

Guidance by the EU supervisory and resolution authorities on Brexit

This briefing gives an overview of the repercussions of the United Kingdom's withdrawal from the EU on financial services, followed by the most recent guidance from the ECB Banking Supervisor, the Single Resolution Board and the three European Supervisory Authorities: the European Banking Authority, the European Securities and Markets Authority; and the European Insurance and Occupational Pensions Authority. The work of the European Systemic Risk Board on Brexit is also highlighted.



Brexit and financial services

Following the end of the transition period, the United Kingdom's (UK) provision of financial services will be subject to the relevant third-country EU rules from 1 January 2021. EU legislation providing 'passporting' rights within the EU will therefore no longer apply to financial services providers established in UK, regardless of the current outcome of the trade related negotiations: *"a Free Trade Agreement (FTA)...would not eliminate most potential disruptions in the financial services sector, as the FTA will not address passporting rights"* ([Joint Committee of the European Supervisory Authorities](#)).

Going forward, financial services between the UK and EU will be largely determined on the basis of regulatory dialogue and equivalence decisions. [Equivalence](#) refers to a process whereby the European Commission, at its discretion, assesses and determines that a third country's regulatory, supervisory and enforcement regime is equivalent to the corresponding EU framework. As [explained](#) by Commissioner McGuinness: *"...equivalence is a process rooted in trust and the EU needs to be able to trust that the third country in question will remain on a path of convergence with the EU framework and will ensure similar outcomes."* Should UK-based firms desire to fully keep the benefit of the internal market for financial services (i.e. 'passporting' rights), they will be required to obtain an authorisation (i.e. a new legal entity established in the EU or extension of an existing licence) from EU competent authorities or fall under an equivalence decision.

The Commission is currently assessing a number of equivalence assessments, but it has indicated that some decisions may take some time.¹ Uncertainty as to whether and to which extent the UK will diverge from the current common rules is also high. It is important to note that a July 2020 Commission Communication reiterates that an equivalence decision will be *"based on a comprehensive assessment, including of the EU interest."* (see below).

¹ See Footnote 21, Commission [Communication](#) on readiness at the end of the transition period between the European Union and the United Kingdom published on 9 July 2020 for a full list of where the Commission has stated that it will not adopt an equivalence decision in the short or medium term.



Recently the Commission [adopted](#) a time-limited equivalence decision for UK central counterparties (CCPs) to mitigate financial stability risks, partly on the recommendation of the ECB Banking Supervisor (SSM), the Single Resolution Board (SRB) and the European Supervisory Authorities (ESAs) (see below).

Lack of authorisation or equivalence in other areas would require UK regulators to reach agreements with individual Member States for access to national markets. Currently, there are a number of national regimes that foresee specific rules to avoid cliff effects in case the transition period ends without an agreement.

In order to prepare market participants for the end of the transition, the Commission published a [Communication](#) on 9 July 2020 outlining the changes that will occur in the relationship between the EU and UK under any scenario, and over 100 sector-specific preparedness notices, including in the field of [banking and payment services](#) (revised on 7 July 2020) and [markets in financial instruments](#) (revised on 13 July 2020).

In addition, EU supervisory and regulatory authorities have urged financial institutions to finalise their preparations for the end of the transition period, factoring in a “no equivalence” scenario where relevant. The Joint Committee of the ESAs [advise](#) financial institutions to “...ensure that their contingency planning minimises detriment to their customers, and should provide appropriate information to their customers regarding their preparations for the end of the transition period and availability and continuation of services offered to EU-based customers.”

The Commission [considers](#) in the above referred Communication that there should be no risks to financial stability at the end of the transition period (now that the time-limited equivalence decision has been adopted). However, EU and UK financial markets remain highly interconnected, with the impact of Brexit on the financial services sector going beyond the transition to third-country rules. As [stated](#) by Commissioner McGuinness: “future evolutions of the EU legislative and supervisory framework will need to factor in the specific implications for financial stability, market integrity, investor protection and the level playing field, of having off-shore financial centre so close to the EU’s single market.”

The sections below highlight the most recent supervisory guidance on Brexit by the SSM, SRB, the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA). Where applicable, their work programme in this area for the year ahead is highlighted.

Single Supervisory Mechanism (SSM)

The question of how well banks in the EU are prepared for the fallout from Brexit continues to be high on the SSM’s supervisory agenda ever since the UK-wide referendum in June 2016 was taken. In its [supervisory priorities for 2020](#), the SSM reiterated that Brexit remains a high priority. Over time, the focus of the ECB’s activities shifted from preparatory work to the practical implementation of policy stances developed. The ECB continuously assessed banks’ plans to relocate activities from the United Kingdom to the euro area, and gave guidance for applications for banking licences. A key objective for the ECB always was to avoid that under its remit any kind of “empty shell institutions” could be established.

