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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT, THE COUNCIL, THE EUROPEAN CENTRAL BANK, THE  
EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE  
OF THE REGIONS**

**Equivalence in the area of financial services**

## **Equivalence in the area of financial services**

### **1. Introduction**

The EU has consistently pursued the objective of strengthening the internal market in financial services by putting in place a single rulebook and a common supervisory architecture for its Member States. In recent years, the EU has achieved tangible progress in this respect by establishing the Banking Union and laying the foundations for the Capital Markets Union.

In keeping with the global nature of financial markets, the EU considers how its domestic framework for financial services covers cross-border activities and exposures to risks in third countries and how that framework interacts with other regulatory regimes. At the same time, the EU monitors and, where necessary, dynamically responds to external regulatory and supervisory developments (meaning improvement or deterioration of bilateral cooperation/mutual trust) that may impact the broader regulatory environment for market participants active in the EU. In doing that, the EU strives to maintain a resilient and effective prudential framework that addresses risks related to cross-border activity insofar as they impact EU financial stability, market integrity, investor protection and the level-playing field in the internal market. At the very least, this means aiming to avoid conflicting requirements and reducing opportunities for regulatory arbitrage.

The EU is not the only regulatory area facing this challenge. The EU financial services law as well as financial regulatory systems in third countries draw from international standards, developed jointly in international bodies like the Financial Stability Board, the Basel Committee on banking supervision, the International Association of Insurance Supervisors and the International Organisation of Securities Commissions, under the political direction of the G20. International standards help all jurisdictions ensure that similar risks can be addressed in a similar way and that races to the bottom - prone to creating financial instability and contagion risks in global markets - are avoided. The overall G20 framework is also underpinned by a network of bilateral cooperation arrangements, both at regulatory and supervisory level. Cooperation contributes to building mutual understanding and trust among jurisdictions, which is a pre-requisite for managing cross-border risks. The EU commitment to global regulatory convergence around international standards is unwavering. At the same time, these global frameworks have a general standard-setting purpose and are not always fit for addressing concrete questions emerging in a specific bilateral context.

Jurisdictions across the globe use different methods to manage internally the various risks and challenges deriving from cross-border activities. These methods range from applying the domestic regime in cross-border situations, to deferring to third-country rules and supervisory outcomes, to fully exempting certain cross-border activities.

The main EU approach, referred to as equivalence, involves a positive assessment of the third-country framework, which enables reliance on third-country rules and the work of the third-country supervisor.

In practice, the EU may determine that the regulatory or supervisory regime of a third country is equivalent to the corresponding EU regime and this allows authorities in the EU to rely on supervised entities' compliance with equivalent rules in such third country. This approach involves decision-making processes by the Commission, preceded by an assessment which follows criteria established in EU law. From the outset, it also involves dialogue with the authorities of the third countries under assessment.

This approach reconciles the effectiveness of the EU single rulebook and supervision and enforcement by EU authorities with offering adequate opportunities for cross-border activity in financial services and markets. Indeed, equivalence decisions can contribute to foster cross-border business.

Today, EU financial services law<sup>1</sup> includes around 40 provisions<sup>2</sup> allowing the Commission to adopt equivalence decisions. On this basis, until today, the Commission has taken over 280 equivalence decisions for more than 30 countries, across various parts of the financial industry.

EU equivalence has been improved in a number of legislative acts agreed recently by EU legislators and relating to the European Supervisory Authorities<sup>3</sup>, European market infrastructures<sup>4</sup> and the prudential treatment of investment firms<sup>5</sup>. These improvements have emphasised that equivalence and ensuing supervisory decisions need to be risk-sensitive, reflect closely the regulatory and supervisory regime of the third country under assessment and take into consideration the impact of the third-country activities on EU markets. These improvements also stipulate clearly that compliance with the criteria and conditions under which an equivalence decision is adopted needs to be ensured by the third country on an ongoing basis.

With these new improvements about to enter the EU rulebook, and in light of international policy developments, it is timely to take stock of the EU's overall approach to equivalence and to present some of the current challenges that this policy faces today. In February 2017,

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<sup>1</sup> 17 pieces of EU legislation contain "third-country provisions" empowering the Commission to decide on the equivalence of foreign rules and supervision for EU regulatory purposes. EU legislation has created various types of equivalence, with differences in the EU decision-making process or in the effects of a decision (e.g. "audit adequacy", "audit equivalence", etc.). Those "third-country provisions" are listed in: [https://ec.europa.eu/info/sites/info/files/overview-table-equivalence-decisions\\_en.pdf](https://ec.europa.eu/info/sites/info/files/overview-table-equivalence-decisions_en.pdf).

