

Equivalence policy in financial services

The European Commission published on 29 July a [communication](#) setting out its equivalence policy in financial services with non-EU countries. While a Commission Communication has no legal effect, it does reflect the Commission’s thinking and policy view on a particular topic.

The Communication notes that it is now generally accepted across the EU institutions that it would be extremely difficult to implement a uniform process and assessment across all areas of equivalence in different pieces of EU law. There is also consensus on the need to better monitor the ongoing fulfilment of equivalence conditions by third countries. In the coming months, the Commission will be working with the European Supervisory Authorities (ESAs) to step up monitoring, in particular on recent changes in legislation (IFR, ESAs review, EMIR 2.2), as existing equivalence decisions to be repealed where 3rd country framework no longer delivers; as well as in relation to high-impact areas/countries.

The Commission highlights that equivalence remains a unilateral, discretionary act of the EU, in accordance with EU priorities and interests and does not “confer a right on third countries for their framework to be assessed or to receive and equivalence determination, even if those third countries are able to demonstrate that their framework fulfils the relevant criteria”. Equivalence is driven by the principles of proportionality and the assessment of risks for the EU markets. That means that the assessment of high-risk, high impact jurisdictions for the EU may be much more detailed and thorough than for low-risk, low-impact jurisdictions; and “may result in the EU expecting stronger assurances from high-impact countries that they are able to deliver the required outcome”.

I. ACTIVE PRIORITIES

Brexit	
<i>CMCE priorities: Ancillary activity test, access to UK and EU trading venues, CCPs and TRs</i>	
Latest developments & CMCE action	Next steps

Former Foreign Secretary Boris Johnson became on 24 July the UK's new Prime Minister after winning victory over Jeremy Hunt in the Conservative Party leadership race. In his acceptance speech, he said that he would "get Brexit done by 31 October".

31 October – Deadline for UK to adopt Withdrawal Agreement, subject to a further extension

MiFID II

CMCE priorities: AA exemption, position limits, reporting, physical forwards

Latest developments & CMCE action

There were no significant developments in the last 2 weeks.

CMCE action

A CMCE response to the ESMA [call for evidence](#) on position limits and position management in commodity derivatives was submitted on 5 July, and was published by ESMA on 12 July with all the [responses](#) it received to the call for evidence.

Next steps

5 August – Entry into force of ESMA [guidelines](#) on application of C6 and C7 instruments

January 2020 – Deadline for ESMA to provide input to the European Commission on MiFID II/MiFIR review report on C6 energy derivatives contracts

March 2020 – Deadline for ESMA to provide input to the European Commission on MiFID II/MiFIR review report on position limits and reporting

EMIR

CMCE priorities: reporting, risk mitigation for uncleared trades, calculation of NFC's positions

Latest developments

There were no significant developments in the last 2 weeks.

Next steps

Benchmarks

CMCE priorities: commodity benchmarks, critical benchmarks, third-country equivalence

Latest developments & CMCE action

There were no significant developments in the last 2 weeks.

CMCE action

CMCE submitted this week a response focussing on commodity benchmarks to the TEG's [call for feedback](#) on the interim report on ESG disclosure for benchmarks

The FCA has given CMCE the opportunity to provide comments on the Senior Managers and Certification Regime that will apply from 7 December 2020 to UK authorised BM administrators, prior to its formal consultation process on draft rules. Members in the benchmarks WG are consulted on whether there are views they would like to share with the FCA on the application of the SM&CR to benchmark administrators in the UK.

Next steps

September – Final TEG report on climate friendly benchmarks to be published

ESAs review & low-carbon benchmarks:

September plenaries – Plenary vote in new Parliament

21 October - Signature of Council President and EP President (earliest possible date)

Mid-November - Publication in the EU Official Journal (tentative timeline)

December - Entry into force (20 days after publication)

II. WATCHING BRIEF

IFR

CMCE priorities: commodity dealer IF regime, scope of class I, changes to MiFID III/MiFIR third-country regime

Latest developments & CMCE action

There were no significant developments in the past two weeks.

Next steps

September plenary – Plenary vote in new Parliament

21 October - Signature of Council President and EP President (earliest possible date)

Mid-November - Publication in the EU Official Journal (tentative timeline)

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MAR		
<i>CMCE priorities: Insider dealing, MM indicators</i>		
Latest developments & CMCE action		Next steps
<p>The FCA published on 1 August MarketWatch 60, its newsletter on market conduct and transaction reporting issues, in which it shares its concerns and findings about control of access to inside information. It also highlights its recent thematic review of money laundering risks in capital markets.</p> <p>CMCE action A discussion took place at the Geneva members' meeting on 28 June on market abuse enforcement trends and the recent ACER guidance on REMIT implementation and layering and spoofing in wholesale energy markets. It was concluded that it would be useful for members to have a forum in which to exchange experiences and learnings in this area. In the first instance, a CMCE members' only information sharing forum will be set up. A MAR working group could be set up in due course if the need for that emerges from these discussions.</p>		<p>31 December 2019 – Deadline for ESMA to provide technical advice to the Commission on the MAR review</p>
SFTR		
<i>CMCE priorities: reporting obligations</i>		
Latest developments & CMCE action		Next steps
<p>ESMA published on 31 July the responses to its consultation on reporting guidelines under SFTR.</p>		<p>Q4 2019 - ESMA to publish a final report on the guidelines on reporting under SFTR</p>
Other relevant developments		
<p>International role of the euro</p>	<p>There were no significant developments in the past 2 weeks.</p>	<p>Summer 2019 – European Commission to report on the results of the consultation on the international role of the euro</p>

REMIT	There were no significant developments in the past 2 weeks.	16 September 2019 – ACER public consultation on the definition of inside information closes
UK Senior Managers and Certification Regime (SM&CR)	<p>The FCA published on 26 July a policy statement on optimising the Senior Managers & Certification Regime (SM&CR), which summarises the feedback received to the consultation it held in January 2019 as well as its response to the feedback.</p> <p>The SM&CR is aimed at strengthening individual accountability in the financial services industry and was introduced for banking firms in 2016 and insurers in December 2018. It will apply to solo-regulated firms from 9 December 2019.</p>	9 December 2019 – Application of the SM&CR regime to solo-regulated firms