

EUROPEAN UNION REGULATION OF INSURANCE INDUSTRY IN THE AFTERMATH OF THE FINANCIAL CRISIS

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Abstract: *At the time of writing of this article we have reached the tenth anniversary of the peak of the financial crisis of 2007 to 2008. The 2008 financial crisis and its aftermath provide the backdrop to regulatory actions in the field of insurance. The article aims to examine the institutional and regulatory actions enacted at European Union (EU) level following the crisis which impacted upon the European insurance industry. Regulatory action was enacted in the EU mainly with the adoption of over forty pieces of financial service legislation from 2008 to 2018, most of which help to channel regulation towards a more centralized regime at an EU level. Hand in hand with the strengthening of the regulatory frameworks of financial services, the EU started focusing on the conduct of business rules under the premise of consumer protection. Finally, the article cannot omit upcoming Brexit as impacts on the insurance industry are inevitable, in particular, as the City of London used to be a financial hub for the whole Europe.*

Keywords: *financial services, insurance, regulatory framework, distribution, EIOPA, IDD, PRIIPs*

INTRODUCTION

The following article will examine the institutional and regulatory actions enacted at a European Union level that impact upon the European insurance industry. At the time of writing of this article we have reached the tenth anniversary of the peak of the financial crisis of 2007–2008 with the culmination of the collapse of Lehman Brothers on 15 September 2008. That event and the impact of the crisis for regulators, in Europe and globally, provide the backdrop and tone of the regulatory changes taken at an EU level post 2008. It also provides a distinct time-frame which enables better understanding of our examination of the current regulatory framework for European insurance, especially in connection to the envisaged post-Brexit impacts.

1. FINANCIAL CRISIS AFTERMATH

The impact of the crisis on developed economies emboldened and transformed regulatory action globally as regulators looked to minimise future systemic risks and ensure that corporate transparency is increased, and consumer protection elements are strengthened. At a global level this strategy was demonstrated with the conclusion of Basel

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¹ This paper reflects the legislation in force in November 2018.

III for banking² and in the United States, the epicentre of the crisis, the passing of the Dodd Frank Wall Street Reform and Consumer Protection Act of 2010.³ Regulatory action was mirrored in the EU where a more activist European Commission initiated and published over forty pieces of financial service legislation from 2008 to 2018 and by centralisation of the oversight at an EU level. Some of the key developments for insurers in Europe represent the establishment of European Insurance and Occupational Pensions Authority (EIOPA),⁴ the implementation of Solvency II⁵ requirements, the Directive on the Activities and Supervision of Institutions for Occupational Retirement Provision (IORPS II),⁶ the Packaged Retail and Insurance-based Investment Products Regulation (PRIIPs),⁷ the Insurance Distribution Directive (IDD),⁸ some of which are briefly summarized below.⁹ Many EU non-financial service regulations impact upon insurers as well, such as the General Data Protection Regulation (GDPR)¹⁰ or the Package Travel Directive,¹¹ however for the purposes of this article we will limit our examination to insurance targeted EU laws.

1.1 Birth of European Financial Supervision Scheme

Former UK Prime Minister Winston Churchill famously stated that leaders should not let a good crisis go to waste.¹² Although many have argued that Churchill never stated this,

² See Basel III: international regulatory framework for banks. In: *Bank for International Settlements* [online]. [2019-04-18]. Available at: <<https://www.bis.org/bcbs/basel3.htm>>.

³ Dodd-Frank Act, The Wall Street Reform and Consumer Protection Act of 2010. In: *Corporate Finance Institute* [online]. [2019-04-18]. Available at: <<https://corporatefinanceinstitute.com/resources/knowledge/finance/dodd-frank-act/>>.

⁴ See Regulatory process in financial services. In: *European Commission* [online]. [2019-04-18]. Available at: <https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-reforms-and-their-progress/regulatory-process-financial-services/regulatory-process-financial-services_en>.

⁵ THORESEN, O. The financial crisis is at the heart of the problems with Solvency II. In: *The Telegraph* [online]. 17. 3. 2012 [2019-04-18]. Available at: <<https://www.telegraph.co.uk/finance/comment/9150443/The-financial-crisis-is-at-the-heart-of-the-problems-with-Solvency-II.html>>.

⁶ Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs), OJ L 354, 23. 12. 2016, p. 37–85.

⁷ Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs), OJ L 352, 9. 12. 2014, pp. 1–23.

⁸ Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution, OJ L 26, 2. 2. 2016, pp. 19–59.