<sup>2</sup> Not all of those provisions have been used until now.

<sup>3</sup> COM(2018)0646. Agreement of 16 April 2019 between Parliament and Council on the proposal on European Supervisory Authorities and financial markets [2017/0230(COD)].

<sup>4</sup> COM(2017)0331. Agreement of 18 April 2019 between Parliament and Council of 18 April 2019 on the Authorisation of CCPs and recognition of third-country CCPs [2017/0136(COD)].

<sup>5</sup> COM(2017)0791. Agreement of 16 April 2019 between Parliament and Council on the Prudential supervision of investment firms (Directive) [2017/0358(COD)].

the Commission services published a Staff Working Document<sup>6</sup>, which provided a first comprehensive assessment of equivalence in financial services. Building on that technical work, this Communication sets out the Commission's current equivalence policy priorities, outlines recent legislative improvements and refers to key aspects of the assessment and the decision-making processes. Finally, it presents recent and ongoing work on equivalence assessments and monitoring.

## **2. The purpose of equivalence**

The EU is firmly committed to promoting open, fair and efficient financial markets that operate within rigorous prudential and conduct frameworks. Equivalence is one of the key instruments at the EU's disposal in furthering that goal in the external dimension of the internal market. This is because it fosters coherence and mutual compatibility between the relevant parts of the EU framework and the corresponding rules in third countries. As a result, the EU equivalence policy satisfies three objectives:

- it reconciles the need for financial stability and investor protection in the EU, on the one hand, with the benefits of maintaining an open and globally integrated EU financial market on the other;
- it is pivotal in promoting regulatory convergence around international standards;
- it is a major trigger for establishing or upgrading supervisory cooperation with the relevant third-country partners.

This general policy perspective also needs to meet the interests of the market participants who naturally focus on more immediate advantages of equivalence decisions, i.e. allowing authorities in the EU to rely on supervised entities' compliance with equivalent rules in a third country, such as:

- reducing (or even eliminating) overlaps in compliance requirements for both EU and third-country market players;
- making certain services, products and activities of third-country companies acceptable for regulatory purposes in the EU and thus facilitating their availability on the EU market;
- in some instances, enabling a coherent prudential regime to apply to EU banks and other financial institutions operating outside the EU, thus lowering the cost of EU firms' investments/exposures in third countries by facilitating capital management in particular.

In effect, equivalence decisions can bring benefits in terms of improving cross-border business conditions and creating new opportunities, thus contributing to fair and open trade between the EU and third countries. In a few cases, equivalence decisions may also increase market-access possibilities. Before embarking on equivalence assessments of third countries,

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<sup>6</sup> Commission Staff Working Document of February 2017 on EU equivalence decisions in financial services policy: an assessment. (SWD(2017) 102 final).

the Commission each time weighs these potential benefits for EU financial market participants in a specific exercise.

At the same time, the equivalence process is primarily a risk management exercise. It invariably involves managing any risks associated with the cross-border activity of market participants (i.e. impacts on EU financial stability, market integrity, investor protection and the level-playing field in the EU internal market), while exploiting the benefits of an open and globally integrated EU financial market.

It is the Commission's responsibility to ensure that – whenever a new decision to rely on third country rules or supervision is considered – the prospective benefits do not come at excessive risk (and cost) to the EU financial markets and that they can be introduced in a prudentially sound way that respects the level-playing field in the EU internal market. Ultimately, each new equivalence decision needs to provide a prudent and sustainable framework that serves as a bridge between the EU internal market rules and the third-country prudential frameworks.

While equivalence is assessed under the criteria established in EU law, the Commission also needs to consider whether equivalence decisions would be compatible with EU policy priorities in areas such as international sanctions, the fight against money laundering and terrorist financing, tax good governance on a global level or other relevant external policy priorities, in order to ensure the consistency of the EU's action on the international stage. All these factors are indicative of the amount of risk to the financial stability or the need for adequate protection of financial market participants and other persons in the EU. Taking into account those aspects is therefore important for preserving the reputation and the long-term stability of the EU financial sector.

