Articles

New Options for Differentiated Integration in the European Union

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Brexit, EU Financial Markets and Differentiated Integration

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Abstract: How does Brexit affect the manner in which the EU manages financial rules and regulations with the UK? How does it change the EU's need to rely on differentiated law internally to overcome intergovernmental conflict over the proposed legislation? This *Article* examines five different areas of financial market regulation and shows how significant differences between the UK and the rest of the EU, but often Germany, could only be combined in EU law by significant discretions in how national law applied to a common policy, and protections to keep those distinctions intact. A consequence of Brexit is that the EU need not rely on differentiated law as much as in the past. A risk to this convergence is the potential for the EU becoming a rule taker from the UK through regime complexity, which would allow the UK to *de facto* determine EU financial market law.

Keywords: financial regulation – company law – harmonisation – battle of systems – regime complexity – legal norms.

I. Introduction

How and where can differentiated law for financial market regulation be simplified in the future after the departure of the UK from the European Union? What happens in the place of differentiated integration to manage UK-EU financial relations given continued financial services links that impact EU financial services? This *Article* first discusses the disruptive challenges brought about in European financial markets by Brexit. It analyses the prospects for international regime complexity to supersede differentiated integration

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ISSN 2499-8249
doi: 10.15166/2499-8249/610

as a challenging but fruitful mechanism, provided sufficient political willingness of UK and EU legislators. These insights are applied to the use of differentiated law inside the EU prior to Brexit and contributes to literature on the Future of Europe.[1] It concludes that divergent UK and EU preferences make regime complexity difficult to agree on, but that the European Commission in particular effectively accepts rules set in the UK given the continued reliance of European businesses on certain parts of finance centred in London. Regime complexity offers foundations for managing the relationship, with potential risks of regulatory conflict into the future. Meanwhile, the EU will likely harmonise more of its own financial market regulation in the UK's absence.

London was the European Union's premiere financial centre, and one of the planet's key financial hubs. American, Chinese, Arab and European capital flowed into the City's financial markets, attracted by the scope and volume of financial services on offer, the expertise of the workers, and the infrastructure supporting the work that they do, from IT services, to exchanges and information platforms. Brexit, particularly the hard Brexit that removed the UK entirely from the EU's legal and institutional order, raised pressing questions about how Europe would organise financial services on which its economy depends. Even if much of Europe's continental economy is financed on the surface through banks rather than bonds and stocks organised through capital markets, contemporary banks themselves rely heavily on a deeper set of wholesale services located in London to fund themselves and carry out most of their other back-office operations.[2]

Brexiteer members of the UK Government expected the City to continue providing financial services to the EU economy after their hard Brexit, as the EU recognised their dependence on London for their economic survival.[3] This would have created a porous EU barrier for the City to exploit, and continue the relationship in which the UK made financial services rules and the EU accepted them. In effect, it would have established a novel relationship in which a discussion of differentiated integration of financial services might be considered, with the UK and the EU bound together by a set of shared rules that respected EU financial regulation principles. However, this did not occur. The Trade and Cooperation Agreement[4] made no provisions for financial services access. The Commission did not

[1] N Moloney, 'Brexit and Financial Services: (Yet) Another Re-ordering of Institutional Governance for the EU Financial System?' (2018) CMLRev 175.

[2] I Hardie and others, 'Banks and the False Dichotomy in the Comparative Political Economy of Finance' (2013) World Politics 691.

[3] S Hix and others, 'The UK's Relationship with the EU After Brexit' (RSC Working Papers 19-2022); D Pesendorfer, *Financial Markets (Dis)Integration in a Post-Brexit EU: Towards a More Resilient Financial System in Europe* (Palgrave Macmillan 2020) 193.

[4] Decision 689/2021/EU of the Council of 29 April 2021 on the conclusion, on behalf of the Union, of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, and of the Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland concerning security procedures for exchanging and protecting classified information.

grant EU equivalence status after the end of the transition period, meaning that UK-based financial services firms would be barred from doing business on the continent without establishing a legally independent and independently-funded subsidiary within the Common Market subject to EU regulation. In addition, EU companies seeking to list their shares on stock exchanges, or bonds on bond exchanges, currencies on currency exchanges and derivatives on derivative exchanges would have to do that in Europe rather than in the UK. Legally and institutionally, Brexit did not lead to differentiated integration, but the disintegration of a core UK-EU relationship.[5]

One result of this break is the transfer of assets and financial services activity from the UK to the EU. Amsterdam emerged as the EU's premiere stock market, while wholesale financial services moved to Paris and Frankfurt, with other European financial centres serving as satellites to these cities. In addition, the Commission bestowed EU equivalency status to US-based companies under certain conditions in the absence of an equivalency ruling for London-based firms.[6] However, the transfer of financial services has been far from complete, with EU companies still relying on specialised services from London, and UK-based firms transferring as few resources as they can while maintaining regulatory approval. This means taking financial services orders in the EU but managing them in the UK, for example.[7] Given political mistrust and competition between the UK and the EU more generally, particularly over adherence to the terms of the Northern Ireland Protocol, EU concerns of UK divergence in financial market regulation moving forward, and the EU's replacement of UK-based financial services with American ones, there is every reason to believe that this lack of an international arrangement for EU financial services will continue into the future.[8]

Another result of this break is that the existing differentiation of company and financial market regulation within the EU is likely to reduce over time, without entirely going away. At the same time, the distance between the UK and the EU will widen, making any differentiated integration between the two sides difficult and unlikely.

II. Differentiated law prior to Brexit

In the EU, differentiated law (framework legislation that provides significant discretion and variation in national legal approaches to accommodate conflicting approaches to regulating

[5] S James and L Quaglia, 'Brexit, the City and the Contingent Power of Finance' (2018) New Political Economy 258.

[6] S Donnelly, 'Post-Brexit Financial Services in the EU' (2022) Journal of European Public Policy 1.

[7] M Kalaitzake, 'Resilience in the City of London: The Fate of UK financial Services after Brexit' (2021) New Political Economy 610.