⁹ Progress of financial reforms. In: *European Commission* [online]. [2019-04-18]. Available at: <https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-reforms-and-their-progress/progress-financial-reforms_en>.

¹⁰ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4. 5. 2016, pp. 1–88.

¹¹ Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC, OJ L 326, 11. 12. 2015, pp. 1–33.

¹² MUTTER, J. Opportunity from Crisis: Who really Benefits from Post-Disaster Rebuilding Efforts in Foreign Affairs. In: *Foreign Affairs* [online]. 18. 4. 2016 [2019-04-18]. Available at: <<https://www.foreignaffairs.com/articles/2016-04-18/opportunity-crisis>>.

it cannot be argued that the European Union seized upon the economic crisis of 2008 to establish a more centralised and powerful insurance supervisor at an EU level in the form of EIOPA, established in 2011 in Frankfurt. Although the zeitgeist of the EU has been towards greater centralisation, especially post-Maastricht, as noted across different areas of policy, exemplified with the establishment of agencies such as EASA and ECHA. The financial crisis provided political momentum and justification to transform the supervisor from the lackadaisical and under-sourced Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) to EIOPA. EIOPA has a legal personality, greater resources and powers to draft regulatory and implementing technical standards, issue guidelines and recommendations, direct financial institutions, develop common methodologies for assessing the effect of product characteristics and distribution processes.

As part of the European Financial Supervision Framework, EIOPA completes the trinity of European Supervisory Authorities (ESAs) of new EU regulators which replaced committee structures with more powerful entities such as the European Banking Authority (EBA) and the European Securities and Market Authority (ESMA) which were also established after the crisis. The current review of the power of the ESA's and their future role,¹³ largely brought about by the implications to financial services due to the recent crisis of Brexit, highlights the possible future role of EIOPA and sets out the debate that exists between EU institutions and EU Member States as to how much of a move should be made towards centralisation at an EU level.

2. CURRENT INSURANCE REGULATORY FRAMEWORK

The insurance industry is not only under double EU and national supervision, as explained above, but also highly regulated by several EU and national frameworks. These regulations challenge the industry in various ways as it seeks to satisfy the due and proper implementation requirements by respective stakeholders.

2.1 Solvency II

Solvency II was published in 2009 and enacted in January of 2016. It builds on the original directive Solvency I of 1973 and replaces fourteen EU insurance directives. To its supporters in the European Commission Solvency II limits systemic risk, increases transparency and ensures that consumer protection is placed within the core of the insurance industry. To its many detractors in the industry Solvency II and its three Pillars is complex and burdensome, representing a fortress Europe mentality so that it has been described in uncomplimentary way as “Basel for insurers”. It has however been acclaimed at a worldwide level as the new standard for risk-based insurance supervision.

¹³ Communication on reinforcing integrated supervision to strengthen capital markets union and financial integration in a changing environment. In: *European Commission* [online]. 20. 9. 2017 [2019-04-18]. Available at: <https://ec.europa.eu/info/publications/170920-esas-review_en>.

In parallel with strengthening of the regulatory frameworks of financial services the EU started focusing on the conduct of business rules under the veil of consumer protection. As a result, the following legislative acts were adopted.

2.2 PRIIPs

Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) brings cross-sectoral harmonizing rules for investment products and insurance products with investment options. The aim of the PRIIPs regulation was to improve transparency of those products when offered to retail customers as well as harmonize different national distribution rules in order to fight the different level playing field.¹⁴ The way how to achieve such goal was to establish common parameters of those products to be displayed in the standardized key information document (KID). By this idea retail investors were supposed to better understand and compare the key features and risks of the PRIIPs. How difficult such task it is has proved to be nearly from the beginning when ESAs were called to draft regulatory technical standards for methodology of risks, costs and other content specifics of the KID.¹⁵ With adoption of those regulatory technical standards insurers started to fear that the appealing idea of simple comparable product overviews may de facto lead to completely opposite and detrimental result in misleading the consumers. As an example, insurers tried to explain that insurance-based investment products provide insurance protection to investors that other investments products do not include, however, as the KID would not explain this properly it makes insurance-based investment products seem more expensive than other products.¹⁶ Besides the above mentioned, as a nail into the coffin related to the idea of comparable products, the adopted exemption for certain investment products enables them use their own methodology and form (KIID) till 31 December 2019.¹⁷

Furthermore, the adoption of the KID regulatory technical standards was hindered from its creation as its content was rushed and it became inevitable that the industry manufacturers of PRIIPs would not have enough time to properly implement all requirements. As a consequence, the application date of the PRIIPs regulation was postponed for an extra 12 months. Both insurers and also asset managers seem to be displeased by the PRIIPs regulation as the European Fund and Asset Management Association (EFAMA) stipulated that “*the rules particularly in relation to performance and*

¹⁴ See recitals 2 and 3 of the PRIIPs regulation.

