
Next Steps for EU-UK Cooperation in Financial Services

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Introduction

This paper highlights priorities for the future EU-UK relationship in financial services following the conclusion of the EU-UK Trade and Cooperation Agreement (TCA) and the end of the transition period.

In July 2020, AFME published a paper highlighting its priorities for the future EU-UK relationship in financial services.¹ The TCA includes limited provisions on financial services. While we had hoped that further cooperation on financial services and equivalence decisions would have been put in place before the end of the transition period, we welcome the Joint Declaration on Financial Services Regulatory Cooperation and continue to believe that it is in the interests of both sides to establish a foundation for future cooperation in financial services.

Now that the political negotiations on the TCA have concluded, it is important that the EU and UK:

- complete outstanding equivalence assessments and data adequacy decisions to provide certainty and clarity to market participants, and
- establish an effective framework for regulatory cooperation including establishing the basis for ongoing cooperation including transparency and dialogue in the equivalence process as envisaged in the Joint Declaration.

Both sides have a common interest in establishing a cooperative and stable long-term relationship for financial services. While the UK's withdrawal from the EU single market has led to increased fragmentation, EU and UK financial markets will remain closely interconnected. It is important to support open and well-functioning markets, providing investors and businesses with a stable business environment and the best possible access to international capital, investment and funding opportunities while preserving financial stability, market integrity and fair competition. This is even more crucial to support the recovery from the extremely challenging macroeconomic situation arising from the COVID-19 pandemic.

Equivalence determinations and data adequacy

We welcome the limited number of equivalence decisions that have been put in place by the EU and UK to date. These have helped to avoid some financial stability risks at the end of the transition period. However, there are a significant number of assessments which have not yet been concluded, despite previous commitments to endeavour to conclude them before the end of June 2020.

While the transition period has ended and banks have implemented their plans to continue to be able to serve their clients across Europe to the best of their abilities, further equivalence decisions remain important, for example to provide appropriate capital treatment of cross-border exposures and avoid adverse consequences for businesses and investors.

¹ <https://www.afme.eu/Portals/0/AFME%20priorities%20for%20the%20future%20EU-UK%20relationship.pdf?ver=2020-07-06-090014-670>

We welcome the temporary bridging solution under the TCA which enables continued transfers of personal data between the EU and the UK for a period to provide time for the adoption of data adequacy decisions. It is important that certainty is provided through the adoption of data adequacy decisions as soon as possible and in any event well in advance of the end of that transitional period.

Regulatory cooperation

It remains important to establish a sustainable basis for future cooperation between the EU and the UK on financial services. Both sides had already made commitments in the political declaration accompanying the Withdrawal Agreement to establish “close and structured cooperation on regulatory and supervisory matters”. We welcome the renewed commitments of the Joint Declaration and strongly support the parties’ aim of establishing a durable and stable relationship in financial services through a Memorandum of Understanding (MoU) which establishes bilateral regulatory dialogue; transparency and appropriate dialogue in the process of adoption, suspension and withdrawal of equivalence decisions; and enhanced cooperation and coordination including in international bodies as appropriate. These measures should provide as much stability, certainty and transparency as possible for financial services firms, their clients and regulators and these should form common objectives of the cooperation.

The MoU could also establish common principles to underpin regulation such as implementing international standards, upholding high standards of regulation to support financial stability and open, well-functioning markets, and minimising harmful fragmentation. It could also contain commitments to better regulation principles including public consultation on proposed material regulatory changes.

Building a framework for bilateral cooperation

As they develop the MoU, the UK and the EU should build upon examples of existing regulatory cooperation fora, taking into consideration the specificities and depth of the EU-UK bilateral relationship in financial services².

A future EU-UK forum should be designed to facilitate exchange of information, regulatory consistency, supervisory convergence and effective oversight of financial markets. It should also form the basis for cooperation on common challenges such as climate change, cybersecurity and anti-money laundering. We propose that particular areas which should be enhanced include:

- a strong bilateral regulatory dialogue comprising both formal/structured discussion and ongoing informal dialogue at working level;
- improved dialogue at early stages of policy development and implementation to identify and discuss forthcoming regulation and potential impacts on the bilateral relationship, acknowledging the autonomy of each jurisdiction;
- coordination on the development and implementation of relevant international standards, building upon the commitment in the TCA;
- dialogue regarding regulatory outcomes which are required to be met under the applicable third country regimes in the two jurisdictions;
- identifying areas of unintended fragmentation and considering ways to address them;
- aiding mutual understanding of regulatory and supervisory approaches in the respective jurisdictions;

² In a paper published in January last year AFME discussed key aspects of cooperation between the EU and key third country jurisdictions and proposed that cooperation should build upon existing fora, such as the EU-US or the EU-Japan Regulatory Forum. Available here: <https://www.afme.eu/reports/publications/details/Equivalence-and-Enhancing-International-Cooperation-in-Financial-Services>

- facilitating equivalence assessments and ongoing monitoring;
- providing for appropriate engagement with industry stakeholders and private sector input; and
- improved governance and increased transparency including publicly communicated terms of reference, schedules of meetings, agendas and outcomes, while respecting the need for confidentiality to facilitate an open discussion in the meetings.

We hope that the EU and UK consider these proposals in their discussions on the MoU.

Transparency and dialogue in the equivalence process

We strongly support the aim of the Joint Declaration to put in place arrangements between the EU and the UK that allow for transparency and appropriate dialogue in the process of adoption, suspension and withdrawal of equivalence decisions.

A key challenge raised by the European Commission in concluding its equivalence assessments to date has been the lack of certainty on the UK's future regulatory framework. Inevitably financial services regulation will continue to evolve in the EU and UK as autonomous jurisdictions. To help increase the confidence in making equivalence decisions and supporting the ongoing stability of equivalence decisions, it would be particularly helpful for both sides to establish mechanisms as part of their regulatory cooperation to keep each other informed of key regulatory developments and to develop a common understanding of how regulatory changes could affect existing and future equivalence decisions.

As part of the ongoing regulatory dialogue on equivalence, it is also important to provide appropriate transparency over the process and timing of equivalence assessments and any potential withdrawal of equivalence. The unilateral withdrawal of equivalence should remain a last resort and follow a clear procedure including dialogue with the relevant third country and affected market participants.

Conclusion

We believe that it is important for the EU and UK to complete outstanding equivalence and data adequacy assessments and establish a framework which will enable effective cooperation to take place going forward. In addition to the MoU, it will be important that in practice both parties approach the dialogue in a constructive manner to build trust and the foundation for ongoing cooperation, recognising that the EU and UK continue to have shared interests in financial services.