[8] The EU and UK agreed a 'Joint Declaration on Financial Services Regulatory Cooperation between the European Union and the United Kingdom' alongside the TCA, but it has not been ratified or implemented. See UK Parliament, 'New UK-EU Financial Services Inquiry Launched' (4 February 2022) UK Parliament committees.parliament.uk.

the same matter) in financial market regulation reflected varying degrees of normative difference between the UK and the rest of the EU over proper regulation of companies, both financial and non-financial. Five interconnected areas of law had their own degree of harmonisation, prudential standards, Member State discretions, as well as self-regulation by private entities. Company law, which spells out the legal and regulatory requirements for establishing and operating a company,[9] has the lowest level of harmonisation across the EU, thanks to UK conflicts with the rest of the EU, but particularly with Germany, regarding basic legal doctrine and instruments that define what a company is, and what obligations it has to various third parties.[10] Accounting law, which spells out the terms by which all market entities provide financial information to investors, tax authorities and other stakeholders, requires listed companies to report with international rules (International Financial Reporting Standards) alongside national rules. This two-track reporting system also formed a compromise between British and European accounting standards, but with the difference that national accounting standards within the EU, which are also tied to national tax codes and are therefore politically sensitive and resistant to harmonisation, are likely to remain divergent enough to ensure that this complicated system is used in the future. Securities regulation is highly harmonised not only due to the leadership of the UK in promoting open and consistently regulated financial markets, but also the willingness of other Member States to do so in the search for ready sources of investment capital. Insurance regulation remains a highly national, but coordinated area. Finally, banking law and regulation is highly differentiated, both in sub-fields (supervision is highly centralised while resolution remains heavily national within an EU context), and in terms of membership (eurozone ins and outs).[11]

This *Article* argues that the UK's departure from the EU reduces the need for differentiated law within EU financial market regulation, with some key areas remaining. The UK's departure means that labour rights in national company laws across remaining EU Member States are more similar, making upgraded European minimum standards and reduced differentiation in EU company law possible. Financial reporting (accounting) law harmonisation will be remain limited to the use of international financial reporting standards alongside national accounts for EU listed companies, given the continued use of Member State tax codes for national accounts. Securities law and supervision[12] will remain highly harmonised. Banking

[9] P Davies, *Introduction to Company Law*. (Oxford University Press 2020).

[10] S Donnelly, *The Regimes of European Integration: Constructing Governance of the Single Market* (Oxford University Press 2010.

[11] S Donnelly, 'Financial Stability Board (FSB), Bank for International Settlements (BIS) and Financial Market Regulation Bodies' in RA Wessel and J Odermatt (eds), *Research Handbook on the European Union and International Organizations* (Edward Elgar 2019) 360.

[12] Securities law covers all financial market activities not covered by banking or insurance law. This includes listing requirements for companies (Directive 2001/34/EC of the European Parliament and the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities; Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive

law[13] is becoming less differentiated as Banking Union evolves, replacing differentiation and discretion with new directives and a single supervisory rule book. Differentiated integration based on eurozone membership will persist, however. Finally, insurance law but not integration will remain differentiated, based on national protection of country-specific arrangements.

The rest of the *Article* is structured as follows. The next section outlines a framework for analysing and explaining regime complexity (RC) as a mechanism for replacing differentiated integration (DI) after Brexit, which is better suited for post-Brexit relations between the UK and the EU. After this section, the *Article* examines the regulatory areas mentioned, the origins of their use of differentiated law, and the prospects for change in light of no longer having to accommodate UK legal features. The final section turns back to the questions with which we started, and discusses lessons for future research.

III. Regime complexity and EU relations with non-Member States

Regime complexity is a method of organising relations between states over access to their territories and managing regulatory difference in the absence of common membership to a single legal order. It is not the same as differentiated integration, which is normally thought of as a form of organised relations between EU Member States.[14] Differentiated

2001/34/EC (Text with EEA relevance); Directive now 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/72/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provision of Directive 2004/109/EC Text with EEA relevance), rules for traders (Directive 89/592/EEC of the Council of 13 November 1989 coordinating regulations on insider dealing; Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (market abuse directive); Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/42/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 Text with EEA relevance; Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment on transferable securities (UCITS) (recast) (Text with EEA relevance); Short Selling Regulation (EU) 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps Text with EEA relevance), financial advisors (Directive 2004/39/E of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC), and financial infrastructure (Regulation (EU) 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories Text with EEA relevance).

[13] Banking law covers corporate governance, and capital adequacy rules for banks as methods of crisis prevention, bank supervision, bank resolution (the closure of a bank) and deposit insurance as means of crisis management.

[14] D Leuffen, B Rittberger and F Schimmelfennig, *Differentiated Integration: Explaining Variation in the European Union* (Palgrave Macmillan 2012); R Bellamy and S Kröger, 'A Democratic Justification of Differentiated Integration in a Heterogeneous EU' (2017) Journal of European integration 625.

integration was useful for the UK as a Member State because it allows integration to proceed between a large group of countries based on common ambitions and a desire to pursue those together regardless of reservations by other Member States. It can include relations with third countries adopting and implementing EU rules in exchange for access to the Single Market, for example through the European Economic Area or the Schengen Agreement. This makes the EU a rule maker and third countries rule takers.[15] This reflects standard power politics expectations of how powerful states relate to other countries,[16] but also the EU's general strategy of establishing contractual relationships with third parties to enhance the bloc's economic, political and even military objectives.[17] Conversely, however, it can allow EU Member States to opt out of certain EU programmes, such as the common currency, or the Common Security and Defence Policy, allowing the others to go ahead.

Regime complexity, in contrast, denotes a legal framework in which the EU adopts rules, standards and procedures decided outside the EU, where it is not the (only) rule maker, but possibly a joint decision-maker or a rule-taker. These arrangements might be codified or informal. Others are not bound to follow EU decision-making procedures or legal principles and vice versa, unless these are enshrined in the formal connection between regimes, typically in a memorandum of understanding. Regimes set international standards and rules to manage transnational or intergovernmental activity for its members. Countries may also form multiple, overlapping and/or interconnected regimes in the same policy areas that allow coexistence of incompatible national approaches,[18] pertaining to all or part of an area like financial market regulation. Regime complexity can also defuse intra-EU disputes over legal rules through external arbitration.[19] The standard setters may even be private or politically independent if public authorities recognise their decisions through EU and national law.[20] The Commission's role is to negotiate regime arrangements that are consistent with the EU's own goals, and with the cohesion of the EU's legal and administrative order more generally.