¹⁵ See art. 8(5) PRIIPs regulation.

¹⁶ See INSURANCE EUROPE. Draft PRIIPs rules will mislead consumer: Mistakes in Regulatory Technical Standards must be urgently corrected. In: *Insurance Europe* [online]. [2019-04-18]. Available at: <<https://insuranceeurope.eu/sites/default/files/attachments/Insight%20briefing%20-%20Draft%20PRIIPs%20rules%20will%20mislead%20consumers.pdf>>.

¹⁷ See art. 32 PRIIPs regulation: “*Management companies as defined in Article 2(1)(b) of Directive 2009/65/EC, investment companies as referred to in Article 27 thereof and persons advising on, or selling, units of UCITS as referred to in Article 1(2) thereof shall be exempt from the obligations under this Regulation until 31 December 2019*”. To even prolong such exception is under current discussion at the EU level.

costs at best confuse investors and at worst mislead them".¹⁸ On top of this, the UK's Financial Conduct Authority (FCA) was lambasted by the Financial Times for allowing adoption of the worst piece of financial regulation ever in Europe.¹⁹

Many of these misunderstandings and misleading parameters and elements could become the focus of the upcoming PRIIPs regulation revision by the European Commission.²⁰

2.3 IDD

The second most important piece of legislation that harmonized rules on insurance conduct of business in the EU was not presented under such severe criticism as PRIIPs, however, its adoption was also not spared from difficulties and tribulations.

Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (IDD) represents a milestone in the regulation of insurance distribution in the EU. Even though IDD is not a first harmonising tool regulating the intermediation of insurance products in the EU, it is by so far, the most complex tool and fundamentally changes certain practices in at least some of the Member States in the EU.²¹

The IDD replaces the former Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation (IMD). Contrary to the IMD the IDD not only applies to insurance intermediaries but to insurers as well. At the time of its adoption the IMD consisted of a simple instrument containing 18 articles, whereas conduct of business rules was represented essentially by the information disclosure requirements spread among two articles.

The nowadays harmonizing instrument presents 46 articles full of provisions regulating *inter alia* product governance and oversight, information requirements and conflict of interest policies. IDD is further supplemented by European Commission's delegated and implementing acts in which adoptions EIOPA played significant role.²²

3. COMMON FEATURES IN RELATION TO THE UNION CONDUCT OF BUSINESS TENDENCIES IN THE AFTERMATH OF THE FINANCIAL CRISIS

We may draw certain conclusions regarding the common features when comparing the abovementioned EU insurance related laws.

¹⁸ See LITTLE S. European fund trade body calls for urgent action on PRIIPs. In: *Money Marketing* [online]. 29. 6. 2018 [2019-04-18]. Available at: <<https://www.moneymarketing.co.uk/priips-kid-european-review/>>.

¹⁹ See FCA lambasted for 'worst piece of financial regulation ever. In: *Financial Times* [online]. [2019-04-18]. Available at: <<https://www.ft.com/content/e064ec38-01b9-11e8-9650-9c0ad2d7c5b5>>.

²⁰ See art. 33 PRIIPs regulation.

²¹ As an example, insurers need to determine the target market of insurance products. In mainly CEE markets such requirement brings fully new approach towards manufacturing of insurance products.

²² i.e. Commission Implementing Regulation (EU) 2017/1469 of 11 August 2017 laying down a standardized presentation format for the insurance product information document (IPID), Commission Delegated Regulation (EU) 2017/2358 of 21 September 2017 supplementing Directive (EU) 2016/97 of the European Parliament and of the Council with regard to product oversight and governance requirements for insurance undertakings and insurance distributors (POG), and Commission Delegated Regulation (EU) 2017/2359 of 21 September 2017 supplementing Directive (EU) 2016/97 of the European Parliament and of the Council with regard to information requirements and conduct of business rules applicable to the distribution of insurance-based investment products (IBIPs).

