

# A TALE OF TWO MARKETS: REGULATORY DIVERGENCE BETWEEN THE EU AND UK SECURITISATION FRAMEWORKS

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Legal Briefings

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The UK voted to leave the European Union on 23 June 2016 and then officially ceased to be an EU Member State on 31 December 2020. Nearly five years later, the long drawn-out process of Brexit has still not come to an end, as the UK and EU continue to clash over borders and trade issues. For the financial services industry, all transitional periods are now over, and full compliance with the relevant local regime is a fact of life for those regulated or doing business in the UK or EU. The pain of separation continues to be felt: the capital markets and investment industries are naturally international, but issues of double compliance arise in many transactions, and fully liquid markets cannot be achieved where investors are subject to differing requirements.

That said, are areas beginning to emerge where it may be possible to find an advantage in one regime as compared to another? Inconsistency is to be deplored, and investors may be inclined to lament that certain aspects of the UK regime are not available in the EU, and vice versa, rather than to see this as a positive. However, scrutiny of the regulatory environment by two separate sophisticated authorities may be beneficial in some ways. Broadly speaking, the UK seems inclined towards greater openness and a more pragmatic approach; the EU appears to be more reluctant to clearly tackle some important and practical aspects in regulation, but has been at the same time the author of greater innovation in regulation. It will be interesting to see how these approaches shape the (two) market(s) as divergence increases.

In this article, we review some key aspects of the ways in which the securitisation regulatory regime differs between the UK and the EU, and consider where the two paths may lead in the future.

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