While equivalence decisions are unilateral and discretionary acts of the EU, they bring benefits to both the EU and its third-country partners. This mutually beneficial outcome relies on equity and fairness in the treatment of EU players active in third countries and subject to local rules and supervision. In this respect, some categories of equivalence decisions are taken after due consideration of the treatment that the third country affords to the EU regulatory framework, to the supervisory work performed by EU authorities and to the local presence of EU market participants. In a number of cases, the design of the EU equivalence framework encourages exploring mutually accommodating outcomes with third countries, for example, putting in place supervisory cooperation arrangements. Going forward, the Commission will continue to consider and, where appropriate, discuss with third countries what prudential treatment they grant to EU market participants when deciding on the equivalence decisions with that third country.

### **3. Recent improvements to the design of EU equivalence regimes**

The possibilities for granting equivalence are set out in dedicated equivalence provisions included in a number of EU financial services legislative acts. Equivalence provisions are tailored to the needs of each specific act and they should be read in the light of the objectives pursued by that act, in particular its contribution to the establishment and functioning of the internal market, market integrity, investor protection and, more broadly, its contribution to

financial stability. The legal acts set out the conditions, criteria and extent to which the EU may take into account the regulatory and supervisory framework of a third country when regulating and supervising EU financial markets in situations involving a cross-border element. As a result, there are considerable differences in how the equivalence mechanisms are built and included in the EU financial services law, be it in terms of process to be followed, the content of the assessment required or the implementation of a positive equivalence finding<sup>7</sup>.

Over the past few years, the Commission has engaged in a robust dialogue with the European Parliament, the Council, and other interested stakeholders on the necessary improvements to the EU's approach to determining and maintaining equivalence.<sup>8</sup> The Commission's conclusion from those discussions and joint reflections is that it is now generally accepted that it would be extremely difficult to implement a uniform assessment and decision-making process encompassing various areas of equivalence. Policy-makers, regulators and other stakeholders now accept the need for heterogeneity in the EU approach to equivalence as long as under each specific equivalence type some common principles are respected: proportionality in the assessments, a risk-sensitive approach to determining equivalent outcomes, as well as enhanced transparency both towards the interested third country and the public at large. In addition, there is a general consensus on the need to put in place arrangements to monitor the ongoing fulfilment by the third countries of the conditions underlying any positive equivalence decision.

The Commission has already actively responded to the calls for improvements that did not require legislative action, notably in the area of public transparency, accountability and in the non-public dialogues with individual third countries. The 2017 Staff Working Document on equivalence explained in detail the process leading up to an equivalence decision and the various considerations and constraints involved. The Commission has also provided a publicly available overview of equivalence empowerments existing in EU law and the decisions taken so far. More recently, the Commission has also adapted its internal processes and it now generally submits for public consultation draft equivalence decisions that are envisaged for adoption (30-day feedback period).

Furthermore, the Commission has been working with the European Parliament and the Council on a number of legislative proposals of relevance to the EU equivalence approach. As a result, significant changes have been recently introduced to the equivalence regimes in a number of legislative amendments relating to the European Supervisory Authorities, European market infrastructures and the prudential treatment of investment firms.

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<sup>7</sup> See also the 2017 Staff Working Document on equivalence, p. 10.

<sup>8</sup> See the Report of 18 July 2018 on relationships between the EU and third countries concerning financial services regulation and supervision (2017/2253(INI)), rapporteur B. Hayes, Committee on Economic and Monetary Affairs, European Parliament.

The amendment of the European Supervisory Authorities' Regulations strengthens the role of those authorities in monitoring equivalent third countries. Each European Supervisory Authority is to perform monitoring work on equivalent third countries and submit a confidential report to the European Parliament, Council, Commission and the other two European Supervisory Authorities “summarising its findings of its monitoring activities” on an annual basis. Moreover, the European Supervisory Authorities cannot enter into administrative arrangements with third countries that appear on the list of high-risk countries from a money laundering and terrorist financing perspective.

The amendment of the European Market Infrastructure Regulation reinforces the supervisory framework for central counterparties that provide clearing services to EU firms, notably by introducing a more risk-sensitive and proportionate approach for the third-country regime. Third-country central counterparties that are, or are likely to become, systemic and relevant for financial stability in the EU will be subject to specific and proportionate requirements reflecting the degree of systemic risk involved. As a last resort, if those requirements are insufficient to mitigate the potential risks to the stability of the Union or of any of the Member States, a third-country central counterparty may be required to provide services to EU firms from an entity authorised in the EU.

The Investment Firms Regulation introduces new assessment criteria as well as additional safeguards and reporting obligations for third-country firms established in equivalent jurisdictions in the existing equivalence framework for the cross-border provision of investment services to professional clients under the Markets in Financial Instruments Regulation (MiFIR)<sup>9</sup>. Under the new equivalence regime, different categories of third-country jurisdictions are created; in particular, for jurisdictions where the scale and scope of the services provided is likely to be of systemic importance for the Union, equivalence can only be granted following a detailed and granular assessment by the Commission. In addition, the role of the European Securities and Markets Authority in monitoring the activities of such firms in the Union is enhanced.