A common element in all of those harmonizing insurance legislations is a noticeable shift towards the strengthening of consumer protection. Many changes in the insurance regulatory framework and conduct of business rules are currently pursued under the veil of consumer protection (e.g. increase of the pre-contractual information requirements). While it is understood that financial products are not the easiest products for consumers to comprehend, and insurance products are no exception to this. However, it is disputable whether the increased information disclosures will satisfy the lack of consumer understanding (e.g. Solvency II, PRIIPs and IDD combined provide for approx. 102 disclosures to be made to the consumer). The extensive disclosure obligation actually brings consumers a haze of information which does not provide them with clarity. Furthermore, all these instruments contain information and disclosure rules which vary in accordance with the different objectives and scopes of the legislative acts in question and thus may result in further confusion among customers.

The EU level rules usually allow for the adoption of more stringent provisions at a national level. Thus, the insurance regulatory framework varies significantly in respective Member States. Many national legislators and National Supervisory Authorities opt for extra layers of information disclosure and regulatory requirements.²³

With the aim of combating the quantity of information disclosures the EU embarked upon a trend of summarizing the main parameters of insurance products in simple standardized EU templates. Therefore, customers may come across the KID (Key Information Document) in the case of investment and insurance-based investment products and the IPID (Insurance Product Information Document) in case of the non-life insurance products. The aim of those standardized templates is to present the main comparable features of the respective products in more comprehensible way and, where feasible, avoiding the insurance jargon. The increasing trend is for certain to be stipulated in the upcoming EU legislation.²⁴

The majority of EU insurance related acts is further specified in the delegated and implementing acts of the European Commission based on Articles 290 and 291 TFEU as well as in the guidelines and other measures adopted by the ESAs. For example, the Solvency II requirements (i.e. 1 secondary law directive) are further specified and detailed in approx. 20-30 implementing and delegated acts and around 30 EIOPA guidelines.

As a result, we may positively evaluate the trend of helping consumers to better understand quite complex and difficult insurance products and insurance-based investment products. Nevertheless, any regulatory requirement to simplify the product information into two A4 pages disclosing the main insurance attributes cannot fully succeed without a proper and continuous financial education. There is no need to further elaborate on the fact that financial understanding among consumers is, on average, quite low. Neither the EU nor Member States can protect consumers just by strengthening the

²³ Czech example: Compare the IDD and the Act No. 170/2018 Coll., on insurance distribution in regards with the conflict of interest, inducements, precontractual information, non-advised sales, etc.

²⁴ See the Commission's proposal on the Pan-European Pension Product: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a pan-European Personal Pension Product (PEPP), COM/2017/0343 final - 2017/0143 (COD), providing for the PEPP KID.

regulatory rules for product manufacturers unless investing into the consumer's financial education; as only educated and informed consumer may adopt responsible decision on what products he/she really needs to buy. Till then, consumers are mostly left in hands of intermediaries hoping to obtain due assessment of their situation followed by fair and impartial recommendation in relation to particular financial products. Further, the impact of Lamfalussy procedure dividing respective regulatory obligations among several layers of EU legislative and non-legislative acts topped up by national transposition rules proves to be incomprehensible and fuzzy for many stakeholders on the market.

4. IMPACT OF BREXIT ON REGULATION IN THE NEAR TERM

At the time of the writing of this analysis the UK was negotiating its departure from the EU and also agreeing a future framework on its relationship with the EU ahead of it leaving the Union in March 2019. As the minutia of this future agreement is yet to be finalised, we will look at larger issues which will impact upon EU regulation for insurance in the near to midterm with the departure of the UK from the EU. In the near future, the key issue for insurance for both sides of the negotiation is centred around contract continuity. In the longer term, the UK's departure and whether it maintains or diverges away from the EU regulatory environment, a direction supported by Brexiteers who wish to move away from "over regulating Brussels", will impact upon the future regulatory direction of the EU.

In July 2018, the UK government set out that the UK will leave the jurisdiction of the Court of Justice of the EU, leave all EU institutions (with the exception of some in which it remains as an observer), leave the Internal Market and eventually finalise a free trade deal with the EU which will allow "frictionless trade" for goods and "improved equivalence" for financial services.²⁵ For UK insurers this will mean the loss of EU passporting rights which allow UK insurers to sell their products across the EU with little to no barriers whilst the UK insurance industry will, according to the Association of British Insurers, become a "rule taker" of EU regulations.²⁶ The immediate industry concern before the UK leaves the EU however is how insurers in the UK and also in the remaining EU 27 will be able to honour insurance and derivatives contracts, which total more than 96 trillion pounds according to the Bank of England.²⁷

At the heart of the matter is that contracts which were written under the jurisdiction of the EU will need to be moved to a new EU jurisdiction ex-UK (or from the EU to the UK post March 2019) so that they will be legally able to be honoured. This is a cumbersome process which requires a lengthy court process from the previous jurisdiction to the new

²⁵ The future relationship between the United Kingdom and the European Union. In: *GOV.UK* [online]. 17. 7. 2018 [2019-04-18]. Available at: <<https://www.gov.uk/government/publications/the-future-relationship-between-the-united-kingdom-and-the-european-union>>.

