Europe's share trading spat with Switzerland is a warning shot Britain should take seriously

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The EU's dispute with Switzerland over the terms of access to their respective share trading markets, which brought the trading of Swiss stocks on European stock exchanges to a halt last week, is a stark reminder of what might await the UK in October.

As a result of the political fallout, which led to the halt in trading, investment firms in both the EU (and, for the time being, the UK) and Switzerland are unable to access key share trading venues on a cross-border basis.

This also affects the ability of companies to raise capital as the ban limits the range of exchanges on which they may list their shares and find the widest, most liquid market.

On October 31, should the UK government decide to leave the EU without a deal, like Switzerland, the UK will become a third country to the EU, meaning our trading venues will no longer be automatically accessible for EU firms to undertake their share trading, and vice versa.

The Swiss dispute brings into focus the "equivalence" system under which the trading of Swiss stocks was permitted for EU investment firms. Introduced in 2017 by a package of measures widely known by its abbreviation as MiFID (the Markets in Financial Instruments Directive), it requires EU investment firms wishing to trade in listed shares to do so only on an appropriately regulated trading venue.

As Switzerland is not an EU member, EU-regulated investment firms are only able to trade in listed securities on Swiss exchanges if those exchanges have been assessed as equivalent to EU standards. This rule is known as the "share trading obligation".

Swiss trading venues have been treated by the EU as equivalent since the end of 2017. However, when it adopted this original equivalence decision, the European Commission stated that it was limited only for one year and that it would monitor the position closely and "consider the broader political context".

At the end of 2018, the Commission extended the equivalence decision for a further six months, to expire on June 30 this year. In its decision, the Commission reiterated that no country has "an automatic right to equivalence", linking the renewal to other factors, including political progress on a trade deal.

And here comes what concerns me the most: the problem with the European equivalence regime is that it doesn't give much procedural protection to those firms outside the EU that are relying upon it.

As such, we could end up in a situation where UK and EU firms' reliance on the maintenance of equivalence decisions to facilitate access to their respective jurisdictions' trading venues would be relying on a framework that is potentially unstable and liable to sudden disruption, where the revocation of equivalence could be used as a lever in a wider political or trade dispute.

The Swiss example shows that this is a real and present risk. Financial institutions and trading venues in the UK and the EU will be rightly concerned about the risk of a sudden adverse change in their ability to access their respective markets.

Stability regarding the terms of access and operation of financial markets is a critical component for the smooth and effective operation of those markets. For example, EU companies may be discouraged from listing their shares on UK venues if there is a risk that those shares may not be capable of being traded by EU firms, thereby reducing the available pool of investors.

Similarly, UK firms may be reluctant to purchase shares on an EU venue where there is a risk that they may suddenly be prevented from using the venue to trade out of their position.

This being said, the real risk of unilateral action by the EU to revoke access to UK venues could be reduced for two main reasons. Firstly, the sheer scale of the UK financial markets, and their importance to EU firms as a means of raising capital and managing risk, and secondly, the likelihood of reciprocal action by the UK to withdraw its own equivalence assessments for EU markets.

To prevent a similar fallout but possibly on a much larger scale, concerns could be addressed by the UK and the EU to agree on a mechanism which would provide procedural protection against the unilateral revocation of an equivalence decision.

However, it is unlikely that the UK and EU would come to an agreement on a narrow issue such as the share trading obligation without there also being agreement on a much wider range of issues covering the trading relationship between the UK and the EU.

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