Moreover, with respect to financial benchmarks, benchmarks administered outside the EU will be exempted until 2022 from having to be either deemed equivalent, recognised or endorsed in order to be used in the EU<sup>10</sup>. In addition, the European Securities Markets Authority will have the power to recognise third-country benchmark administrators as of 2022.

#### **4. Assessments and decision-making on equivalence**

An equivalence decision is a unilateral and discretionary act of the EU, conducted and concluded by the Commission, in accordance with the Union priorities and the interests of EU financial markets. Equivalence decisions are not prepared and taken in isolation: the

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<sup>9</sup> Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

<sup>10</sup> COM(2018)0355. Agreement of 26 March 2019 between Parliament and Council on Low carbon benchmarks and positive carbon impact benchmarks [2018/0180(COD)].

Commission as a matter of principle will always seek to establish an effective technical dialogue with the parties concerned in order to ensure the robustness and accuracy of its underlying technical assessments, involving where relevant the European Supervisory Authorities. Third-country authorities are invited to contribute to fact-finding exercises relating to the way in which their regulatory and supervisory frameworks deliver the outcomes as set out in the corresponding EU framework.

The Commission seeks to establish technical contacts with the third country concerned in order to develop its understanding of the third-country framework and later to confirm its equivalence findings. At a later point, such technical contacts may help in dealing with the potential gaps identified in its regulatory or supervisory framework in an ex-post monitoring process. In that respect, the EU's regulatory or regional dialogues already in place with a number of third countries are not only a source of information, but also an opportunity to fine-tune technical assessments for equivalence decisions, to discuss equivalence monitoring findings or a need for a review of an existing decision, if material deficiencies have been identified.

The determination of the equivalence of a third-country regime results from a rigorous case-by-case assessment of third-country rules and its supervision by the Commission. Such an assessment is driven by two main aspects: the principle of proportionality and the need to manage the risks related to the cross-border activity underpinned by equivalence.

The Commission attaches utmost importance to taking a proportionate view on the risks implied by the third-country frameworks under assessment. Examined jurisdictions may involve different risk exposures for EU financial markets, depending among other things, on the interconnectedness of the assessed market with EU financial markets and thus also the market share of the relevant third country. The focus on risks in this process implies that, as a rule, "high-impact" third countries, for which an equivalence decision is likely to be used intensively by market participants, will represent a more significant set of risks which the Commission will need to address in its assessment of the equivalence criteria and in the exercise of its discretion. If there were to be shortcomings or gaps in the equivalence assessment of such third countries, these would likely have a negative impact on financial stability or market integrity in the EU.

Under this approach, the Commission identifies risks to the EU financial system which may be arising as a result of an increased exposure to a specific third-country framework. It specifically looks at those risks when verifying third countries' compliance with a set of equivalence criteria, applying the criteria proportionally to the risks identified. The technical assessment - which may include further relevant criteria where necessary - may involve a contribution from the European Supervisory Authorities (ESAs) – that is, the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA), and the European Insurance and Occupational Pensions Authority (EIOPA) or, where relevant, other EU-level bodies such as the Committee of European Auditing Oversight Bodies (CEAOB).

The equivalence assessments of third-country frameworks look at the outcomes of third-country regulation and supervision, while taking into account the risks related to the third-



country financial system. Third-country regimes do not need to be identical to the EU framework, but they do need to ensure in full the outcomes as set out in that framework. In that respect, the risk-sensitive approach may lead the Commission to consider specific issues of third countries under assessment, for instance the fact that EU firms extensively rely on operators regulated and supervised in a third country under assessment. Proportionality in the application of the criteria may result in the EU expecting stronger assurances from high-impact countries that they are able to deliver the required outcome. These elements taken together contribute to an effective and secure equivalence framework that supports from the EU side cross-border activity in the financial markets.