²⁶ Brexit White Paper response: insurance industry „too important to be a rule taker“. In: *Association of British Insurers* [online]. 12. 7. 2018 [2019-04-18]. Available at: <<https://www.abi.org.uk/news/news-articles/2018/07/brexit-white-paper-response/>>.

²⁷ WEBER, A., BRUSH, S. EU Dismisses UK Concerns About Post-Brexit Continuity of Insurance Contracts. In: *Insurance Journal* [online]. 12. 7. 2018 [2019-04-18]. Available at: <<https://www.insurancejournal.com/news/international/2018/07/12/494918.htm>>.

jurisdiction and the agreement of the new regulator. As this is such a lengthy and costly procedure the UK insurance industry has asked for the grandfathering of contracts to be included in any agreement allowing industry to honour contracts which have been concluded before the UK leaves the EU.²⁸ The UK industry representative body City UK warned both the EU and the UK that without an agreement or in case of a hard Brexit (the UK simply leaving the EU) more than 36 million insurance contracts on both sides of the English Channel would be in danger of not being honoured.²⁹ In the UK the head of the Bank of England Mark Carney and the Head of the Prudential Conduct Authority Andrew Bailey have warned of the dangers for existing contracts in the UK and the EU if no deal is agreed between the two.³⁰

In comparison, the European Commission has consistently rebuffed the warnings of the industry and regulators in the UK. The cruciality of the issue has been at least acknowledged by EIOPA. EIOPA issued opinion according to which, as the UK will become a third country for the purposes of applying the Solvency II framework after the withdrawal date, the insurance undertakings would not be authorised anymore to carry out insurance activities with regard to these cross-border insurance contracts by way of freedom of establishment or freedom to provide services.³¹ *“The policyholders and beneficiaries of these cross-border insurance contracts will be exposed to significant uncertainty, for a prolonged period as cases relating to the continuation of the insurance service may be considered by national courts”*.³² As there is not an easy way out, EIOPA mostly urged national supervisory authorities as well as insurance undertakings to take the necessary steps in order to ensure service continuity with regard to insurance contracts concluded before the Brexit in order to assure that these contracts may be fulfilled also after the UK leaves the European Union.³³ EIOPA analysed possible options which could be feasible under the current legal framework to somehow ensure continuity of services with regard to insurance contracts and stipulates following solutions: (i) to transfer insurance contracts of UK undertakings with policyholders in the EU to an insurance

²⁸ GANGCUANGCO, T. With the uncertain future of ‘grandfathering’, insurers better start moving. In: *Insurance Business* [online]. 31. 8. 2017 [2019-04-18]. Available at: <<https://www.insurancebusinessmag.com/uk/news/breaking-news/with-the-uncertain-future-of-grandfathering-insurers-better-start-moving-77572.aspx>>.

²⁹ SCHALOSKE, H. Contract continuity post Brexit. In: *Clyde&Co* [online]. 25. 6. 2018 [2019-04-18]. Available at: <<https://connectedworld.clydeco.com/post/102exy4/contract-continuity-post-brexit>>.

³⁰ EU withdrawal: transition and financial regulation, Speech by Andrew Bailey, Chief Executive of the FCA, at the All Party Parliamentary Group on Wholesale Financial Services Annual Dinner. In: *Financial Conduct Authority* [online]. 28. 3. 2018 [2019-04-18]. Available at: <<https://www.fca.org.uk/news/speeches/eu-withdrawal-transition-and-financial-regulation>>; INMAN P. Brexit: bank contracts worth trillions at risk, says finance watchdog. In: *The Guardian* [online]. 27. 6. 2018 [2019-04-18]. Available at: <<https://www.theguardian.com/politics/2018/jun/27/brexit-bank-contracts-worth-trillions-at-risk-says-finance-watchdog>>.