[15] VA Schmidt, 'The Future of Differentiated Integration: A "Soft-core", Multi-clustered Europe of Overlapping Policy Communities' (2019) Comparative European Politics 294.

[16] DW Drezner, 'The Power and Peril of International Regime Complexity' (2009) Perspectives on Politics 65; C Damro, 'Market Power Europe' (2012) Journal of European Public Policy 682; S Donnelly, 'Failing Outward: Power Politics, Regime Complexity, and Failing Forward under Deadlock' (2021) Journal of European Public Policy 1573.

[17] S Meunier and K Nicolaidis, 'The Geopoliticization of European Trade and Investment Policy' (2019) JComMarSt 103; EM Hafner-Burton, 'The Power Politics of Regime Complexity: Human Rights Trade Conditionality in Europe' (2009) Perspectives on politics 3.

[18] KJ Alter and S Meunier, 'The Politics of International Regime Complexity' (2009) Perspectives on politics 13.

[19] S Donnelly and RA Wessel, 'The International Dimension of EMU: The Interplay Between the Global Financial Stability Architecture and the European Union' in F Amtenbrink and C Herrmann (eds), *The EU Law of Economic and Monetary Union* (Oxford University Press 2020) 99; S Donnelly 'Financial Stability Board (FSB), Bank for International Settlements (BIS) and Financial Market Regulation Bodies' cit.

[20] J Pauwelyn, R Wessel and J Wouters (eds), *Informal International Lawmaking* (Oxford University Press 2012); W Mattli and T Büthe, 'Global Private Governance: Lessons from a National Model of Setting Standards in Accounting' (2005) Law&ContempProbs 225.

While voluntarism is often assumed, it depends on the absence of disadvantageous power relations and regulatory disagreements between countries. Powerful states controlling critical resources may exert control of regimes that determine other areas of law and policy, so that the supposed voluntarism of legal contracts underlying regimes fades away into the shadow of structural dominance and even coercion by a single powerful state.[21] One regime sets out rules that EU and national governments are effectively bound by, setting out the parameters of what is politically allowed and not.[22] While this provides political and legal certainty, it sidelines the interests of dissenting states. Within the EU, Germany leveraged control over European Stability Mechanism (ESM) resources to force its own vision of bank regulation on other Member States for example.[23] Similarly, any agreement, explicit or tacit, providing continued UK financial services for the EU would similarly turn the EU into a rule-taker, unable to set its own legislation over British preferences.[24] This could lead to the EU wanting higher regulatory standards to ensure financial stability, for example, while the UK lowers its own to pursue additional business globally. While there has been considerable migration of financial services from London to the EU,[25] this is not the case in areas of critical infrastructure, particularly central counterparties, which guarantee financial payments between seller and buyer across the financial system. Neither the Commission nor the European Central Bank (ECB) desire to see regulatory standards in this critical area diverge from their own preferences and requirements.

The European Union has the intent to establish itself as home to a global financial centre after Brexit,[26] subject to EU law and regulation, and to control access to its market, substituting UK-based financial services as needed. Although the EU arguably did not consider such geopolitical calculations before,[27] it is justifiably concerned about becoming a rule-taker to UK financial services through mechanisms of regime complexity as the UK Government pursues regulatory divergence from Europe as part of its Global Britain strategy, but continues to set financial regulations and provide financial services. Thus, regime complexity is a possible mechanism for cooperation, but one fraught with potential disadvantage for the EU.

IV. The five worlds of financial market regulation

This section explains the use of differentiated law in financial market regulation as a means to bridge differences between Member States, and outlines how Brexit supports

[21] DW Drezner, 'The Power and Peril of International Regime Complexity' cit.

[22] T Pratt, 'Deference and Hierarchy in International Regime Complexes' (2018) International Organization 561.

[23] S Donnelly, 'Failing Outward: Power Politics, Regime Complexity, and Failing Forward under Deadlock' cit.

[24] Reuters, 'UK Cautions EU against Financial "Self Harm" over Brexit' (28 May 2020) Reuters www.reuters.com.

[25] S Donnelly, 'Post-Brexit Financial Services in the EU' cit.

[26] BJ Cohen, *Currency Power: Understanding Monetary Rivalry* (Princeton University Press 2015).

[27] D Hodson, 'EMU and Political Union Revisited: What we Learnt from the Euro's Second Decade'. (2020) Journal of European Integration 295.

greater harmonisation. Financial market regulation involves five related realms of private law that vary in the philosophical/normative foundations of differing (and/or shared) approaches to law and regulation (what needs to be done and why); the material points of agreement or conflict (how it needs to be done); and differentiation between euro area members and others. It encompasses company law; securities law; accounting (financial reporting) law; insurance law and banking law. The first three are inseparable for the functioning of stock markets, but integrated to radically different degrees. Company law regulates the rights and responsibilities of various company stakeholders, including investors, employees and others. In this *Article*, we focus on listed companies, i.e. those listed on stock exchanges where shares can be bought and sold, given the central role of shares to financial markets and their regulation. European company law strongly supports national legal diversity despite CJEU judgements striking down national restrictions on company mobility and activity, based on the right of establishment.[28] Meanwhile, accounting (financial reporting) law,[29] sets out the financial reporting conditions companies must meet in order to offer their shares for sale on financial markets. In most EU countries, accounting law is synonymous with the country's tax code, which has deeply national political roots. In order to provide uniformly legible financial reporting information throughout the EU, a solution based on double reporting was reached in 2001 that holds to this day, in which companies prepare reports for tax authorities and a second set for financial markets. Securities law covers most financial market activity outside of banking and insurance (considered to include stock markets, bond markets, commodities markets, derivative markets, investment funds, financial advice bureaus, credit rating agencies and investment banking – legal instruments below). It regulates what kinds of financial assets and securities may be legally bought and sold, under what conditions, and how various companies providing information services to financial market participants are required to act. Here, since the late 1980s, the EU has witnessed an explosion of legislation, a remarkable growth of EU regulatory power, and an explicit drive to harmonise national law and regulation. Insurance law, meanwhile, is specific to minimum solvency requirements of insurance companies,[30] which build in considerable discretion for national insurance systems and associated law. Banking law meanwhile (legislation below), is rapidly changing from a national to a European responsibility, with high degrees of harmonisation within the eurozone, and significant degrees of overlap with the other EU Member States. The impact of Brexit on differentiated law and integration is the strongest

[28] Case C-167/01 *Inspire Art* ECLI:EU:C:2003:512 and case C-438/05 *The International Transport Workers' Federation and The Finnish Seamen's Union* ECLI:EU:C:2007:772.

