

Soyez les bienvenus... European Banking Authority's (EBA) relocation to Paris in 2018

Is this the first step to "twin peaks" and what does this mean for financial services firms?

At 7.43 pm on 20 November 2017, six months of suspense as to where the EBA would call home post-BREXIT came to an end. In a selection process that has been likened to a supervisory steeplechase, Paris, la cité lumière, came through as an outside favourite to go neck and neck with Dublin before being pulled out of a hat as a clear winner¹ Chapeau to Paris... even if many had expected the EU to look to Vienna's central position and international role of east-west dialogue as a fitting home. This Client Alert explores the EBA's move and what it might mean for EU financial services rulemaking and supervisory culture going forward and in particular in light of proposals to reform and consolidate the EU's European Supervisory Authorities (**ESAs**).

The move of the EBA's headquarters and its ca. 160 staff from Canary Wharf to across the Channel is a boost to Paris. The French capital presented a comprehensive proposal of incentives² and already hosts the EBA's sister ESA, the European Securities and Markets Authority (**ESMA**) along with a host of expertise at the Banque de France, the Autorité de Contrôle Prudentiel, as prudential regulator and both components of the SSM and Banking Union, and the Autorité des Marchés Financières, as markets and conduct regulator. ESMA like the EBA and the European Insurance and Occupational Pensions Authority (**EIOPA**) in Frankfurt are the gatekeepers of the EU's Single Rulebook for financial services. The move of EBA thus also represents an opportunity for the EU to deliver on its goal to move to a more single supervisory culture and drive that at the EU level and then roll it out across EU Member States and the various national institutions that together with EU level institutions form the European System of Financial Supervision (**ESFS**).

So what next and why does this matter?

The EBA is set to move during 2018 and should begin operations in Paris at the latest from January 2019. For EU authorities the next step is for them to finalise the legislative instruments necessary to make that move happen. For the EBA and the French local authorities will be looking to finalise the Headquarters Agreement and flesh out the logistics of moving people, premises and processes. For EBA staff



¹ Press Release available here: <https://www.consilium.europa.eu/en/press/press-releases/2017/11/20/european-banking-authority-to-be-relocated-to-city-country/>

² See: <https://www.consilium.europa.eu/media/21799/paris-eba-offer-en.pdf>

and families, any relocation planning may well be underway and move in phases, whereby dependants may gradually move over if at all.

For financial services firms, whether on the ground in the EU-27 or those looking to relocate, 2018 to 2019 will be busy. A string of EU financial services regulatory reforms with varying degrees of impact will begin to affect their businesses and those of their clients. On top of this, comes the fact that firms will probably start to trigger their BREXIT-plans. Concurrently, firms may want to think about how best to centralise and address their engagement strategy with both the ESAs, the ECB and other components of the ESFS.

For many banking sector market participants BREXIT-plans look at moving EU facing operations from London to a number of challenger financial centres to the north or east of France. Frankfurt has emerged as a key favourite given its home to the European Central Bank (**ECB**), including in its role in the lead of the Eurozone's Banking Union and the Single Supervisory Mechanism (**SSM**).

The EBA's move is unlikely to cause BREXIT-relocations to abandon other challenger centres in favour of EU facing business being run out of Paris. However, what it does do is boost Paris' role as a key regulatory policymaking centre. It bolsters the 'financial services triangle' that is drawn between Brussels, Paris and Frankfurt. Each of those cities are under three hours by train or 1 hour by flight to one another. With the EU, and a number of Member States, notably France, quite serious about completing the three horizon challenges of completing Banking Union, finalising the Capital Markets Union and integrating the Economic and Monetary Union (i.e., the Eurozone) by 2019 and ultimately 2025, this triangle and its location at the heart of the EU's French, Benelux and German motor matters. The EBA's move to Paris may offer more choice to bankers faced with relocating. It may be that many firms will chose to locate EU facing business heads in Frankfurt, so as to give permanence and thus meet the ESA's "supervisory principles on relocation" (**SPoRs**)³ whilst using Paris as a twin hub thus permitting rainmakers to have easy access to Frankfurt and Brussels but equally back across the Channel to London.

So is this the first step to twin peaks?

