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POST-BREXIT, LEGAL PRIVILEGE MAY NOT OPERATE AS WE KNOW IT

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SUMMARY

Grappling with issues of legal privilege is more of a recurring, rather than emerging, theme for financial services firms. Now, courtesy of Brexit, there is a new issue on the horizon.

Post Brexit, firms operating both in the UK and EU member states and their legal advisors will need to consider, more carefully than ever before, the different EU and UK rules of privilege when structuring investigations and advising on potential competition law issues that could result in the involvement of the European Commission.

There are a number of potential scenarios where firms, which continue to have sales or a presence in the EU and/or EEA post-Brexit, may be required to disclose legal advice from UK qualified lawyers to the European Commission in the context of a European Commission investigation into potential anti-competitive agreements or abuse of a dominant position.

Firms should ensure a plan is implemented to manage the new risk that legal advice given by lawyers qualified in the UK may become disclosable to the European Commission, where before Brexit, it would have been privileged.

Clare Reeve Curatola and Naomi Miles wrote about this in our Emerging Themes in Financial Regulation 2021 publication.

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MEET THE TEAM

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