[29] Specifically, Directive 2001/65/EC of the European Parliament and of the Council of 27 September 2001 amending Directives 78/660/EEC, 83/349/EEC and 86/635/EEC as regards the valuation rules for the annual and consolidated accounts of certain types of companies as well as of banks and other financial institutions.

[30] Specifically, Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast) (Text with EEA relevance).

where UK conflicts with the rest of the EU was also the strongest — in company and banking law. In these areas, we should see less differentiated integration as a result. The sections below outline each of these legal areas in turn.

IV.1. Securities and assets law and regulation

Securities law and regulation is heavily harmonised, thanks in part to the efforts of the UK to promote financial markets within the Single Market rather than though banks. Much of the legislation on the books deals with the provision of accurate information to investors, including risks of investing (Prospectus Directive,[31] Transparency Directive,[32] Markets in Financial Instruments Directive);[33] with ensuring a level playing field for investors (Insider Trading Directive,[34] Market Abuse Directive),[35] particularly investors across national borders; ensuring quality infrastructure for payments systems and derivatives operations (European Market Infrastructure Regulation: EMIR, covering over-the-counter-derivatives, central counterparties and trade repositories);[36] standards for various financial market participants (UCITS Directive for mutual investment funds,[37] AIFM Directive for Hedge Funds,[38] Credit Rating Agency Regulation)[39] and with facilitating access to national financial platforms through regulatory passports.[40] When a company is registered by the relevant national competent authority as a financial market participant in one Member State, it is permitted to act in other Member States on the basis of the original authorisation, since national legislators and supervisors are working with the same legal requirements. The idea is primarily to simplify access, since capital is not as centralised in one Member State as in the case of London for the UK (or previously for the EU).

[31] Directive 2003/71 cit.

[32] Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC; revised Directive 2013/50 cit.

[33] Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation and Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast) Text with EEA relevance.

[34] Directive 89/592 cit.

[35] Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse).

[36] Regulation 648/2012 cit.

[37] Directive 2009/65 cit.

[38] Directive 2011/61 cit.

[39] Regulation (EU) 462/2013 of the European Parliament and of the Council of 21 May 2013 amending Regulation (EC) 1060/2009 on credit rating agencies Text with EEA relevance.

[40] F Pennesi, 'Equivalence in the Area of Financial Services: An Effective Instrument to Protect EU Financial Stability in Global Capital Markets?' (2021) CMLRev 39. Without the UK agreeing to abide by EU financial market regulation, it chose to end passport access. See N Moloney, 'Financial Services, the EU, and Brexit: An Uncertain Future for the City?' (2016) German Law Journal 75.

While one might expect the UK's departure to result in less EU emphasis on capital markets (as an alternative to banks as a means of financing the economy), this does not appear to be the case.[41] There has been no rollback of the EU's program of Capital Markets Union, although the pandemic has diverted attention temporarily elsewhere, and stalled initiatives. However, the Commission has pushed through with a programme to expand capital markets to include digital finance. The Digital Finance Strategy seeks to promote the use of fintech that offers payment, loan and other combined financial services while ensuring consumer protection and financial stability.[42]

One main reason for the continuity is that there remains general consensus in the EU that financial markets are needed to finance the European economy, given the limited capacity of governments to borrow and spend compared to the massive capital costs of rejuvenating the Single Market, covering greening, digitalisation and general economic competitiveness and development.[43] This is even so in light of collectively increased willingness to borrow and invest in the wake of Covid. In this light, ending Capital Market Union (CMU) would most likely be seen to be a greater act of economic self-harm than the departure of the UK's financial market access to the EU itself. While EU Member States still have a relatively high degree of reliance on banks to fund their economies, there is realisation that financial markets provide a valuable addition to the banking landscape, above all in the provision of capital to riskier company strategies. This is not only for stock and bond markets, but for all of the additional financial instruments and services that support this investment.

Indeed, the EU has understood a need to increase financial services on the continent, and to look for alternatives to indispensable services provided from the UK where these could not be built up in time. The first of these impulses is reflected in actions to ramp up the provision of financial services on the European continent. Since the Brexit referendum in 2016, the Paris-based platform Euronext has acquired as many financial services companies from the EEA (at least one prominent acquisition is in Norway) as possible to ensure that their capacity is as high as possible. Paris has accordingly been the highest growth financial centre in Europe, with ambitions to become the most comprehensive through its links to other centres. Amsterdam in particular is now the centre of stock, bond and fund trading, but is affiliated with Euronext. Euronext is not alone, however. Its rival to be London's successor in the EU continues to be Frankfurt's Deutsche Börse, which started with much of its own internal capacity, and continues to build on that through its own efforts.[44] Both centres contain not only the markets most of us see, but also the backdrop of invest-

[41] WG Ringe, 'The Politics of Capital Markets Union: From Brexit to Eurozone' in F Allen and others, (eds), *Capital Markets Union and Beyond* (MIT Press 2019) 341.

[42] European Commission, *Digital Finance Package* ec.europa.eu; RP Buckley and others, 'The Road to RegTech: The (Astonishing) Example of the European Union' (2020) Journal of Banking Regulation 26.

[43] See European Commission, *Recovery Plan for Europe* ec.europa.eu.

[44] S Donnelly, 'Post-Brexit Financial Services in the EU' cit.

ment banks, derivatives trading, repositories and data management systems that constitutes much of the plumbing of a modern financial system. There is little if any tension between countries over the importance of such developments, or over regulatory content., although the UK is determined to keep its status as a world-leading financial centre. All of this means that Brexit keeps up the pressure to keep capital markets union alive, and that there is no differentiation to be seen or expected.

