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Brexit/financial markets - EU Commission signals interrupted market access for UK after 2020

Last week the European Commission (EC) adopted a communication on upcoming changes for relevant sectors at the end of the Brexit transition period on 31 December 2020.

The communication can be found [here](#).

The communication includes a specific chapter on financial services (page 12 onwards), which highlights very clearly expectations for minimum market access for financial services after the end of the transition period.

As part of the Withdrawal Agreement and the political declaration on the future relationship with which the UK formally left the EU (politically, but not economically) at the end of January 2020, both sides had committed to conduct equivalence assessments in financial services by the end of June.

In recent weeks, however, **the prospects of broad equivalence for the UK across the roughly 40 relevant market access provisions in EU legislation has been complicated by three factors:**

- A clear statement from the UK government of its intent to diverge from the EU's regulatory framework on financial services – by signalling for example already the intent to not apply aspects of the Central Securities Depository Regulation (CSDR) and the Securities Financing Transaction Regulation (SFTR).
- The UK-Swiss agreement on mutual access for financial services in which the UK clearly signalled an intent to adjust its rulebook – as a matter of sovereignty – once it has fully left the EU.
- A lack of engagement by the UK in the process used by the EU to determine equivalence. As the communication points out, the UK failed to submit the requested information in over 20 areas of possible equivalence that the EU had requested in order to make positive equivalence assessments by the end of 2020.

Additional complications

The communication also highlights that equivalence findings in critical areas such as for example access to derivatives and share trading venues is further complicated by the fact that the EU's rulebook on these aspects is currently in flux and set to further evolve in the coming months – as the EC will come forward for example with legislative revisions to the MiFID 2 framework in the coming weeks.

What to expect

Currently **broad expectations amongst policymakers are for a full reversal to third country market access restrictions for the UK** at the end of the transition period.

This means for example that there will be **no access for UK investment firms/brokers/venues/funds for the provision of services to EU clients**. Likewise, access for **EU counterparties to UK trading venues (including FX venues) will be cut off**. Venues and firms who have **established EU27 entities will of course be able to continue providing services** through such entities to EU firms and clients. For example Refinitiv's FX all platform has an MTF licence in Dublin, so FX hedging by EU firms can continue via this MTF.

As had been expected, **the EU is only committing to temporary equivalence provisions in a small subset of areas where a complete interruption of market access would have financial stability implications on the EU side.** As a result, the EU will likely grant the UK **temporary equivalence for CCPs** to enable European clients to continue clearing derivatives trades temporarily through UK clearing houses.

- Important to note in this regard that the EU's rulebook on CCP supervision has just evolved with changes to the EMIR regulation (EMIR 2.2.) that grant ESMA and the ECB additional supervisory powers over third country CCPs. Under the new rules and based on the overall levels of initial margin held in third country CCPs either denominated in Euro or held by EU participants, ESMA can classify non-EU CCPs as systemically critical. This then allows ESMA to enforce mandatory clearing relocation services by requiring the non-EU CCP to seek EMIR authorisation to provide clearing services to EU counterparties (EMIR authorisation requires establishment in the EU).

It is also important to note that the EC emphasises in the communication that it views the discussions on market access for services on the basis of equivalence as separate from the overall negotiations on the future relationship between the EU and the UK.

It is also critical to note that equivalence is a unilateral decision by the EC that – once granted – can be revoked at 30 days' notice.

Finally, equivalence decisions by the EU in financial services involve a number of conditionalities in other areas to guarantee a level playing field. This for example includes comparable rules in the target jurisdiction for AML and Anti-Tax avoidance.

Likewise, equivalence decisions by the EC in financial services are not always purely technical decisions, but can also involve political considerations – see unilateral revocation by the EU of equivalence for Swiss share trading venues under MiFID 2 last year because of an unwillingness by the Swiss government to advance the negotiations on an overall new bilateral framework agreement for EU-Swiss relations.

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