













# Financial Services Regulatory: EU/UK Equivalence Decisions







In the below tracker, we set out some equivalence powers contained within EU financial services legislation and outline whether equivalence decisions have been adopted by the European Commission and the UK in each other's favour<sup>1</sup>. Where a ✓ indicates that an equivalence determination has been made, you can click to view the decision (multiple ✓'s signify there has been more than one determination in respect of a particular provision).

Equivalence Power	UK decision	Observations	EU decision (expiry date)	Observations	W&C commentary
<b>Central Securities Depository Regulation (Regulation (EU) No 909/2014)</b>					
<p><b>Article 25(9)</b> Allows for determination of equivalence in respect of central securities depository (CSDs), <i>provided</i> that:</p> <ul style="list-style-type: none"> <li>i. third country's legal and supervisory arrangements ensure that CSDs are subject to requirements equivalent to those set out in CSDR;</li> <li>ii. CSDs are subject to ongoing and effective supervision, oversight and enforcement;</li> <li>iii. the legal framework of the third country provides for an effective equivalent system for the recognition of CSDs authorised under third-country legal regimes.</li> </ul>	✓	<p>Allows EEA CSDs to continue to service UK securities and leave the temporary transitional regime; <i>provided</i> that, BoE enters into appropriate co-operation arrangements with the relevant NCAs and makes CSD-specific recognition determinations.</p> <p>On 30 November 2020, BoE sent a <a href="#">letter</a> to EEA CSDs confirming that non-UK CSDs must apply for UK CSDR recognition within six months from the end of the transition period. There is <a href="#">guidance</a> available to assist CSDs making recognition applications.</p>	 (30 June 2021)	<p>The recitals to the EU decision recognise that EU issuers had not made sufficient progress to migrate their positions to EU CSDs in advance of the end of the transition period, meaning that it was necessary and in the interest of the EU and its Member States to grant temporary equivalence until the end of June 2021.</p> <p>In December 2020, ESMA and BoE agreed a <a href="#">memorandum of understanding</a> that provides ESMA with tools to monitor the ongoing compliance by covered CSDs with recognition conditions.</p>	
<b>European Market Infrastructure Regulation (Regulation (EU) No 648/2012)</b>					
<p><b>Article 1(6)</b> Article 1(4) exempts certain third-country central banks and public bodies charged with or intervening in the management of public debt, meaning they are not subject to the clearing obligation, to margin requirements or to the reporting obligation. Article 1(6) allows for the list of exempted third-country entities set out in Article 1(4) to be amended.</p> <p><b>Article 2a</b> In relation to the clearing and bilateral risk-management requirements for OTC derivative contracts, a third-country market is deemed equivalent where an equivalence decision has been adopted that determines that the market complies with equivalent legally binding requirements and that it is subject to effective supervision and enforcement in that third country on an ongoing basis.</p> <p><b>Article 13(2)</b> Counterparties entering into a transaction within the scope of EMIR are deemed to have fulfilled certain requirements by complying with requirements set by third countries, <i>provided</i> that an equivalence decision has been adopted determining that the legal, supervisory and enforcement arrangements of a third country are equivalent.</p>	     	<p><b>Article 1(6)</b> Determines that certain EEA central banks and public bodies are not subject to the clearing obligation, to margin requirements or to the reporting obligation.</p> <p><b>Article 2a</b> Determines that, for the purposes of Article 2a, markets in each EEA State comply with legally binding requirements which are equivalent to the requirements laid down in UK law, and are subject to effective supervision and enforcement in each such EEA State. This will enable UK firms to continue to treat derivatives traded on EEA regulated markets as exchange-traded derivatives rather than OTC derivatives.</p> <p><b>Article 13(2)</b> Allows UK firms to seek or apply an exemption from the requirement to clear through a CCP or meet margin requirements for transactions with an EEA entity in the same group. The granting of this decision means these exposures can qualify as intragroup exposures in the credit valuation adjustment calculation, ensuring that UK firms will, in many cases, not have to capitalise CVA on over the counter exposures to EEA affiliates.</p>	    		









<sup>1</sup> This document does not consider equivalence powers where neither the EU nor the UK has made an equivalence decision. It is worth noting that in footnote 21 of the document "[Getting ready for changes: Communication on readiness at the end of the transition period between the European Union and the United Kingdom](#)", which was published in July 2020, the Commission set out that it would not make an equivalence decision in the short to medium term in respect of the following equivalence powers:

- Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts (Statutory Audit); Art. 45(6) - Equivalence to the international auditing standards of the standards and requirements in the third country
- Regulation (EU) N° 600/2014 on markets in financial instruments (MIFIR); Art. 33(2) - Derivatives: trade execution and clearing obligations; Art. 38(3) - Access for third-country trading venues and CCPs; Art. 47(1) - Investment firms providing investment services to EU professional clients and eligible counterparties
- Directive 2014/65 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (MiFID 2 – recast); Art. 25(4)(a) - Regulated markets for the purposes of easier distribution in the EU of certain financial instruments
- Regulation (EU) No 596/2014 on insider dealing and market manipulation (MAR Market Abuse Regulation); Art. 6(6) - Exemption for climate policy activities
- Regulation (EU) No 236/2012 on short selling and certain aspects of Credit Default Swaps (SSR); Art. 17(2) - Exemption for market making activities
- Regulation (EU)2017/1129 of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC; Art. 29(3) - Prospectus rules

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<b>European Market Infrastructure Regulation (Regulation (EU) No 648/2012)</b>					
<p><b>Article 25(6)</b> Allows for third-country CCPs to access EU markets where there has been an equivalence decision. Such a decision requires that:</p> <ul style="list-style-type: none"> <li>i. the legal and supervisory arrangements of the third country ensure that CCPs are subject to requirements equivalent to those set out in Title IV EMIR;</li> <li>ii. CCPs are subject to ongoing and effective supervision and enforcement;</li> <li>iii. the legal framework of the third country provides for an effective equivalent system for the recognition of CCPs authorised under third-country legal regimes.</li> </ul>		<p><b>Article 25(6)</b> Provides that, subject to entry into co-operation arrangements with the relevant NCAs and making CCP-specific recognition determinations, EU CCPs will be able to continue to provide services in the UK.</p>	  (30 June 2022)	<p><b>Article 25(6)</b> In September 2020, ESMA and BoE agreed a <a href="#">memorandum of understanding</a> setting out the arrangements for co-operation on the monitoring and supervision of CCPs established in the UK.</p>	<p>Link to detailed placemat</p>
<b>Capital Requirements Regulation (Regulation (EU) No. 575/2013)</b>					
<p><b>Article 107(4)</b> Exposures to third-country investment firms, credit institutions, clearing houses and exchanges can be treated in the same way as exposures to a home country institution; <i>provided</i> that the third country applies prudential and supervisory requirements to that entity that are at least equivalent.</p> <p><b>Article 114(7)</b> Where equivalence is granted, a lower risk weight can be applied to exposures to third-country governments and central banks.</p> <p><b>Article 115(4)</b> Where equivalence is granted and the third country treats exposures to regional governments/local authorities in the same way as exposures to central government, then a lower risk weight can be applied to such exposures to third-country regional governments/ local authorities.</p> <p><b>Article 116(5)</b> Where equivalence is granted and the third country treats exposures to public sector entities in the same way as exposures to central government, then a lower risk weight can be applied to such exposures to third-country public sector entities.</p> <p><b>Article 132(3)</b> An equivalence decision in respect of third-country CIU's may be adopted, <i>provided</i> the third country applies supervisory and regulatory arrangements that are at least equivalent to the EU regime and where there is co-operation between the supervisory authorities. Where an equivalence decision has been adopted, exposures to third-country CIUs can benefit from a lower risk weight.</p> <p><b>Article 142(2)</b> An equivalence determination can be made where a third country applies supervisory and regulatory arrangements that are at least equivalent to the EU regime. If such an equivalence determination has been made, a third-country financial sector entity may meet the definition of large financial sector entity for the purposes of the Internal Ratings Based Approach Chapter of the CRR.</p> <p><b>Article 391</b> A private or public undertaking, including its branches, established in a third country can be considered an "institution" for large exposures purposes; <i>provided</i> the third country applies prudential supervisory and regulatory requirements at least equivalent to those applied in the EU.</p>		<p>Determines that each EEA State (i) applies prudential, supervisory and regulatory requirements equivalent to those applied in the UK, for the purposes of Article 107(3) and 391 of the Capital Requirements Regulation as it will form part of UK law at the end of the transition period (CRR); and (ii) applies supervisory and regulatory arrangements equivalent to those applied in the UK, for the purposes of Articles 114(7), 115(4), 116(5), 132(3) and 142(2) of CRR.</p> <p>For UK firms, equivalence ensures they will not be subject to increased capital requirements as a result of their EEA exposures.</p>			

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<b>Credit Rating Agencies Regulation (Regulation (EC) No. 1060/2009)</b>					
<p><b>Article 5(6)</b> Third-country legal and supervisory frameworks may be considered equivalent to the CRA Regulation; <i>provided</i> it fulfils the following conditions:</p> <ul style="list-style-type: none"> <li>i. CRAs in the third country must be subject to authorisation or registration and are subject to effective, ongoing supervision and enforcement;</li> <li>ii. CRAs in the third country must be subject to legally binding rules that are equivalent to certain core requirements set out in the CRA Regulation;</li> <li>iii. The regulatory regime in the third country prevents interference by the supervisory authorities and other public authorities of that third country with the content of credit ratings and methodologies.</li> </ul>		<p>Determines that the legal and supervisory framework of each EEA State ensures that credit rating agencies authorised or registered in each EEA State:</p> <ul style="list-style-type: none"> <li>i. comply with legally binding requirements which are equivalent to the requirements resulting from CRAR; and</li> <li>ii. are subject to effective supervision and enforcement in each such EEA State.</li> </ul> <p>This means non-systemic credit rating agencies authorised or registered in the EEA can apply to be certified in the UK.</p>			
<b>Benchmarks Regulation (Regulation (EU) 2016/1011)</b>					
<p><b>Article 30</b> Allows for the adoption of implementing decisions stating that the legal and supervisory framework of a third country with respect to specific administrators or specific benchmarks or families of benchmarks are equivalent to the requirements under the Benchmarks Regulation.</p>		<p>Determines that benchmark administrators in each EEA State comply with legal requirements equivalent to the UK Benchmarks Regulation and are appropriately supervised in the relevant EEA State. This equivalence decision acts as a mechanism to enable such administrators to be added to the FCA's benchmarks register, and to enable them to provide benchmarks to supervised entities in the UK.</p> <p><b>Note:</b> The Financial Services Bill 2021, which recently received Royal Assent, extends the transitional period for all overseas benchmarks from 31 December 2022 to 31 December 2025. During the transitional period for third-country benchmarks, UK supervised entities are permitted to use all third-country benchmarks.</p>			
<b>Market Abuse Regulation (Regulation (EU) No 596/2014)</b>					
<p><b>Article 6(5)</b> Allows equivalence decisions to be adopted to extend the exemption referred to in paragraph 1 of Article 6 (which carves out transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy by certain public bodies and central banks) to certain public bodies and central banks of third countries.</p>		<p>Decisions have been adopted to exempt several EEA public bodies that include, but are not limited to:</p> <ul style="list-style-type: none"> <li>i. Member States</li> <li>ii. ECB</li> <li>iii. the central bank of Member States</li> <li>iv. the central bank of Iceland or of Norway</li> <li>v. the Ministry of Finance and Economic Affairs of Iceland</li> <li>vi. the Ministry of Finance of Norway</li> <li>vii. the Ministry of General Government Affairs and Finance of Liechtenstein</li> </ul>		<p>The European Commission adopted Delegated Regulation 2019/461 granting an exemption to the Bank of England and the UK Debt Management Office from the scope of MAR.</p>	

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<b>MiFIR (Regulation (EU) No 600/2014 on markets in financial instruments)</b>					
<p><b>Article 1(9)</b> Allows for equivalence decisions to be adopted so that the Regulations do not apply in respect of transactions where the counterparty is a third-country central bank.</p>		<p><b>Article 1(9)</b> The exemption for the European System of Central Banks is included in the retained Regulation. The Markets in Financial Instruments Exemption Directions 2019 provides for an exemption in respect of the central bank of Norway and the central bank of Iceland.</p>		<p><b>Article 1(9)</b> The European Commission amended the list of exempted central banks of third countries to include the Bank of England under Commission Delegated Regulation (EU) 2019/462.</p>	
<b>Prospectus Regulation Delegated Act (2019/980) (and Regulation 1569/2007)</b>					
<p><b>Article 23(a)</b> Allows for equivalence determinations in respect of the presentation of historical financial information in accordance with certain third-country accounting standards.</p>		<p>The UK recognises EU-endorsed IFRS as equivalent to UK-endorsed IFRS. The equivalence decision, however, does not extend to EEA national GAAPs.</p>			
<b>Solvency II Directive (2009/138/EC)</b>					
<p><b>Article 172</b> Allows for the delegated acts setting out that third-country solvency regimes that apply to reinsurance activities of undertakings with the head office in that third country are equivalent. Where there has been an equivalence decision, reinsurance contracts purchased from equivalent third-country reinsurers can be treated in the same manner as contracts from domestic reinsurers.</p> <p><b>Article 227</b> Allows insurance groups with entities in third countries that have been deemed equivalent to take into account the local rules for capital requirements and own funds in respect of that entity when making group solvency calculations.</p> <p><b>Article 260</b> Allows for recognition of the equivalence of group supervision exercised by a third-country. Where equivalence is granted, reliance on third-country group supervision by equivalent third-country supervisors for third-country groups with EEA entities is permitted.</p>		<p>The Solvency 2 Regulation Equivalence Directions 2020 determine that:</p> <ol style="list-style-type: none"> <li>i. the solvency regime of each EEA State that applies to certain reinsurance activities is equivalent to that laid down in the relevant UK law;</li> <li>ii. the solo prudential regime of each EEA State is equivalent to that laid down in the relevant UK law; and</li> <li>iii. the groups prudential regime of each EEA State is equivalent to that laid down in the relevant UK law.</li> </ol>			
<b>Transparency Directive (2004/109/EC)</b>					
<p><b>Article 23(4)</b> Allows for the laws of third countries to be deemed equivalent to the requirements of IFRS. Where third countries are deemed equivalent and the registered office of a company is in a country outside the EU, the competent authority of the relevant home member state can exempt an issuer from complying with the requirements set out in Articles 4 and 5.</p>		<p>In November 2018, the UK government made a commitment that it would allow overseas issuers with securities admitted to trading on a UK regulated market, or overseas issuers making an offer of securities in the UK, to continue to use EU-adopted IFRS when preparing their consolidated financial accounts for future accounting years. This commitment was formalised in April 2019 in The Prospectus Directive and Transparency Directive Equivalence Directions 2019, which determined that the EU-adopted International Financial Reporting Standards are equivalent to UK accounting standards and can continue to be used to prepare financial statements for requirements under the Transparency Directive.</p>			

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<b>Short Selling Regulation (Regulation (EU) No 236/2012)</b>					
<p><b>Article 17</b> Allows for the adoption of a decision that the legal and supervisory framework of a third-country market is deemed equivalent.</p>	✓	<p>The Short Selling Regulation Equivalence Directions 2020 determine that EEA States markets are equivalent, allowing EEA market makers to benefit from the exemption in Article 17 of the UK Short Selling Regulation. The exemption disapplies certain short selling restrictions and reporting requirements, <i>provided</i> that certain regulatory requirements are met.</p>	✗		
<b>SFTR (Regulation (EU) No 2015/2365)</b>					
<p><b>Article 2(4)</b> Allows for the adoption of delegated acts to amend the list of central banks and public debt management bodies set out in Article 2(2). The entities listed in Article 2(2) are exempt from the reporting and transparency requirements on counterparties to a structured finance transaction set out in Articles 4 and 15 SFTR.</p>	✓ ✓	<p>The Transparency of Securities Financing Transactions and of Reuse Exemption Directions 2019 provides for an exemption from the requirements set out in Articles 4 and 15 of SFTR to the European Central Bank; the central bank of a Member State; Member State bodies that perform similar functions to members of the European System of Central Banks; or a body in a Member State involved in the management of the public debt.</p> <p>The Transparency of Securities Financing Transactions and of Reuse Exemption (No.2) Directions 2019 extend the exemption to the central banks of Iceland and Norway, a body in Iceland, Norway or Liechtenstein that performs similar functions to members of the European System of Central Banks; or a body in Iceland, Norway or Liechtenstein responsible for the management of the public debt.</p>	✓	<p>On 30 January 2019, the European Commission adopted Commission Delegated Regulation (EU) 2019/463, which amended the list of exempt entities to include the central bank and other bodies performing similar functions and other public bodies charged with, or intervening in, the management of the public debt in the United Kingdom of Great Britain and Northern Ireland.</p>	
<b>Prospectus Regulation (Regulation (EU) 2017/1129)</b>					
<p><b>Article 29(3)</b> The Commission may adopt an implementing decision allowing for prospectuses drawn up under the laws of a third country to be approved by the competent authority of the home Member State for use in connection with an offer to the public or admission to trading on an EU regulated market.</p>	✓	<p>Equivalence has been granted to EEA States by way of the Prospectus Regulation and Transparency Directive Directions 2019.</p>	✗	<p>In the publication <a href="#">“Getting ready for changes: Communication on readiness at the end of the transition period between the European Union and the United Kingdom”</a> the Commission set out that it would not make an equivalence decision in the short to medium term.</p>	
<b>Statutory Audit Directive (Directive 2006/43/EC)</b>					
<p><b>Article 45(6)</b> Article 45 provides for the regulation of auditors of companies from outside the EEA, where those companies issue securities that are admitted to trading on the regulated market of an EEA State. Article 45(6) allows for the Commission to assess and make an equivalence determination in relation to third-country standards and requirements of auditors.</p>	✓	<p>The Statutory Auditors and Third Country Auditors (Amendment) (EU Exit) (No. 2) Regulations 2020 grant audit equivalence to the EEA States and approve as adequate their audit competent authorities.</p>	✗	<p>In the publication <a href="#">“Getting ready for changes: Communication on readiness at the end of the transition period between the European Union and the United Kingdom”</a> the Commission set out that it would not make an equivalence decision in the short to medium term.</p>	