Despite this progress in generating own alternatives, the EU still lacks certain critical financial services, which raises the question of whether the UK might not still exert a structural influence over EU financial market policy. The most important of these are central counterparty services, which ensure that payments are fulfilled in financial markets even if one of the parties goes bankrupt.[45] This is particularly important for the interest rate and currency exchange swaps used by businesses in great quantity. While the ECB would like these services delivered from within the EU, where it can supervise compliance with rules and resource requirements, the Commission has found it difficult to pull European companies away from London and the control that UK authorities have over the process. Commission attempts to break this stranglehold by allowing companies to use counterparty services in the United States (giving it choice in an environment of regime complexity) have done nothing to change this. Overall then, differentiated law inside the EU is low, while regime complexity with the UK remains significant.[46]

IV.2. Banking law and regulation

Banking Union (since 2012) is the area in which integration is the most differentiated in membership.[47] It is also an area that has seen remarkable harmonisation, particularly in the setting and supervision of capital adequacy standards. The most recent Banking Package of 2019, for example, contained harmonisation of how much money to keep on hand, what debt instruments, which do not normally count as cash, could be converted into shares in the event of an insolvency,[48] building on prior commitments in the Bank Recovery

[45] S Van Kerckhoven and J Odermatt, 'Euro Clearing after Brexit: Shifting Locations and Oversight' (2020) Journal of Financial Regulation and Compliance 187.

[46] S Donnelly, 'Post-Brexit Financial Services in the EU' cit.

[47] For the development of Banking Union, see R Goyal and others, 'A Banking Union for the Euro Area' (12 February 2013) International Monetary Fund www.imf.org; D Howarth and L Quaglia, *The Political Economy of European Banking Union* (Oxford University Press 2016); S Donnelly, *Power Politics, Banking Union and EMU: Adjusting Europe to Germany* (Routledge 2018).

[48] Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for won funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) 648/2012 (Text with EEA relevance).

and Resolution Directive[49] to bail-in creditors and shareholders in the event of an insolvency. Although EU law regulating banks applies to all banks in the EEA in principle, there are additional features for members of the Eurozone, which are considered to have a special responsibility to one another as a result of sharing a single currency. Bankruptcies in individual Member States put governments under pressure to provide state aid to banks. To the extent that financial markets fear that the government cannot repay what they borrow, those Member States can effectively go bankrupt, causing a collapse of confidence in the euro for all Member States. The primary focus of Banking Union has therefore been financial stability—ensuring that financial services continue to be available to individuals and companies throughout the Union. It has a preventative arm and a corrective arm. A third arm, based on insurance, remains national, despite an urgent need for it.[50] The Commission's proposals for a European Deposit Insurance Scheme faltered due to German and Dutch opposition to what they saw as fiscal transfers from their own banks to banks in southern Europe, and their ever-growing list of demands for bank regulation harmonisation before talks on deposit insurance could resume.

The preventative arm is the Single Supervisory Mechanism.[51] The European Central Bank is the direct bank supervisor for all European Systemically-Important Banks (E-SIBs), about 120 of the largest banks in the EU, covering the largest three banks in each Member State of the Eurozone, plus any banks holding assets over specific thresholds. Non-Eurozone Member States are supervised by their own national competent authorities, often central banks, but sometimes specialised bank regulators alongside central banks. All of these agents are responsible for applying EU legislation on minimum capital requirements (having enough capital on hand, calibrated to the kinds of claims that can be made on the bank known as the Capital Requirements Directive),[52] risk management (everything from know-your-customer forms of reducing the risk of lending to borrowers that

[49] Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) 1093/2010 and (EU) 648/2012, of the European Parliament and of the Council Text with EEA relevance.

[50] L Quaglia, 'The Politics of an "Incomplete" Banking Union and its "Asymmetric" Effects' (2019) Journal of European Integration 955.

[51] Regulation (EU) 1024/2013 of the Council of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions; Regulation (EU) 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17).

[52] Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures (Text with EEA relevance).

does not get repaid, to advanced forms of financial engineering) and corporate governance (ensuring proper procedures, and ensuring that political demands on banks do not undermine the bank's obligations to pay attention to the first two issues).

Overall, preventative bank regulations have exploded in number since the onset of the Eurozone crisis, primarily by specifying how banks hold capital and what provisions have to be made for the risk of default on different assets. These rules apply to banks in all Member States, whether or not they are within the eurozone. What has changed in terms of differentiation is that some national central banks and bank supervisors have been reluctant to apply standards stringently due to the belief that national banks should not really be allowed to fail, even if they are not performing well or applying EU law with due diligence, while the ECB has proven to be stricter in its application of EU law. This indeed creates differentiated application of the law, though not differentiated law itself in a critical area of economic life in the EU. It also creates different mechanisms for output and exceptional intervention based on (non) eurozone-member status. While national supervisors of the Eurozone have seats at the table of the single supervisor, others must suffice with more informal linkages they have with the ECB as outsiders to the single currency. But this loose relationship is asymmetrical. The ECB retains the right to step in and take over supervision of any bank in the Union, regardless of size. The same is true (but only in principle) of the Single Resolution Mechanism (SRM, below).

It is notable that Banking Union generated enormous negative reactions from the UK Government, and that the latter successfully negotiated throughout the related bank legislation that the ECB would in no way interfere on the Bank of England's turf, and that the UK Government reserved the right to set its own standards, as long as they did not undercut what the EU was doing. The primary concern on the British side was to do anything necessary to instil global confidence in City, which sometimes meant being harder on banks in supervision and prevention than the EU was politically willing to go.[53]

The corrective arm of Banking Union, the Single Resolution Mechanism, deals with bank resolution, which is what happens to a bank that is bankrupt and can no longer remain in business. Banks can be closed, but more frequently they are dismantled to ensure that households and businesses retain their usual bank accounts and other financial services, and that arrangements can be made to decide what the bankruptcy means for other institutions that have investments with the bank. Rarely will they lose everything, but a resolution authority decides how much is lost, or how much money is demanded in the process. Resolution is designed to prevent a domino effect of financial collapses, and typically draws on deposit insurance. In the case of Banking Union, a special, limited resolution fund, the Single Resolution Fund (SRF), was established for this purpose.[54]

[53] D Hodson, 'EMU and Political Union Revisited: What we Learnt from the Euro's Second Decade' cit.