The ECB provides more detailed instructions about the procedures that banks have to respect when relocating to the euro area on a dedicated [webpage](#). That webpage was last modified in February 2020, to reflect the ratification of the withdrawal agreement by the UK and the EU.

In July 2020, Yves Mersch, Member of the Executive Board of the ECB and Vice-Chair of the Supervisory Board of the ECB, highlighted in a [blog post](#) that banks must prepare for the end of the transition period, and summarised the current state of banks’ preparedness for the end of the transition period. He pointed out that the ECB’s supervisory teams had discussed the relevant issues with banks well in advance, giving them sufficient time to fill gaps and progress towards their target operating models. In an [interview](#) on 24 September, Chair Enria of the the Supervisory Board stated that “We think that we have done everything possible in preparation for Brexit, as supervisors. We asked the banks to make all the necessary preparations and we think that they have moved significantly in the right direction. They are now ready to take the hit, to some extent.”

Mersch also mentioned, however, that the ECB identified three priority areas that banks have to pay particular attention to, namely (a) contingency planning in the event that funding and trading markets come under stress, (b) the soundness of risk management and governance arrangements, and (c) reducing remote booking of EU activities.

In that blog post, Mersch also noted that in some areas, banks are planning to rely on equivalence decisions by the European Commission, and judged that - while equivalence can offer limited additional possibilities in the short term - it does not constitute a sustainable basis for their business models, as the conditions for equivalence decisions may fall away and the decisions may be withdrawn. For Mersch, the ECB's expectations are very clear: all activities related to European products or European customers should, as a general principle, be managed and controlled from entities located in the EU.

Single Resolution Board (SRB)

The SRB has provided guidance for banks under its remit to prepare for the UK's withdrawal from the EU, most notably with its [Brexit expectations](#) document, published in November 2018. More recently, the SRB published two policy documents which outline measures that apply to third countries, including the UK post-transition. Firstly, in its [expectations for banks](#) in the resolution planning phase, published in March 2020, the SRB outlines certain principles relating to governance and loss absorbing and recapitalisation capacity applicable for third countries. Secondly, the SRB published its final [Minimum Requirements for Own Funds and Eligible Liabilities \(MREL\) Policy under the Banking Package](#) in May 2020, which, *inter alia*, includes a section dealing with the eligibility of liabilities governed by third country law.

Moreover, in its 2020 [work programme](#), the SRB identified the relocation of banks post-Brexit and responding to other challenges as critical developments to monitor. In a July 2020 [blog post](#), Chair König urged banks to finalise its preparations for the end of the transition period and reiterated that the 2020 resolution plans "will take the impact of Brexit and the end of the transition period into account while continuing to make progress towards all banks being resolvable." Earlier on, in a breakfast speech of 26 March 2019, Mrs König reassured that "Preparations have been made, so the situation appears manageable. There may be volatility but given the level of preparedness there should be no imminent risk to financial stability."

European Supervisory Authorities (ESAs)

The ESAs have played an important role in preparing financial service participants for the transition by issuing a number of opinions and recommendations; assessing sources of financial stability risks in the event of no equivalence decisions; and establishing cooperation agreements with UK supervisory authorities. Going forward, ESAs will also play a role monitoring developments in the UK that threaten regulatory and supervisory convergence in the event that equivalence is granted in a certain area². As outlined in the 2021 [work programme](#) of the Joint Committee of ESAs: "it is vital that the EU continues to address any legacy issues in order to ensure investor protection, EU market integrity and financial stability. The Joint Committee will continue to serve as a forum to discuss and coordinate any cross-sectoral issue arising from this."

European Banking Authority (EBA)

The EBA published its third Brexit-related [opinion](#), on deposit protection, in March 2020.³ The opinion focuses on coverage of branches of UK credit institutions located in the EU and equivalence assessments of the protection granted to such branches; coverage of EEA institutions in the UK; transfer of depositor guarantee schemes; and the provision of adequate information to such depositors.

² See [Regulation \(EU\) 2019/2175](#)

³ Previous Brexit-related opinions were focused on [issues related to the UK withdrawal from the EU regarding the application of the EU prudential framework](#) (October 2017) and on [preparations for the withdrawal of the UK from the EU](#) (June 2018).

