

---

## Press release

### AFME highlights Brexit cliff edge risks in new paper

22 January 2018

---

The Association for Financial Markets in Europe (AFME) has today published a new paper highlighting some of the potential cliff edge risks that Brexit could create for market efficiency and financial stability.

The paper focuses on issues which may require intervention from policymakers and/or regulators in the UK and EU27.

**Simon Lewis, Chief Executive of AFME**, said: “There are now less than 15 months before the UK leaves the EU and the financial services industry continues to face significant uncertainty. It is therefore imperative that agreement is reached as soon as possible on transitional arrangements. We have set out today a summary of some of the most significant cliff edge risks that need to be avoided through transitional arrangements and further action. In order to maintain financial stability, EU and UK policymakers should urgently clarify actions to mitigate these cliff edge risks.”

The paper highlights the following 5 key risks:

**1. Cross-border personal data transfers**

Restrictions on sharing of personal data between the EU27 and the UK as a result of Brexit could severely disrupt the ability of businesses to continue to transfer personal data post Brexit. For businesses to continue to operate on a cross-border basis, an arrangement is required to ensure the ongoing free flow of personal data post Brexit.

**2. Continuity of contracts**

When the UK leaves the single market, existing passports enabling UK-based firms to engage in regulated activity in the EU27 (and vice versa) will cease. This creates important questions for businesses regarding the continuity of services under existing cross-border contracts.

**3. Choice of jurisdiction; recognition and enforcement of judgments**

There is a very significant volume of financial services contracts where the parties have chosen the jurisdiction of the English courts. It is therefore important to provide clarity that continued recognition will be provided to the choice of jurisdiction throughout the UK and EU and that judgments of the courts of a Member State and of the UK will continue to be enforced throughout the UK and EU27.

**4. Access to market infrastructure: recognition of CCPs**

In the absence of transitional arrangements, EU27 banks could find themselves in breach of regulation for maintaining positions in UK CCPs that would no longer be authorised or recognised under EU regulation. EU27 banks may also be required to hold a significantly increased amount of regulatory capital against positions in UK CCPs. While an equivalence framework for CCPs is in place in the EU, it is necessary to ensure that there is no gap while equivalence is formally assessed.

**5. Recognition of resolution actions**

The Bank Recovery and Resolution Directive (BRRD), put in place to prevent taxpayer bailouts, provides for the automatic recognition of resolution actions throughout the EU.

Without an intergovernmental agreement, the automatic recognition would no longer apply as between the UK and EU27 following Brexit, which could create issues for financial institutions, including:

- the potential requirement for EU27 banks to amend or reissue contracts governed by English

law (and UK-based banks to amend or re-issue contracts governed by the law of a Member State) to include contractual recognition of bail-in and resolution stays, or having to re-issue them; and

- uncertainty regarding the continued eligibility of English law governed capital and debt instruments issued by EU27 banks to meet loss-absorbing capacity requirements (and instruments issued by UK- based banks under EU27 law).

AFME's paper points to the Withdrawal Agreement as the best way to solve these cliff edge risks. It also suggests that where policymakers and regulators can take unilateral actions, this should also be done.

– Ends –

### **AFME Contact**

Rebecca Hansford  
Head of Media Relations  
[rebecca.hansford@afme.eu](mailto:rebecca.hansford@afme.eu)  
+44 (0)20 3828 2693  
+44 (0)7825 081 686

### **Further materials**

AFME has previously published the following publications which address some of the topics in greater detail:

- **The need for early clarity on a Brexit transition, September 2017:**  
<https://www.afme.eu/en/reports/publications/the-need-for-early-clarity-on-a-brex-it-transition/>
- **Impact of Brexit on cross-border financial services contracts, September 2017:**  
<https://www.afme.eu/globalassets/downloads/publications/afme-brx-impact-of-brex-it-on-cross-border-financial-services-contracts.pdf>

### **About AFME:**

AFME (Association for Financial Markets in Europe) advocates for deep and integrated European capital markets which serve the needs of companies and investors, supporting economic growth and benefiting society. AFME is the voice of all Europe's wholesale financial markets, providing expertise across a broad range of regulatory and capital markets issues. AFME aims to act as a bridge between market participants and policy makers across Europe, drawing on its strong and long-standing relationships, its technical knowledge and fact-based work. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. AFME participates in a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) through the GFMA (Global Financial Markets Association). For more information please visit the AFME website: [www.afme.eu](http://www.afme.eu).

Follow us on Twitter @AFME\_EU