

Financial Services Regulatory: EU/UK Equivalence

The UK's departure from the EU has created new uncertainties in EU-UK cross-border financial services. One such area is the regulatory landscape that EU and UK financial services firms will have to navigate when doing business in the EU and UK. The paucity of provisions in the Withdrawal Agreement and the EU-UK Trade and Cooperation Agreement (TCA) has left financial services providers with little guidance on the long-term cross-border regulatory framework. It is looking increasingly likely that the EU will make equivalence decisions in favour of the UK not as an equivalence package as some had hoped, but on a case-by-case basis, and just how forthcoming these decisions are will likely depend on the extent of the UK's post-Brexit regulatory divergence from the EU.

26 March 2021

Announcement that technical discussions to agree the memorandum of understanding for future financial services regulation had concluded, although it has not yet been signed

Equivalence Decisions: Current Status



EU Equivalence Decisions adopted in favour of the UK

2



UK Equivalence Decisions adopted in favour of the EEA

28

“We will only grant equivalences in those areas where it is clearly in the interest of the EU; of our financial stability; our investors and our consumers.”

Michel Barnier, January 2020

Similar, but Independent Regulatory Regimes

As a consequence of Brexit, the UK's equivalence regimes are now separate. Firms benefiting from equivalence decisions adopted in the UK will not be able to rely on this equivalence to provide services in the EU. The same is true for firms relying on EU equivalence in the UK.

Despite there being two separate regimes, the equivalence powers in the UK are retained EU law within the meaning of section 3 of the European Union (Withdrawal) Act 2018. There are, therefore, striking similarities between the regime in the UK and the EU.

The Equivalence Process

European Union		United Kingdom
Source of Power		
Power exists in an EU legislative act		Power exists in retained EU law or new UK law
Consultation prior to decision		
European Commission, EBA, ESMA and EIOPA consult on the proposed equivalence		HM Treasury, the Bank of England, the PRA and the FCA consult on the proposed equivalence
Adoption		
European Commission adopts equivalence via an Implementing Decision		HM Treasury adopts equivalence via a Statutory Instrument
Monitoring		
Ongoing monitoring to identify and address serious divergences early		Proportionate, ongoing monitoring
Caveats		
Time limited and partial May be withdrawn unilaterally on short notice		Time limited and partial HM Treasury has ability to revoke equivalence, but is viewed as a last resort and will be subject to parliamentary scrutiny

Where are Equivalence Powers Contained?

The European Commission and HM Treasury are empowered under the following Legislative Acts to adopt Equivalence Decisions:

- Prospectus Regulation
- Transparency Directive
- Accounting Directive
- Solvency II Regulation
- Statutory Audit Regulation
- Electronic Money Regulation
- Central Securities Depository Regulation
- Securities Financing Transactions Regulation
- Benchmarks Regulation
- Short Selling Regulation
- Market Abuse Regulation
- Markets in Financial Instruments Regulation
- MiFID II
- Credit Rating Agencies Regulation
- Capital Requirements Regulation

Equivalence not Available for all Services

There are areas, such as deposit-taking, commercial bank lending and insurance, where EU law does not provide for determining equivalence to grant market access to third country firms.

Equivalence Timeline