The EBA's move also comes at a time where the EU is still considering how to reform the ESAs⁴. In summary, these reforms propose further centralisation of supervisory powers so as to improve convergence of rulemaking and supervisory approaches at the EU level but equally across the national competent authorities in each of the EU Member States which in addition to the Banking Union authorities when taken together form the EU's ESFS. This aims to help make the Single Rulebook more single and also to create a more common supervisory culture.

In regulatory parlance a "twin peak" supervisory model refers to a supervisory set-up whereby prudential supervision, i.e., focusing on regulatory capital requirements and thus the health and soundness of firms, sits on one peak and the conduct and

³ Please see our series on this available from here: <http://www.bakermckenzie.com/en/insight/?articletypes=9cbfe518-3bc0-4632-ae13-6ac9cee8eb31,e47e40af-b7c0-49af-902f-eb8741bc6463&professionals=6a76e11d-44cd-4045-bb57-457c677f3e65&reload=false&scroll=1000&usefallback=true>

⁴ Please see our separate coverage on this.

markets supervisor sits on the other peak. Centralisation of prudential supervision across the Eurozone has already meant the ECB-SSM has created its own peak amongst national authorities, some of which operate on a twin-peak basis.

A number of national authorities across EU Member States moved to a twin peaks institutional model following the 2007 crisis. The influential EU think tank Bruegel and contributors Veron and Schonmaker in their policy contribution published 13 November 2017⁵ called for ESAs to also move to twin peaks. This is not the first proposal of its kind but certainly a detailed one.

With the EBA and ESMA now set to be in Paris, and with a merger of EBA and EIOPA or EBA and ESMA already having been proposed as part of the ESA reforms, could this leave the EU-27 with an integrated EU- Financial Conduct and Markets Authority and thus a single voice for Capital Markets Union and all other chapters of the EU's Single Rulebook? If yes, who would run the prudential peak, especially as the ECB-SSM's mandate does not (currently) extend beyond the banking sector in those participating Member States (i.e. currently this is limited to the Eurozone-19). Such a move might also be welcome by the ECB-SSM, which after three years of operation is coming out of infancy and has already made progress in making the Eurozone's banking sector more resilient by further harmonising and streamlining how the EU's Single Rulebook is applied across the Banking Union and supervised institutions.

The political will to getting to twin peaks may emerge due to a number of reasons but these are currently subject to national and EU level policy constraints. Yet a move to an EU "twin peaks" structure for the ESAs could happen sooner if financial services firms push for it. This may be a notion that sounds strange to some, but is based on the premise that a Single Rulebook and more single supervisory culture and institutions translates into a lower cost of compliance then this may outweigh any benefits that might still exist from arbitrage across EU Member States.

The United States of America's financial sector, which is often cited by the EU as a benchmark reference for EU financial services and regulators to emulate, moved from a series of state regulators and systems to an integrated supervisory system during a period of great change. That transition helped give rise to a level playing field that spanned a continent and thus generated liquidity and growth from greater opportunities. With the EU set on its plans for what it should look like 2025, it is not unconceivable, absent certain national Member States' changing political views, that the landscape of the ESFS will be considerably more centralised, integrated and pan-EU.

So what should financial services firms do now?

Whilst financial services firms are likely to have a busy time to 2019, the need to ensure that a regulatory and supervisory engagement policy is capable of benefitting from continued engagement will be key to how existing and relocating firms approach their compliance challenges.

It is not yet clear how many EBA staff will relocate, or indeed if there is a sufficiently detailed handover plan and knowledge transition arrangements in place

⁵ See: <http://bruegel.org/2017/11/a-twin-peaks-vision-for-europe/>

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to preserve institutional know-how. From experience of how the SSM was set up and what that meant for national supervisors, or how following the set-up of the Single Resolution Board (SRB), staff was drawn from the ECB, and not just the SSM component, to staff the SRB. This may of course be conducive to fostering a requisite amount of common supervisory culture, but it does mean further impact on institutional functioning as well as processing of workplans.

If you would like to receive more analysis from our wider Eurozone Group or in relation to the topics discussed above, as well as how we can help firms looking to engage with the EBA, the Banking Union and any other component of the ESFS, then please do get in touch with any of our Eurozone Hub key contacts below.

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