

# BANKING, FINANCE AND SECURITIES NEWS FLASH

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## BREXIT – FINANCIAL SERVICES NEW EU-UK TRADE AND COOPERATION AGREEMENT

December 2020

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Now that the UK is a third country, the EU and the United Kingdom have spent the past year negotiating the terms of a new "Trade and Cooperation Agreement" to govern their future relations. On 24 December 2020, an agreement in principle was reached at negotiators' level and both parties are now working towards its signature and ratification, in line with their respective rules and procedures, with a view to its provisional application from 1 January 2021.

Such Agreement establishes the basis for a broad relationship between the Parties, covering innumerable matters, including the **supply of financial services, such as insurance and insurance-related services and banking and other financial services.**

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## 1. General obligations

As the EU and UK will form two distinct regulatory and legal spaces, **the free movement of persons, goods and services, as we know it, will end.**

Especially with respect to **service providers**, including financial service providers, UK service providers will no longer benefit from the prudential supervision by the country-of-origin principle, having to comply with the rules of each Member State, or, alternatively, relocate to the EU if they intend to continue to operate as they do today.

## 2. Specific measures regarding financial services:

Within the specific measures regarding the supply of such services, are the following:

- The Agreement does not prevent a Party from **adopting or maintaining measures for prudential reasons** in relation to branches established in its territory by legal persons in the other Party;
- The Parties shall make their best endeavours to ensure that **internationally agreed standards in the financial services sector for regulation and supervision**, for the fight against money laundering and terrorist financing and for the fight against tax evasion and avoidance, **are implemented and applied in their territory**;
- **Each Party shall permit a financial service supplier of the other Party** established in its territory to supply any new financial service that it would permit its own financial service suppliers to supply **in accordance with its law in like situations**;
- **A Party may determine the institutional and legal form** through which the service may be supplied **and require authorisation** for the supply of the service. Where such authorisation is required, a decision shall be made within a reasonable time and the authorisation may only be refused for prudential reasons.

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- o Each Party shall grant to financial service suppliers of the other Party established in its territory **access to essential payment and clearing systems** operated by public entities, and to **official funding and refinancing facilities** available in the normal course of ordinary business.

### 3. Reservations

However, both Parties set out reservations with respect to existing measures that do not strictly conform with the general obligations imposed by articles SERVIN.2.2 to SERVIN.2.6 and SERVIN.3.3 regarding market access, national treatment and most-favoured-nation treatment, that broadly set out a reciprocal principle of most favorable treatment.

Some of those reservations refer to the application of the Portuguese Law, from which we highlight:

#### a. Insurance and Insurance-related Services

- o Insurance intermediation by direct branching of United Kingdom based companies will not be permitted, as local incorporation will be required.
- o Regarding insurance undertakings based in the United Kingdom, the establishment of a branch or agency may be authorised to entities allowed to carry out the business of insurance or reinsurance, according to the relevant national law for at least five years.

#### b. Other financial services

- o Direct branching of pension fund management companies from United Kingdom based companies is not permitted.

With respect to the reservations set out, if a Party adopts a new measure at a level of government different to that at which the reservation was originally taken, and this new measure effectively replaces – within the territory to which it applies – the non-conforming

aspect of the original measure cited, the new measure shall be deemed to constitute 'modification' to the original measure.

#### **4. Decree-Law 106/2020 of December 23:**

The Decree Law 106/2020 of 23 December approved a transitory regime applicable to the provision of financial services by entities registered in the United Kingdom, which establishes the rules applicable to financial services after the end of the transitional period, entered into force on December 24 and shall take effect on January 1, 2021.

Such effects are to be produced, at least, until the date of entry into force of the referred agreement between the European Union and the United Kingdom, Great Britain and Northern Ireland, or a decision on equivalence, which regulates the matters covered by the diploma.

However, even though the trade and cooperation agreement reached covers such matters, it only sets out general principles of action with respect to the supply of financial services, and doesn't appear to establish measures conflicting with those foreseen in the national law, which might mean that the Decree Law will still take effect of January 1, 2021, and until distinct legislative or supervisory orientations are known.

GPA – Lawyers will continue to follow the evolution of national legislative measures in this area.



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