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EU-UK regulatory and supervisory relations in a post- Brexit world

The end of the UK's transition from the EU on 1 January 2021 marked the beginning of a new era in the relations between the EU and UK financial sectors, both for firms and for the authorities overseeing those sectors. The good news was that the transition period ended without any notable disruption. Since then, the EU and UK have turned their attention to establishing a framework for structured regulatory cooperation, which will be the foundation for a strong, balanced and fruitful future relationship.

Separate to this, the EU and UK begun the process of assessing the equivalence of each other's rules and supervisory arrangements in early 2020. On the EU's side, the Commission (with the technical assistance of ESMA and other EU bodies) undertook a comprehensive assessment of 28 areas of EU law where the most relevant equivalence provisions exist. With the end of the transition period approaching in late 2020, in the interest of mitigating potential risks to financial stability, time-limited equivalence was granted by the Commission for UK Central Counterparties (CCPs) and UK Central Securities Depositories. For all other areas, the assessment remains ongoing. Any future equivalence decisions will be unilateral and in the interest of the EU, just like the equivalence decisions adopted by the UK towards the EU in November 2020.

The EU is an open financial jurisdiction and ESMA is a strong proponent of the use of deference in financial services, as a means to reduce market fragmentation and limit cross-border divergences. Unfortunately, Brexit is by its nature a market fragmenting event and with the UK signaling its intention to diverge from EU rules, the task for the Commission on equivalence becomes more complicated. Equivalence normally works by fostering coherence between EU rules and the corresponding framework in a third country. In this case, with one jurisdiction likely to increasingly diverge from the other, it makes sense for the EU to also be forward-looking in its assessments. The EU's equivalence model, which focuses on achieving the same outcomes, remains the tool which the Commission will use to determine equivalence for the UK. It should be noted however that there are heightened level-playing field concerns and increased systemic risks due to natural and historic interconnectedness of the UK and EU economies and financial markets. The European Supervisory Authorities,

with their new equivalence monitoring powers, will assist the Commission through technical advice and monitoring of ongoing compliance by third countries with the conditions of equivalence decisions.

In addition, the EU's third-country supervision model has been enhanced in recent years. The most notable enhancement, which was first used in the context of the 2020 time-limited equivalence decision for the UK, was to the EMIR regime for third country CCPs. ESMA must now tier and recognise applicant CCPs and, depending on the tiering decisions, they may be subject to additional requirements and to ESMA's direct supervision. These additional safeguards ensure that any risk which is imported into the EU via third-country entities can be appropriately managed, in particular when it comes to third-country entities that may be systemically important in the EU.

Aside from the ongoing question of equivalence, the most important thing from ESMA's perspective is that cooperation and information sharing between EU and UK regulators remains open and constructive. In 2019 ESMA concluded two cooperation agreements with the UK Financial Conduct Authority (FCA), which have ensured that ESMA, the FCA and EU securities markets authorities can cooperate effectively on supervisory and enforcement matters, and exchange information to allow all authorities to discharge their duties regarding investor protection, orderly markets and financial stability.

Similarly, we intend to continue our cooperation with the UK at international level in the work of standard setting bodies like IOSCO.