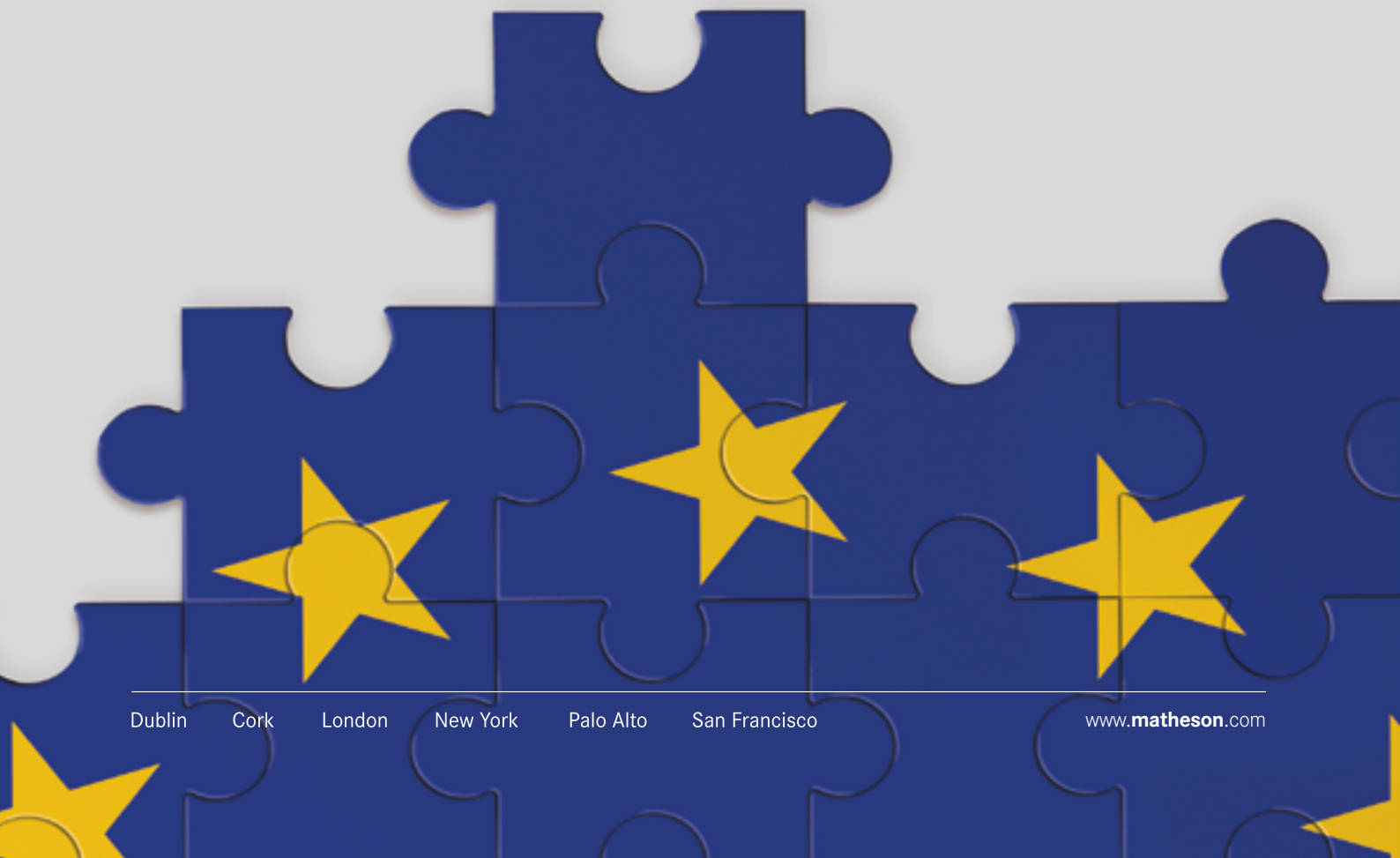




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Brexit: Is Equivalence a Solution for Fintech and Payments?