On 29 July 2020, the EBA [called](#) on financial institutions to finalise the execution of their contingency plans and their establishment in the EU in accordance with the plans agreed with their respective competent authorities, as well as to ensure that customers are adequately informed of any relevant Brexit-related changes. This echoes the [communication](#) published by the EBA in October 2019. Regarding the establishment of financial institutions in the EU as required for authorisation, the EBA warns that “*financial institutions should not outsource activities to such an extent that they operate as ‘empty shell’ companies, but are expected to increase their EU footprint, including their local resources, proportionally to the amount of business carried out in and from the EU.*” The EBA places particular emphasis on the provision of payment services, reminding UK-authorized payment and electronic money institutions that authorisation is required should they wish to provide services to EU customers after the end of the transition period.

In its 2020 revised [work programme](#), the EBA identified preparing for and mitigating potential risks arising from Brexit as one of their core activities. As ongoing work, the EBA committed itself to (i) work on risk analysis and mitigation; (ii) assess contingency planning of financial institutions and consumer issues; (iii) continue convergence work on authorisation and supervisory standards across Member States; (iv) support the exchange of information and cooperation amongst relevant stakeholders; (v) and assist the Commission in assessing and monitoring of the equivalence of the UK regulatory framework. Going forward, in its [work programme for 2021](#), the EBA will maintain a focus on market access, authorisation and equivalence (see Table 1) However, unlike in its 2020 work programme, ensuring effective cooperation with third countries is not a horizontal priority.

Table 1. EBA Work Programme 2021

Activity 16: Market access, authorisation and equivalence	
Cooperation agreements with third country authorities on supervision, resolution, conduct and AML/CFT	Ongoing
Monitoring of regulatory perimeter and new financial activities across the EU	Ongoing
Report on the treatment of third country branches (Article 21b of the CRD)	Q2
Review of regulatory technical standards on authorisation	Q3
EBA opinion on the equivalence of regulatory and supervisory frameworks of third countries	Q4
Reports on the assessment of the equivalence of regulatory and supervisory frameworks and ongoing monitoring of equivalence decisions, including the submission of an annual confidential report summarising the findings of its monitoring activities on equivalent third countries	Q4
Guidelines on the equivalence of third country authorities’ confidentiality requirements (supervision and resolution)	Q4
Guidelines on common assessment methodology for the authorisation of institutions (Article 8 of the CRD)	Q4

Source: [EBA](#).

In addition, all of the previously issued communications and opinions published by the EBA aimed at preparing financial institutions for Brexit remain valid until the end of the transition period (see [here](#)).

European Securities and Markets Authority (ESMA)

In the context of the UK’s withdrawal from the EU, ESMA has been focusing on assisting firms and regulators in ensuring their preparedness, notably through public communications and measures aimed at providing clarity on the requirements and implications for market participants. In their updated 2020 [work programme](#), ESMA committed to “*continue to prioritise responding to the risks and challenges posed by Brexit*”. As the withdrawal date approaches, ESMA has been preparing for different scenarios related to the

UK's withdrawal (including if the UK would have to leave the EU without a deal) and focusing its' work on four different workstreams:

- Clearing and settlement - access to UK central counterparties (CCPs) and to the UK central securities depository (CSD);
- Credit rating agencies (CRAs) and trade repositories (TRs);
- Cooperation agreements;
- Supervisory convergence.

In its 2021 [work programme](#), ESMA intends to monitor the impact of the end of the UK's transition period on markets and minimise potential disruptions to TRs; conduct a peer review on National Competent Authorities' handling of Brexit-related relocation to the EU27; and continue to engage with institutional and market stakeholders on relevant issues.

On 21 September 2020, the European Commission's [adopted](#) a time-limited decision on an equivalence of UK CCPs. This decision will be valid for 18 months during which the EU financial market participants "is strongly encouraged to work together in developing strategies that will reduce their reliance on UK CCPs that are systemically important for the Union ... [this] temporary equivalence decision aims to protect financial stability in the EU and give market participants the time needed to reduce their exposure to UK CCPs".

On 28 September ESMA [recognised](#) three UK CCPs as third-country CCPs eligible to provide their services in the EU, after the end of the transition period following the withdrawal of the UK from the EU on 31 December 2020. In the same vein, on 1 March 2019, ESMA has [recognised](#) two UK based CSDs as a third country CSDs eligible to provide its services in the EU. Both of these recognition decisions would take effect only in the case of a no-deal Brexit on the 1 January 2021.