[54] Regulation (EU) 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms

The SRM has a Single Resolution Board (SRB) at its heart,[55] which is responsible for the resolution of any bank that is under the supervision of the ECB and the Single Supervisory Mechanism. In practice, it oversees and approves whatever response national resolution authorities prepare in response to bankruptcy, including any potential use of the SRF.[56] The idea is to ensure that terminally ill banks are actually dealt with rather than becoming zombie banks. But unlike a normal resolution authority, it cannot unilaterally take action itself. It may only recommend to the European Commission, and Commission approval remains subject to blockage by the Council. The latter is particularly important in any use of the SRF, given that the agreement regulating its use and disbursement provides that funds can only be released by intergovernmental agreement.[57] In principle, the SRB is set up in such a way that it can mitigate differentiated integration by being able to ensure that national authorities apply resolution law in a consistent way inside and outside the eurozone, and between banks of different sizes. But it has shown in a number of recent cases, particularly in the cases of local alternative banks Veneto and Vicenza in Italy, that it lacks the political will to apply the law consistently.[58]

Finally, Banking Union lacks a deposit insurance scheme that could be used for bankruptcies, making the system lopsided, but at least keeping differentiated integrated to a minimum. This has everything to do with German and Dutch opposition to any single fund that would constitute financial transfers between national banking systems.[59] This situation, given the strong financial interdependencies in play, means that the EU remains highly financial unstable under stress.

IV.3. Financial reporting law and regulation

Accounting law and regulation in the EU is based on the International Accounting Standards (IAS) Directive 2001, which both harmonises EU law and leaves national discretions intact. Importantly, however, it is embedded in regime complexity, using rules established outside the EU, with significant UK involvement. Public companies (those listed on

in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) 1093/2010.

[55] *Ibid*.

[56] *Ibid*.

[57] A Kern, 'European Banking Union: A Legal and Institutional Analysis of the Single Supervisory Mechanism and the Single Resolution Mechanism' (2015) ELR 154.

[58] S Donnelly and IG Asimakopoulos, 'Bending and Breaking the Single Resolution Mechanism: The Case of Italy' (2019) JComMarSt 856; D Howarth and I G Asimakopoulos, 'Stillborn Banking Union: Explaining Ineffective European Union Bank Resolution Rules' (2021) JComMarSt 264; PD Culpepper and T Tesche, 'Death in Veneto? European Banking Union and the Structural Power of Large Banks' (2021) Journal of Economic Policy Reform 134; D Howarth and L Quaglia, 'The Difficult Construction of a European Deposit Insurance Scheme: A Step too far in Banking Union?' (2018) Journal of Economic Policy Reform 190; S Donnelly and G Pometto, 'Banking nationalism and resolution in Italy and Spain' (2022) Government and Opposition (forthcoming).

[59] S Donnelly, 'Advocacy Coalitions and the Lack of Deposit Insurance in Banking Union' (2017) Journal of Economic Policy Reform 210.

stock exchanges) in the EU are obligated to file their consolidated financial reports in accordance with these standards, now known as International Financial Reporting Standards (IFRS). Subsidiaries of holding companies are not affected and continue to report by national standards. The purpose is to guarantee that companies provide essential information on the finances of the company that investors can easily compare throughout the Single Market, regardless of traditional reports based on national tax codes, which vary significantly. National tax codes are still not subject to harmonisation or even approximation within the EU, with the exception of the minimum tax agreement reached between the EU and the US in fall of 2021.

These national tax differences have significant impacts on private companies, and owe their stickiness to differences in legal philosophy reflected in company law. They can force or allow companies to present radically different pictures of their financial strength, which in turn make them more attractive or less so to shareholder investors. This also affects their ability to hold and invest profits in future productivity. For example, UK reporting standards allow companies to amplify their reported profits and maximise dividends to shareholders, often at the expense of their ability to invest in the company, while German reporting standards allow companies to set aside profits rather than reporting it as cash to be paid out to shareholders, so that it can be invested in the company's long-term profitability.[60] Overall, the UK's departure increases practical harmonisation. While the IAS Directive is designed to ensure that company reports are readily comparable and promote cross-border investment, the exit of the UK from the EU reduces the emphasis on profit maximisation in practice.

The standards themselves are set outside the EU, by the International Accounting Standards Board, which is a private, global association. It has members from different regions of the world, with the Americas most heavily represented, followed by Asia, and then Europe, with one UK and one French member, plus a German Chair as of July 2021. IFRS do not impose direct legal obligations for the EU and its Member States; rather the EU must adopt each standard through the comitology procedure established in the directive. This ensures that IFRS remains a useful tool, but that the EU must explicitly agree to standards as they are developed, which shields the EU from unintended effects of exploiting regime complexity. This capacity and relative autonomy for Europe was one of the main reasons for choosing the International Accounting Standard Board (IASB)'s standards over U.S. standards (Generally Accepted Accounting Practices, or U.S. GAAP), which are solely the responsibility and product of the American political system.[61]

Since 2009, the Board is supported by the (private) IFRS Foundation, and subject to oversight by two boards of stakeholders to ensure some degree of public insight into the

[60] S Donnelly, 'Public Interest Politics, Corporate Governance and Company Regulation in Germany and Britain' (2000) German Politics 171.