8 October 2020



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We have considered in a broader context whether the European Union (“EU”) equivalence framework provides an appropriate basis for the future relationship between the EU and the United Kingdom (“UK”) – see our paper “**Brexit – Is Equivalence a Solution for Financial Services?**”. With the prospect of no agreement being reached by the end of the transition period becoming increasingly likely, our view (as outlined in the above paper) with respect to equivalence generally is that the existing equivalence framework does not provide an acceptable, long-term, sustainable solution for the UK-based financial services industry as a whole to access EU markets. Predictability, stability and transparency are key for financial services firms to implement their distribution, marketing and growth planning in the medium to long-term and the existing regime does not offer these benefits.

In this paper, we consider the fintech and payments sector specifically and outline what an absence of equivalence provisions in the grounding legislation means for those impacted firms. We have also prepared papers assessing and summarising the expected legal impacts arising from no agreement on financial services being reached by year end for each of the areas of: **insurance, derivatives clearing, banking, MiFID firms**, and **investment funds**; together with an analysis of equivalence as a viable or relevant mechanism in each case.

Equivalence and Fintech and Payments

Fintech is a broad term and can obviously capture digitalised credit institutions, investment firms / asset managers and insurance undertakings / brokers. However, this section is focused on the payments and e-money sectors.

The payments and E-Money industry in Europe is regulated by two primary regulatory regimes, namely the Second e-money Directive 2009/110/EC (“**EMD2**”) and the Second Payment Services Directive (EU) 2015/2366 (“**PSD2**”). EMD2 and PSD2 do not provide for any equivalence regime for persons located in third countries. Therefore, the discussion which has been had in other regulated sectors, and the focus on third country equivalence, has no real significance in the payments and e-money sector.

Under PSD2 and EMD2 payment and e-money firms can avail of passporting to offer their services throughout the EEA. The key focus for Fintech and Payment clients to date has therefore been on acquiring authorisation in another EU Member State to allow the firm to continue to service existing EEA clients once the UK ceases to be counted as a “Member State” for the purposes of EMD2 and PSD2, at the end of the December 2020.

There has also been a lot of focus on EU-authorized Fintech and Payment firms applying for the UK Temporary Permissions Regime to ensure continued access to the UK, given that it represents a significant payments / e-money market for most firms currently operating in the EU.

We have seen a significant growth in the number of e-money and payment firms authorised by the Central Bank of Ireland (“**Central Bank**”) as Ireland has emerged as the domicile of choice for many of these firms with some of the large names in the Tech industry now hold these authorisations from the Central Bank.

Business Migration

Many firms though authorised have waited to migrate the European Economic Area (“**EEA**”) customers to this new entity as Brexit timelines and negotiations progressed and there was an element of uncertainty around the Brexit date / arrangements between the UK and the EU. PSD2 requires two months’ notice to be provided to most customers (consumers and microenterprises under Irish law) and so the UK entities are now looking at notifying customers of the proposed migration across to the newly authorised firm. This involves customer communications, regulatory engagement, and ensuring an effective mechanism for migrating the business within the timeframe and assuming the current withdrawal period ends on 31 December 2020. So as the withdrawal deadline approaches newly authorised firms are ensuring that their firms are fully operational with customers either migrated or migration plans are at an advanced stage.

The Future

With no equivalence regime provided for within either EMD2 or PSD2 firms have gone ahead and established new subsidiaries in Ireland. Clients tell us that they made their location decisions based on the strength of the talent pool, the reputation of the regulator, the proximity to and cultural similarities to the UK and the proven track record in the area. We continue to see a steady stream of further applications from firms who want to establish in the EU and recognise Ireland as an increasingly important hub for the fintech and payments sector.

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Please get in touch with your usual Matheson contact or any of the contacts listed in this publication should you require further information in relation to the material referred to in this paper.

Full details of Matheson's Financial Institutions Group and Asset Management and Investment Funds Group, together with further updates, articles and briefing notes written by members of the team, can be accessed at www.matheson.com. Further Brexit-related updates, articles and briefing notes may be accessed on our [Brexit Forum](#).

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