LSE and Europe

Brexit and EU Financial Governance: Passporting, Equivalence, and Beyond

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#LSEBrexit
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EU Financial Governance + the Researcher

- ‘EU financial governance’
- Rule-making, supervision, and enforcement + institutions
- Why - ‘To Know the Causes of Things’
- Highly dynamic and sophisticated aspect of EU law
  - Constitutional; institutional; functional; political; international; market/household perspectives......and more
  - Importance of the public interest + fiscal implications
  - Sits at intersection of major fault-lines in EU politics, finance, and law
- Legal specialist
  - European Securities and Markets Authority Stakeholder Group (2011-2016); Special Adviser, UK House of Lords Inquiry into EU’s regulatory response to crisis (2015)
EU Financial Governance + the Researcher

- Array of forces which shape financial rules and institutions + outcomes
  - Balance of power between EU and its Member States
  - Choices about the EU financial market and its regulation: what kind of market; does law matter?
- Institutional questions
- Consumer finance questions: the ‘Cinderella’ topic....
- Current work: Brexit and EU financial governance
- Repeating patterns of disruptive shock, change, ripples + momentum effects; part of a wider pattern
  - Financial crisis $\rightarrow$ Single rulebook + European System of Financial Supervision + ripples
  - Euro area crisis $\rightarrow$ Banking Union + ripples
  - Brexit $\rightarrow$ ?
Nature of Brexit Effects

- Intersecting spheres + feedback loops: UK; EU; international
Financial Governance: UK and EU

- The question: ‘passporting’, ‘equivalence’, or something else……
- Political......but also legal
- Passport rights + passport substitutes.....a matter of law or politics?
I Financial Governance: UK and EU

- ‘Passporting’
  - Key achievement of EU financial governance
  - Unlocks single market; a creation of EU law and within its structures
  - Legal device: allows highly regulated financial actors to operate across the EU on the basis of ‘home’ regulation (or passport)
  - Highly sophisticated legal and institutional technology in support
  - Question: interaction with EU financial law
  - Question: cause and effect - market relevance and the UK
  - Question: distinctiveness of Passport internationally
  - Question: losing the Passport
    - Embedded in the single market
    - ‘Acronym anxiety’: from a ‘UCITS’ to an ‘AIF’…….does it matter?
    - Legal strategies: subsidiaries…..? Regulatory reaction?
Financial Governance: UK and EU

- ‘Equivalence’
  - Legal and procedural device for managing access by ‘third countries’ to the EU + how EU actors interact with ‘third countries’
  - A ‘hidden’ part of EU financial governance; how will it behave when unseen forces are applied?
  - Shining a light.....
    - Breadth of application + what is ‘equivalence’?
    - Patchwork of legislation; available in some sectors only
    - Procedural challenges
    - Legal certainty v. resilience challenges
    - Institutional challenges, incentives, and opportunities
    - Managing dynamism
    - Evidence
    - Powered by single market technology...

- No ‘equivalence’: legal outcomes in a regulated environment?
II Financial Governance: the EU

- The grit in the oyster.....and the pearl
II Financial Governance: the EU

- The UK and single market + euro area relations in financial governance
  - Constructive tensions and ambiguities....
  - Complex ecosystem
    - Banking Union and the euro area
      - New structures; new ways of thinking (risk sharing); new demands on EU law
    - European System of Financial Supervision and the single market
      - Pressure on single market structures (European Supervisory Authorities)
      - A delicate minuet being played out + new institutional games learned
  - David Cameron’s ‘New Settlement’ and protecting multi-currency financial integration
  - → What will be impact of the Brexit environmental shock on this ecosystem?
II Financial Governance: the EU

- Regulatory governance
  - Change to the ‘single rulebook,’ which glues the euro area and single market together
    - Inflection point; Substance; Tolerance of local discretion
  - Frictions to change
  - Question - EU: consumer financial protection
  - Question - UK: equivalence + ‘location’ requirements

- Institutional governance
  - Lessons from history
    - Momentum matters; law matters
  - The euro area: Banking Union, Capital Markets Union, Financial Union?
    - The role of law in institutional change
  - The single market: change to the single market arrangements
    - Disruption to current institutional incentives
    - Changing the three European Supervisory Authorities: a ‘twin peaks’ arrangement + the role of law
III Financial Governance: the International Sphere

- Shifting patterns......
III Financial Governance: the International Sphere

- ‘International finance governance’
  - The ‘great powers’ + those with capacity to influence (regulators)
  - International standard-setting bodies (Basel Committee; Financial Stability Board)
    - Crisis era and G20
      - Standards (Basel III; IFRS 9)
    - ‘Bedding in’ and growing regulatory influence
      - Conduct (beyond stability); supervision; enforcement

- The EU
  - Growing presence (alongside Member States)
    - Basel III and the EU
  - ‘First mover’ effects’; EU using equivalence to ‘export’ its approach; shape standards
III Financial Governance: the International Sphere

- Brexit effects
  - UK/EU coalitions: changing dynamics - influence
  - Change to patterns of influence across EU institutions
  - Growing importance of European Supervisory Authorities (equivalence effects)
    - Shaped by Brexit

- Geopolitical effects
  - Is the crisis-era consensus on standards shifting?
  - Fragmentation of regulation? Regulatory competition? Local specialization?
  - Skirmishes
  - How might the EU respond - and without the UK..
Intersecting Spheres

- Back to the intersecting spheres

- Example: UK equivalence outcome shaped by (and shapes) EU institutions whose posture may in turn be shaped by international effects
Thank you

Based on: