

UK grants EU equivalence in a number of areas

AT A GLANCE

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What's new?

- In a statement to the House of Commons on 9 November 2020, Chancellor Rishi Sunak announced that the UK would be [granting the EU equivalence in a number of areas](#) on a unilateral basis.
- HM Treasury (HMT) also published its [overarching approach to equivalence](#), and announced plans to launch a call for evidence on the UK's regime for overseas firms. Through this, it aims to provide clarity to trading partners about how the UK intends to use the overseas regime, with a focus on openness, transparency and predictability.

What does this mean?

- In the political declaration on future relations, the EU and UK committed to undertaking equivalence determinations by June 2020. However, other than granting the UK temporary equivalence for CCPs, the EU has not yet made any equivalence determinations on the UK.
- As part of the UK's onshored version of the EU's regulatory framework, HMT has the powers to make equivalence determinations in a range of areas of financial regulation. HMT has announced the areas in which it will grant the EU equivalence from 1 January 2021, but has not ruled out making further determinations.

- HMT has granted the EU equivalence in the following areas:

EMIR - the UK has granted EU CCPs equivalence, meaning UK firms will be able to continue clearing through them. EU CCPs may, however, also continue to take advantage of the Temporary Recognition Regime (TRR) for CCPs. UK firms will be able to apply for the margining and/or clearing exemption for intragroup transactions where their intragroup counterparty is located in the EEA. UK firms will also be able to consider EEA trading venues as regulated markets under UK EMIR, meaning they will be classed as exchange traded derivatives under UK EMIR.

CRR - HMT has granted the EU equivalence in a number of areas of CRR, meaning UK firms will continue to be able to treat exposures to EU CRR firms, governments and collective investment undertakings in a preferential way. The EU has also been deemed equivalent for the purposes of the large exposures regime.

Solvency II - HMT has undertaken the three equivalence determinations under Solvency II, covering both reinsurance and group capital treatment.

CSDR - the UK will deem the EU equivalent for the purposes of UK CSDR, allowing EU CSDs to apply for recognition by the Bank of England.

CRAs - EEA credit rating agencies registered with ESMA and whose credit rating activities are not of systemic importance to the UK may apply for certification with the FCA. UK firms will be able to use credit ratings for regulatory purposes issued by an EEA CRA if it is FCA-certified and has no presence or affiliation in the UK.

Benchmarks Regulation - EEA benchmark administrators will be able to access UK markets, and UK-supervised entities can continue to use their benchmarks on that basis.

Short Selling Regulation - EEA firms which have not previously submitted a notification for a market maker exemption under UK SSR can now do so without needing to be a member of a UK trading venue, and can submit a notification to the FCA based on being a member of an EEA trading venue.

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- HMT has not chosen to grant the EU equivalence in other areas such as for EU investment firms under MiFID, perhaps because the EU has ruled out granting the UK equivalence in this area in the short to medium term. However, HMT has not ruled out making further determinations where it deems them in the UK's interests and says it is open to further dialogue with the EU on the matter.
- HMT has also confirmed that it will replicate the majority of equivalence determinations made by the EU on third countries. The exception to this is that the UK will undertake its own equivalence assessment for third country CCPs. Until these are undertaken third country CCPs can take advantage of the TRR.
- HMT has also published a guidance document setting out the UK's approach to equivalence with overseas jurisdictions. HMT states it will apply a technical outcomes-based approach that prioritises stability, openness and transparency.

What do firms need to do?

- In a number of areas firms will need to seek approval or recognition from the UK regulators to be able to take advantage of HMT's determinations. For example, those firms wishing to gain or retain intra-group exemptions under EMIR are required to apply to the FCA. There are similar requirements in a number of areas of equivalence, and as the end of the transitional period is approaching firms should take action quickly if they wish to utilise the equivalence determinations.
- The announcements from HMT are welcome and will help firms avoid certain additional costs from post-Brexit operating models, including capital requirements in some areas. Firms should factor these determinations into their Brexit plans.
- But firms should note that, while there remains the possibility that the EU will choose to, at this stage it has not replicated the equivalence determinations made by the UK. This means that firms cannot plan on the basis of mutual equivalence in the areas HMT has granted the EU equivalence. This reduces the value of some of these determinations, such as intra-group exemptions under EMIR.

Next steps

The equivalence determinations will take effect once the transitional period ends on 31 December 2020. Firms should prioritise submitting applications or notifications to UK regulators where these are needed to take advantage of these determinations.