³¹ EIOPA. Opinion on service continuity in insurance in light of the withdrawal of the United Kingdom from the European Union. EIOPA-BoS-17/389. In: *EIOPA* [online]. 21. 12. 2017 [2019-04-18]. Available at: <https://eiopa.europa.eu/Publications/Opinions/2017-12-21%20EIOPA-BoS-17-389_Opinion_on_service_continuity.pdf>.

³² *Ibid.*

³³ *Ibid.*

subsidiary established in the EU; (ii) likewise to transfer insurance contracts of EU's undertakings with UK policyholders to an insurance subsidiary established in the UK; (iii) to establish third country branch in the UK or in the EU's Member State of the policyholder; and (iv) with regard to UK undertakings in the legal form of a European company to change its domicile to the one of EU's Member State.³⁴ Having read that, it is undoubtedly costly, time consuming and administratively burdensome solution.

The UK and the EU have agreed in the UK withdrawal deal in principle that the UK could stay in the EU Internal Market and Custom Union, but lose MEPs and representatives in EU institutions, for a transition period of two years from April 2019 until December 2021. This would provide a solution to the contract issue for insurers. However, this solution is unpopular politically with more than eighty MPs who are Brexit supporters in the UK parliament and view a transition period as unattractive as the UK would, in their view, become a EU colony. Without the parliamentary agreement of MPs in the UK, who at the time of the writing of this article is highly likely, the transition deal will not be accepted and a hard Brexit would occur, nullifying the solution of a transition deal.³⁵

It can be argued that Brexit in part came about due to the post 2008 regulatory action of the EU as many Brexiteers were motivated by a belief that the EU was stifling growth in the UK with over regulation and this strategy could only be reversed with the UK's withdrawal from the EU. Solvency II was especially disliked within the City and the Vote Leave campaigns set out how the UK could move away from this framework towards a more business friendly regime.³⁶

A rejection of a withdrawal and transition deal would also provide difficulties to the EU in that the UK would almost certainly move away from the current European regulatory model. In order to minimise the damage to the UK from the loss of access to the EU the UK economy would need to pivot towards a lighter touch regulatory environment.³⁷ Insurers and the Association of British Insurers have argued that a post-EU UK will have no choice but to pursue a *laissez faire* regulatory environment and a highly reformed Solvency II regime as the UK will no longer have a voice in the EU and future regulation will not be as market friendly as when the UK was active in EU institutions.³⁸ The overall impact of Brexit on financial services in the UK seems much more complicated than most voters, outside of the City, considered or debated before they voted on their future in June 2016.

The preferred environment of low taxation and regulation by Brexiteers dubbed the Singapore model, and if successful, it could according to them place pressure on the EU to reduce or dilute current regulation and pivot its regulatory direction away from its

³⁴ Ibid.

³⁵ WRIGHT, B. Brexit: What will happen if MPs reject Theresa May's deal? In: *BBC News* [online]. 5. 12. 2018 [2019-04-18]. Available at: <<https://www.bbc.com/news/uk-politics-46320368>>.

³⁶ Brexit is a golden chance to throw some EU regulations on a bonfire. In: *The Telegraph* [online]. 28. 3. 2017 [2019-04-18]. Available at: <<https://www.telegraph.co.uk/opinion/2017/03/28/brexit-golden-chance-throw-eu-regulations-bonfire/>>.

³⁷ See <https://iea.org.uk/publications/plan-a-creating-a-prosperous-post-brexit-uk/>.

³⁸ Brexit shifts debate on Solvency II reforms. In: *Insurance ERM* [online]. 13. 10. 2016 [2019-04-18]. Available at: <<https://www.insuranceerm.com/analysis/brexit-shifts-debate-on-solvency-ii-reforms.html>>.

current focus. It is a question for the future but if the UK post-Brexit successfully moves away from the EU regulatory model towards a light touch Singaporean regime the EU will come under increased pressure to change direction and follow the UK's direction.

The regulatory developments following the 2008 financial crisis were admirable in that they were attempting to recalibrate the regulatory environment away from the lackadaisical regime it was. However, it can be argued that this action became overbearing, prescriptive and rigid and has not attained its goals of consumer confidence or growth and ironically came to be used as a justification in the UK for Brexit as to them the EU was hurting and not helping financial services. As we continue to live in difficult and challenging times, both politically and juridically, it is questionable whether the strengthening of consumer protection provisions in the field of financial services will pre-empt us from another inevitable financial and political crisis or survive stagnant economic growth.