In a no-deal Brexit scenario, CRAs and TRs established in the UK will also lose their EU registration as of the withdrawal date. Upon request by ESMA, majority of the UK based CRAs and TRs have implemented contingency plans in preparation of a no-deal Brexit scenario. Currently, two CRAs and two TRs registered themselves in one of the EU Member States.

On 1 February 2019, ESMA and EU national securities regulators have [agreed](#) a Memoranda of Understanding (MoU) with the UK's Financial Conduct Authority. The MoU addresses the exchange of information in relation to the supervision of CRAs and TRs; as well as lays down supervisory cooperation, enforcement and information exchange between individual regulators and the Financial Conduct Authority.

In order to enhance understanding of key issues arising from relocation of firms (notably investment firms, asset managers and trading venues) in the scope of the UK's withdrawal from the EU, in June 2017 ESMA has set up a Supervisory Coordination Network that held discussions of concrete real-life cases between members, proactively promoting supervisory convergence among NCAs. Through information exchange, sharing of good practices and discussions, this Network (which [concluded](#) its' work in May 2020) has discussed more than 240 cases and nearly 150 follow-ups to these cases.

Also, aiming at increasing regulatory and supervisory convergence, on 28 September ESMA had [published](#) draft regulatory and implementing technical standards on the provision of investment services and activities in the EU by third-country firms under MiFIR and MiFID II.

European Insurance and Occupational Pensions Authority (EIOPA)

On 31 October 2019, EIOPA [published](#) the responses from NCAs on their compliance with the "Recommendations for the insurance sector in light of the United Kingdom withdrawing from the European Union" (published in February 2020). These recommendations aimed to foster supervisory convergence and consistency in the treatment of UK insurance undertakings and distributors across Member States. They cover areas such as orderly run-off, portfolio transfer, change in the habitual residence or establishment of the policyholder, authorisation of third country branches, lapse of authorisation, cooperation between national competent authorities, communication to policyholders and beneficiaries, and distribution

activities. Based on the responses by NCAs, EIOPA [concluded](#) that “all national competent authorities comply or intend to comply with almost all recommendations.”

In its 2020 [work programme](#), EIOPA identified Brexit as a risk factor, and stated that it ready to undertake any regulatory work in regards to the UK’s withdrawal from the EU. Looking ahead to its 2021 [work programme](#), EIOPA remains committed to ensuring regulatory harmonisation and supervisory convergence, and maintaining good relationships with third-country authorities, including those in the UK. EIOPA has also indicated that it will continue to provide input into the European Commission’s equivalence decisions. It also expects to conduct on-site visits, and deliver on individual third country reports and broader annual assessments fom 2021 onwards.

For more information on EIOPA’s guidance related to Brexit, see [here](#).

Box 1. European Systemic Risk Board work in preparations for Brexit

Before the break out of the world wide Covid-19 pandemic, the European Systemic Risk Board (ESRB) has [highlighted](#) the risk of a repricing in financial markets due to increased uncertainty in (geo)political and policy developments (Brexit, trade tensions, etc.) as a high risk to the financial system in the EU.

In order to assess and quantify Brexit-related financial stability risks in the derivatives markets, the ESRB [developed](#) a daily EU derivatives market monitor based on transaction-level data under the reporting framework established by the European Market Infrastructure Regulation:

“The ESRB and its member institutions have pioneered the analysis of these data: together with the ECB, ESMA and all its member institutions, the ESRB has developed the technological infrastructure to analyse and monitor on a daily basis systemic risk developments in the derivatives market. ESRB member institutions were provided with daily analyses and a regular dissemination of a set of aggregates (shared in anonymised and confidential format), which reflected a series of macro developments, including those between the UK and the EU. Such analysis was carried out across an extensive set of dimensions (including, among others, the type of underlying of the derivative contracts, the currency of denomination, the maturity and other relevant dimensions) for both exchange-traded and over-the-counter derivatives. The monitor covered several aspects of the complex derivatives market, including cleared and uncleared transactions, client clearing, collateral exchanged through initial and variation margins and post-trade activities such as compression.”

Such granular information and higher frequency data has enabled authorities to engage in a continuous dialogue about financial stability issues, and facilitated decision-making across the ESRB community on the topics of systemic relevance.

Disclaimer and copyright. The opinions expressed in this document are the sole responsibility of the authors and do not necessarily represent the official position of the European Parliament. Reproduction and translation for non-commercial purposes are authorised, provided the source is acknowledged and the European Parliament is given prior notice and sent a copy. © European Union, 2020.

Contact: egov@ep.europa.eu

This document is available on the internet at: www.europarl.europa.eu/supporting-analyses