[61] S Donnelly, 'Financial Stability Board (FSB), Bank for International Settlements (BIS) and Financial Market Regulation Bodies' cit.

governance of the body and the appropriateness of its decisions: the Public Interest Oversight Board (PIOB) and the Monitoring Board. Two of the PIOB's members are nominated by the European Commission, with others nominated by the World Bank and three other International Standard-Setting Bodies.[62] The Commission is also present on the Monitoring Board alongside representatives from Japan, the U.S. and International Organization of Securities Exchange Commission (IOSCO). Its standards are principles-based and soft law in nature, allowing for national legal diversity. Standards are accordingly subject to application by accountants in differing national jurisdictions with some degree of discretion and therefore of national difference.[63] But the standards themselves provide considerable direction on what companies may and may not do. Accordingly, the EU has pushed the Board repeatedly to take European concerns into account more heavily, and the IASB has found itself trying to walk a tightrope in between American (U.S. GAAP) and UK standards on the one hand, and other European expectations particularly.[64] The main issue remains financial reporting, whereby American and UK standards push companies to pay out profits to shareholders more extensively than in Europe, but European legislators seem set to demand more financial transparency in areas of Environmental, Social and Governance (ESG) standards for European companies.[65] This is above all visible in the introduction of the Taxonomy Regulation,[66] which pressures companies to outline their ESG policies and performance. Under economic strain, these differences are likely to increase as the UK seeks to ensure the viability of its own financial system.[67]

This is an area of likely future tension between the EU and the UK as differentiated integration is impossible, and regime complexity may impact negatively on generally accepted accounting practices in the EU. The Commission may choose to restrict regime complexity by withholding a decision of regulatory equivalency until certain conditions are met regarding how financial reports are made.[68] Given the UK's current trajectory of doubling down on its own investor-focused model of economic entrepreneurship, it

[62] The three bodies responsible for micro prudential supervision: Basel Committee on Banking Supervision, the International Association of Insurance Supervisors; and the International Organization of Securities Exchange Commissions (IOSCO).

[63] A Schaub, 'The Use of International Accounting Standards in the European Union' (2005) Northwestern Journal of International Law & Business 609.

[64] P Leblond, 'EU, US and International Accounting Standards: A Delicate Balancing Act in Governing Global Finance' (2011) Journal of European Public Policy 443.

[65] D Schoenmaker, 'Sustainable Investing: How to Do it' (2018) Bruegel Policy Contribution.

[66] CV Gortsos, 'The Taxonomy Regulation: More Important than Just as an Element of the Capital Markets Union' in D Busch, G Ferrarini and S Grunewald (eds), *Sustainable Finance in Europe: Corporate Governance, Financial Stability and Financial Markets* (Palgrave Macmillan 2021) 351.

[67] H Kassim and others, 'Preferences, Preference Formation and Position Taking in a Eurozone out: Lessons from the United Kingdom' (2020) Political Studies Review 525.

[68] P Böckli and others, 'The Consequences of Brexit for Companies and Company Law' (University of Cambridge Faculty of Law Research Paper 22-2017) 15.

seems more and more likely that there is even room to codify accounting standards that require more robust social and environmental components than is the case in the UK.

IV.4. Company law and regulation

Company law and regulation in the EU is heavily based on divergent national norms and laws regarding the conditions for registered companies to operate, requiring differentiated law. EU company law is based in part on the Treaty right of establishment throughout the European Union, allowing free movement of capital as interpreted by the CJEU in a series of rulings in the 1990s and early 2000s, which requires no differentiation.[69] For the half of the EU Member States that accept company registrations on the basis of mutual recognition of home country regulations and control, this poses no difficulty.

However, for the other half of EU countries that insist on incoming companies respecting national company law requirements, the right of establishment is entangled with social rights and responsibilities in particular, as well as company responsibilities to a wider set of stakeholders. At the EU level, the European Companies Statute [2001], the European Employees Participation Directive [2001][70] and the Takeover Directive [2004][71] established differentiated law within an EU framework as a lasting feature. The Participation Directive ensured that if a company without employee participation in management (board membership) or policy-making (works councils) took over another that did, it would not be able to get rid of them. The Takeover Directive struck a balance between the general right of companies to take over other companies, and the ability of target companies to fend off takeover bids to protect national ownership.[72] At stake for these countries, and for the EU's company law framework as a whole is whether companies have social obligations that cannot be undercut through regulatory arbitrage. The Company Law Directives effectively settled this dispute for the first time at the cost of greatly differentiated law, in which company discretion following national company and labour law remained high.

Instead of supporting a single company law standard, the UK and Germany pushed a different kind of European Company Statute (ECS) that effectively entrenched their national legal differences in perpetuity and pushed back the advances of the CJEU into what was conceived of as national prerogative. The ECS as adopted provided for companies to incorporate as a European company, or SE, which would allow it to operate throughout the Single Market on one legal and regulatory basis, but bowing to real seat theory and national law in the process. A company would only be allowed to incorporate as an SE in

[69] S Donnelly, *The Regimes of European Integration: Constructing Governance of the Single Market* cit.

[70] Directive 2001/86/EC of the Council of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees.

[71] Directive 2004/55/EC of the Commission of 20 April 2004 amending Council Directive 66/401/EEC on the marketing of fodder plant seed.

[72] S Donnelly, *The Regimes of European Integration: Constructing Governance of the Single Market* cit.

ways that mirrored national law where it was incorporated, and it had to be incorporated where its factual headquarters were located.

This meant that companies were locked into a differentiated legal landscape and could not shop around for their preferred legal structure. Furthermore, the ECS was accompanied by two other pieces of legislation that further entrenched national control of two areas, even as SEs grew and developed in a more transnational fashion. The European Employee Participation Regulation mandated that an SE could only dispense with worker participation rights under very high thresholds: 75 per cent of the workforce would have to approve such a removal of their rights; and the company would have to have shifted its centre of gravity so that it could reasonably be considered a company based on company law where employee participation was not the norm. This clearly created a ratchet effect in which the German model was expected to spread elsewhere, but the UK model was difficult to adopt. The Takeover Directive, meanwhile, reduced the use of poison pills and golden shares by creating a 75 percent threshold to approve a takeover. A bidding company that could purchase that threshold had a legal right to buy the company outright regardless of other regulatory restrictions. The use of poison pills remains legal, however. The Takeover Directive also ensured that the bidding company could no dismantle employee participation after purchasing a company. This would be regulated by the Employee Participation Regulation. The Takeover Directive's threshold rule constituted a concession to well-capitalised British firms (able to raise cash on the London Stock Exchange) was the primary incentive for the UK to agree the deal, and to put further threats of company law adversely affecting UK law at bay.

