Greengage

The Nascent UK Cryptoassets Industry

Post-Brexit Opportunity?

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WHITE PAPER

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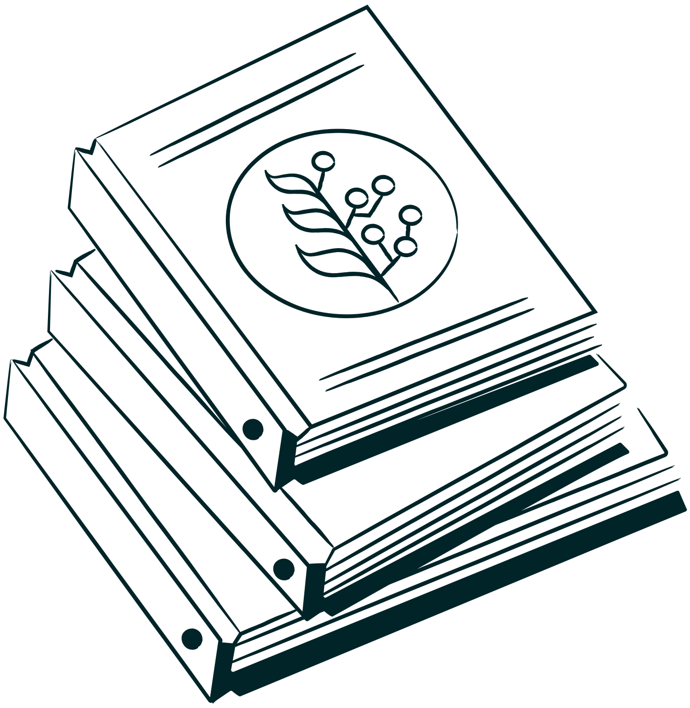
Introduction

The start of 2021 heralded new rules governing the relationship between the UK and EU.

While the scope for cross-border financial services provision between the UK and the EU still remain unclear in the final hour Brexit deal, it seems likely that regulatory "equivalence" will continue for most areas of traditional financial services (e.g. including those firms falling within MiFID) at least for the short- to medium-term. However, in certain areas, divergence between jurisdictions is already starting to emerge in broader regulatory approaches post-Brexit.



Regulatory divergence between jurisdictions in broader regulatory approaches post-Brexit

Perhaps the most reported regulatory divergence is the UK's speedy approval for COVID-19 vaccines when compared with the EU, resulting in the UK having vaccinated more people than Germany, France and Italy combined at the time of publication of this article.[1] UK regulatory approaches show nimbleness not only in response to the coronavirus pandemic, but also increasingly in certain areas of niche financial services including in the cryptoasset space.

1 https://www.politico.eu/article/coronavirus-vaccination-europe-by-the-numbers

UK government's staged and proportionate proposal to address the regulation of cryptoassets and stablecoins

On the 9th November, Chancellor Rishi Sunak set out his ambitions for the future of UK financial services, advocating amongst other things support for stablecoin and Central Bank Digital Currency (CBDC) technologies to remove friction in payments.[2] Shortly thereafter, on 7th January 2021, HM Treasury published a consultation paper on the UK regulatory approach to cryptoassets and stablecoins. This paper outlines that, "The government proposes a staged and proportionate approach to regulation, which is sensitive to risks posed, and responsive to new developments in the market."[3] While the paper explores timelines for bringing emerging cryptoassets within the regulatory perimeter, for a period the government is "considering an approach in which the use of currently unregulated tokens and associated activities primarily used for speculative investment purposes, such as Bitcoin, could initially remain outside the perimeter for conduct and prudential purposes."[4]

2 https://www.gov.uk/government/news/chancellor-sets-out-ambition-for-future-of-uk-financial-services

3 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/950206/HM_Treasury_Cryptoasset_and_Stablecoin_consultation.pdf

4 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/950206/HM_Treasury_Cryptoasset_and_Stablecoin_consultation.pdf

EU's approach to regulation within the cryptoasset sector

This pragmatic approach involving open consultation and transparent frameworks for engagement (e.g. regulatory sandboxes, dialogue with HM Treasury and FCA, etc.) contrasts to the more opaque approach espoused by the EU when announcing their comprehensive new regulatory framework on cryptoassets, called Markets in Crypto-assets ("MiCA"), that was released largely already fully formed, and developed with a view to streamline distributed ledger technology and cryptoasset regulation across EU countries. MiCA seeks to harmonise the various national regimes, including the likes of Malta where that jurisdiction had promoted itself as "Blockchain Island" with a bespoke regulatory framework, and also create a prescription guidance for cryptoasset firms. MiCA will come into force within approximately the next four years.

Conclusion

The UK's more guidance and principles-based approach to regulation may be more responsive, and allow for greater flexibility in such a rapidly innovating area as the cryptoasset sector seems to bring considerable change every year. Given the backdrop of London as a global financial and technology centre, the UK already has a robust set of firms that have sought out FCA registration for cryptoasset-related activity, with circa one hundred UK-based firms either already registered or on the list of temporary registration.[5] The recent announcements from HM Treasury and FCA portend that this is a sector that will continue to receive bespoke attention to foster responsible growth for years to come. It seems, albeit from an early stage, that this iterative approach could pay interesting dividends for economic growth in a fast-developing space within UK financial services.

Greengage's CEO, Sean Kiernan co-authored this article with Charles Kerrigan, a Fintech partner at CMS, an international law firm.

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To find out more about this topic please do not hesitate to contact us at info@greengage.co

5 https://www.fca.org.uk/firms/financial-crime/cryptoassets-aml-ctf-regime

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