESAs) to the UK regulators – the Prudential Regulatory Authority (PRA), the Bank of England (BoE), and the Financial Conduct Authority (FCA). These standards, running to approximately 10,000 pages, do not set policy direction but fill out the technical detail of how requirements set at Level 1 are to be met. Having played an important role in the EU to develop these standards, through their membership of the Boards and working groups of the European Supervisory Authorities, the UK regulators have the necessary expertise and resource to maintain them. This allocation is also consistent with the framework set by Parliament under FSMA, which provides for the regulators to make detailed technical rules.

As we discussed, while the ESAs have responsibility for developing and drafting BTS, it is the role of the European Commission to adopt them so that they are brought into law. We propose to combine these functions in the UK so that they fit with the UK's existing FSMA framework. Through FSMA, Parliament has given responsibility to the regulators for both drafting and making FSMA rules. With BTS, we propose that UK regulators have the same responsibilities - for developing and drafting any necessary BTS changes, and 'making' those changes so that they become binding in law.

As we discussed, each mandate for the development of BTS, including the limits imposed by EU law on the exercise of it, will be onshored. Parliament will be asked to approve, through the affirmative procedure, each specific BTS mandate that will be transferred to UK regulators. As such, the regulators will only be able to make BTS for those specific purposes approved by Parliament.

As we propose to transfer responsibility for BTS to UK regulators, it also makes sense that the regulators perform the task of making any appropriate corrections to them so they work effectively in the UK from day one of exit. We therefore propose to sub-delegate to the regulators the ability to make fixes to BTS to ensure they are consistent with the legislative changes that Parliament oversees. We will propose to make this sub-delegation by way of affirmative secondary legislation.

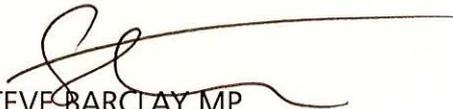
During our discussion, you raised concern about the limited time available to the regulators to propose and consult on changes to BTS so that all of the necessary corrections are in place in time for exit. I acknowledge that this will be a significant challenge for our regulators. But the regulators are better placed than HM Treasury to make these changes due to their involvement in the initial development of the BTS. In addition, it will mean that HM Treasury will be able to focus attention squarely on addressing deficiencies in the key pieces of legislation which set policy direction. We are working closely with the regulators to ensure the entire body of onshored financial services legislation is ready for day one of exit. This includes finding a workable approach to engaging with industry and other stakeholders. I would be grateful for your views on this issue and perhaps this is something we can discuss further.

As well as the proposed approach to transferring responsibility for BTS, we will use affirmative SIs to transfer any other relevant functions, currently performed by the EU Supervisory Authorities, to UK regulators. Therefore, in summary, each specific function that we propose to transfer to the regulators will need Parliament's approval using the affirmative SI procedure.

The Government believes that the approach outlined here is an appropriate allocation of responsibilities which respects the regulatory framework set by Parliament, ensures democratic accountability for legislation which sets the direction of policy, and fits with the existing responsibilities of UK regulators. The work to ensure we have an effective UK regulatory regime when we leave the EU is significant, in terms of scale, time, and complexity. I am keen to continue to work with you and colleagues to ensure that our approach is understood and supported by Parliament.

I hope that this will be the start of an ongoing conversation and will update you in the New Year on our timetable for the legislation.

Yours ever



STEVE BARCLAY MP
ECONOMIC SECRETARY TO THE TREASURY