Brexit provides an opportunity to reduce this differentiation substantially, though not entirely. Materially, Commission proposals to create the Company Law Directives prior to 2000 faltered on conflict between UK company law which gave unquestioned priority to shareholder rights, and German company law, which insists on stakeholder (social, environmental, community and institutional investor) rights entrenched in corporate institutions (supervisory boards and works councils), and legal rights of company directors to reinvest profits into future employment, productivity, environmental protection and community quality of life rather than quarterly shareholder dividends.[73] Germany's regulations were not the same as in other Member States, but continental company law was generally less focused solely on shareholder rights. Similarly, provisions for golden shares, through which states can veto company decisions in the (national) public interest, anti-takeover measures (such as the Volkswagen law that prevents any shareholder from exercising more than 20 per cent of votes) and employee rights protection in a company shutdown, merger or takeover are found throughout the remainder of EU Member

[73] S Donnelly, 'Public Interest Politics, Corporate Governance and Company Regulation in Germany and Britain' cit.; S Donnelly, *The Regimes of European Integration: Constructing Governance of the Single Market* cit.

States. Without the need to accommodate the UK's rejection of restrictions on shareholder rights to profits, opportunities to pursue more harmonised company law standards with higher social imperatives present themselves.[74] However, this would have to tackle different corporate protection mechanisms beyond that found in Germany, particularly golden shares, in which the state retains veto rights in privatised companies. Such practices are found in France and Sweden.

Overall, the UK's departure from the EU provides the room to streamline and approximate company law for the single market, with a view to increasing social, environmental and community priorities for company directors, even where this is not a high priority at the current moment. However, as Europe emerges from the pandemic and returns attention to the Capital Markets Union, and incorporates concerns for Environmental, Social and Governance standards in EU companies and financial reporting standards, it should prove possible to agree on a more robust framework for how companies are regulated in the single market, to address how shareholder and stakeholder interests are balanced. Overall this means that the EU as a whole has more power over markets than it did during the UK's membership, given decreasing need for differentiation, and may address regulatory issues with a common approach.

IV.5. Insurance law and regulation

Like company and accounting law, European insurance law retains a strong national component. Legislation with hard legal obligations is primarily limited to the Solvency I and II Directives,[75] which require insurance companies and supervisors to invest their income in areas that are safe within reasonable expectations, and to have enough cash reserves to meet their financial obligations. Additionally, EU law covers fair treatment to potential buyers. These in turn are based on international principles generated by the International Association of Insurance Supervisors (IAIS), whose output can be categorised as soft law, providing for considerable divergence between countries. The discretion provided at both levels creates space for the long-term contracts typical of insurance to be shaped by the dictates of national law. The departure of the UK from the EU reduces the gaps between national insurance laws in material ways. For example, British life insurance companies,

[74] S Sabato, B Vanhercke, and AC Guio, 'A "Social Imbalances Procedure" for the EU: Towards Operationalisation' ETUI Working Paper 09-2022) 33; A Crespy, *The European Social Question. Tackling Key Controversis* (Agenda Publishing 2022); M Koutsia, 'Exit Britain Enter the Stakeholders: Could Brexit End the Cultural Wars within the European Union Company Law and Give Birth to a Truly "European Company"?' (2019) European Business Law Review 881.

[75] Second Council Directive 88/357/EEC of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC and Directive 2009/138 cit., updated as Directive 2013/58/EU of the European Parliament and of the Council of 11 December 2013 amending Directive 2009/138/EC (Solvency II) as regards the date for its transposition and the date of its application, and the date of repeal of certain Directives (Solvency I).

which offer products that compete with private pension investments, were able to invest more heavily in higher-return but higher-risk products than many of their competitors.

V. Conclusions

Brexit both complicates and simplifies prospects for financial market regulation in the EU. The UK is determined to forge its own path on financial market regulation as it seeks to retain its status as a prime global financial centre, even after losing some business to the EU. At the time of writing, this intent had not generated any notable divergence with the EU, but the intent to do so was clear. This means that the UK's central role in shaping EU financial market regulation, particularly in capital markets, retains some afterglow of its membership period, but that with time discrepancies will grow. The lack of an institutionalised agreement between the EU and the UK on financial services will mean that this divergence is unmanaged. The consequences for the EU are either for the Commission to negotiate some sort of regime complexity in which UK businesses continue to perform certain financial services for EU companies, but under certain conditions (as it currently does with the United States), to abdicate any ambition for negotiating these rules and accept whatever the UK government and the City of London generate, or to push harder to exclude UK financial services, even if they are legally equivalent.

Within the EU, Brexit provides opportunity for a more coherent legal and supervisory framework. The UK as a Member State contributed heavily to differentiated law, particularly in company law, where its preferences and rules were highly valued and very different from the rest of the EU. Differences in accounting law and practice, and banking law were also bridged with great national discretion in the details of EU directives. The remaining EU Member States now have the chance to upgrade these areas and reduce the use of differentiated law after the UK's departure, and in banking already have begun the process. In particular, the EU's interest in upgrading environmental, social and governance standards in company and financial law indicates the potential for less use of differentiated law, and little opportunity for an arrangement in which the UK would have guaranteed access through regime complexity. Policy and regulations are diverging, and therefore regulatory equivalence cannot be assumed.

At the same time, the EU appears to have retained the very strong harmonisation fostered by the UK while it was still a member. The UK was the overall driver of securities law and harmonisation through the Capital Markets Union program. This saw the EU develop greater acceptance of financial markets, of level playing fields and open access for financial services. This is visible as well in the EU's Digital Finance Strategy, which seeks to promote the use of fintech in the single market with EU-specific protections in the areas of consumer protection and prudential regulation. The EU's future work should see it revisit company law to entrench European rules for good corporate governance and reporting that reflect its greater emphasis on legal standards over self-regulation, to ensure better level playing fields, and its desire to improve the attractiveness of European companies to investors on EU stock exchanges through more standardised information.

The remaining field of differentiated integration in the EU therefore remains between the Member States of the eurozone. But note, non-members are still tied into the rule structures of Banking Union through the single rulebook, and the coordination of the European Banking Authority. This differentiated integration still provides non-eurozone countries with voice in the rule-making process, as well as national supervision within these parameters.