UK FINANCE AND AFME PUBLISH PAPER ON NEED FOR POST-BREXIT CONTRACTUAL CERTAINTY

UK Finance and AFME have today published a joint paper "Impact of Brexit on cross-border financial services contracts". The paper examines the UK and EU market place for cross-border provision of financial services and the potential impact on the existing stock of cross-border contracts.

It identifies key issues around contractual uncertainty resulting from the UK's exit from the EU in March 2019 and suggests potential ways of addressing these. This includes the need for an agreement to enable existing contracts to continue and run to maturity.

Commenting on the paper, UK Finance CEO Stephen Jones said: "Contractual uncertainty of cross-border contracts post-Brexit needs to be addressed promptly by all parties to avoid damaging impacts for customers on both sides of the Channel. This issue is wide-ranging and not just limited to banking, affecting cross-border products and services across payments, insurance and investment management services also. Early action is essential to provide clarity that these contracts will continue post-Brexit."

Simon Lewis, Chief Executive of AFME said: "It is estimated that EUR1.3 trillion of UK-based bank assets are related to the cross-border provision of financial products and services – many of which support EU exporting businesses that are key drivers of growth. EU and UK businesses are increasingly concerned about the potential impact of Brexit on the continuity of their existing contracts. Early action to clarify that these contracts will continue following Brexit is therefore critical. As part of AFME's fact-based pan-European approach, we have come together with UK Finance to highlight the importance of this issue."

The joint UK Finance and AFME paper "Impact of Brexit on cross-border financial services contracts" identifies the following critical issues:

- The regulatory framework and passports that have enabled EU-based customers to access a diverse suite of cross-border financial products and services from UK based banks (and vice versa) will cease to apply after UK exit.
- These services include lending and capital markets, risk management and foreign currency products and services and span the entirety of the financial services sector, including banking, payments, insurance and investment management. Its estimated EUR1.3 trillion of UK-based bank assets are related to the cross-border provision of financial products and services to a variety of customers from governments to businesses to individuals;

- There is a shared interest in the UK and EU to find a solution – without this each contract will need to be individually assessed to determine if elements to be performed constitute a regulated activity no longer authorised under the EU passporting regime and whether the national laws of the Member State where the customer is located nonetheless permit the activity, creating complexity and uncertainty;
- Contracts between EU27 businesses and UK-based banks may need to be transferred, restructured, or potentially terminated. In addition businesses may need to look for alternative financing providers to ensure they can meet their commercial objectives. Potential implications of such restructuring include: significant demands on management time for the businesses, one off reorganisation costs, crystallisation of tax liabilities (where repayment triggers a capital gain), ongoing expenses where it is not possible to restructure a contract on a like-for-like basis, increased credit risk and impact of losing the benefit of netting positions.

Alongside a transitional period, early action is required to provide the necessary clarity that these contracts will continue following the exit of the UK and the EU:

- Both sides should confirm at the earliest opportunity the principles established in the EU negotiating directives that the right to trade goods on the market at the point of exit must be preserved and extended to services and to avoid contractual uncertainty.
- Transitional arrangements should be structured in a way to protect existing contracts for the duration of the transitional arrangements.
- EU Member States should consider legislation to ensure contractual continuity for a specified number of years where appropriate / required.
- The UK should use the European Union (Withdrawal) Bill to provide the same.
- There is precedent for dealing with this sort of situation. For example, an EU-wide solution was adopted to address the uncertainty around the introduction of the euro currency and around the new regulations on OTC derivatives, central counterparties and trade repositories.

The paper is available from the UK Finance and AFME websites.

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Notes to editors

About UK Finance
UK Finance was formed on 1 July 2017 to represent the finance and banking industry operating in the UK. It represents around 300 firms in the UK providing credit, banking, markets and payment-related services. The new organisation brings together activities previously carried out by the Asset Based Finance Association, the British Bankers' Association, the Council of Mortgage Lenders, Financial Fraud Action UK, Payments UK and the UK Cards Association.

About AFME
The Association for Financial Markets in Europe (AFME) is the voice of Europe's wholesale financial markets. We represent the leading global and European banks and other significant capital market players. This briefing paper is part of AFME's fact-based, pan-European approach to provide market expertise and insight to Europe's policymakers and regulators. Our aim is to work to safeguard financial stability and market efficiency during the Brexit process and subsequently. This paper highlights the potential impact of Brexit on existing cross-border financial services contracts. Given the importance of this issue for EU and UK businesses, we have come together with UK Finance to highlight this issue for policymakers.