As part of its discretion, the Commission may decide to formally adopt, suspend or withdraw an equivalence decision, as necessary. Depending on the circumstances, such decision can take effect after a possible transition period, applicable to the full decision or to parts of it. If withdrawn, equivalence could be restored at some subsequent time if and when all necessary conditions were met. The Commission may also grant a time-limited equivalence or set conditions or limitations to equivalence decisions. For instance, it may grant equivalence in part, or grant equivalence to the entire framework of a third country for specific covered entities, products or services or to categories thereof or to some of its competent authorities only. The Commission may decide to make use of that flexibility in particular where some aspects of a third country's equivalence assessment do not render a consistently satisfactory result, where more experience is necessary to assess how cooperation between supervisors in the EU and the third country develops, or where a new regime in the third country is expected to deliver fully on the required outcomes. In addition to assessing whether the equivalence criteria in EU financial services law are fulfilled, the Commission will take into account effective cooperation with a third-country jurisdiction across other EU policy areas as set out in section 2 above.

Third countries may express an interest in being assessed, which the Commission will duly consider. It should be noted that equivalence empowerments do not confer a right on third countries for their framework to be assessed or to receive an equivalence determination, even if those third countries are able to demonstrate that their framework fulfils the relevant criteria. Similarly, while in many cases the EU is adhering to international standards, and a third country's adherence to international standards will be an important factor, this does not mean that the Commission would automatically find that country EU equivalent in a specific area.

## **5. Equivalence decisions adopted since January 2018**

Since January 2018, the Commission has adopted equivalence decisions in the areas of the European Market Infrastructure Regulation on margin requirements (Japan)<sup>11</sup>, the Capital Requirements Regulation (Argentina)<sup>12</sup>, the Markets in Financial Instruments Regulation on

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<sup>11</sup> Commission Implementing Decision (EU) No 2019/684 of 25 April 2019, OJ L 115, 2.5.2019, p. 11–15.

<sup>12</sup> Commission Implementing Decision (EU) No 2019/536 of 29 March 2019, OJ L 92, 1.4.2019, p. 3–8.

the Derivative Trading Obligation (Singapore)<sup>13</sup>, the EU Benchmarks Regulation (Singapore and Australia)<sup>14</sup>, the European Market Infrastructure Regulation on central counterparties and the Central Securities Depositories Regulation on central securities depositories (both for the United Kingdom in case of a no-deal Brexit)<sup>15</sup>. The Commission has also consulted the public on an adequacy decision under the Statutory Audit Directive (China)<sup>16</sup>. An equivalence decision in the area of the Markets in Financial Instruments Regulation on the Shares Trading Obligation (Switzerland)<sup>17</sup> was adopted in December 2018 and expired on 30 June 2019. Finally, in the field of Credit Rating Agencies Regulation<sup>18</sup> (9 third countries<sup>19</sup>), on the one hand the Commission extended some existing decisions for certain third countries, and on the other hand for the first time it repealed existing decisions for certain third countries. Indeed, some jurisdictions could no longer meet the standards set by the EU Credit Rating Agencies Regulation after its amendment in 2013, and decided not to implement the necessary legislative adjustments given the scale of activity to be covered. The Commission directly informed the jurisdictions affected about its intention to repeal their equivalence regime and offered an opportunity to the third-country authorities concerned to revert on the matter. This illustrates how monitoring may result in reviewing decisions, including repealing such decisions where justified (See Annex for more details and the factors which prompted the adoption of such decisions).

## **6. Monitoring and reviews of equivalence**

### ***Monitoring of equivalence decisions***

A constant evolution of the regulatory and supervisory frameworks of leading financial centres and a dynamic market context imply that facts and assumptions on which some equivalence decisions have initially been taken may no longer be correct. Reliance on an outdated equivalence finding may bring new risks to the EU financial system.

Adequate equivalence monitoring needs to be assured by the Commission and the European Supervisory Authorities, acting in cooperation in accordance with their respective mandates.

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<sup>13</sup> Commission Implementing Decision (EU) No 2019/541 of 1 April 2019, OJ L 93, 2.4.2019, p. 18–24.

<sup>14</sup> Two Commission Implementing Decisions adopted together with this Communication (Commission Implementing Decision C(2019)5476 and Commission Implementing Decision C(2019)5477). Drafts were published for public feedback between 19 March 2019 and 16 April 2019.

<sup>15</sup> Commission Implementing Decision (EU) 2018/2030 of 19 December 2018, OJ L 325, 20.12.2018, p. 47–49 with amendments; Commission Implementing Decision (EU) 2018/2031 of 19 December 2018 OJ L 325, 20.12.2018, p. 50–52 with amendments.

<sup>16</sup> Draft published for public feedback between 4 June 2019 and 2 July 2019 - Ares(2019)3590761.

<sup>17</sup> Commission Implementing Decision (EU) No 2018/2047 of 20 December 2018, OJ L 327, 21.12.2018, p. 77–83.

<sup>18</sup> OJ L 146, 31.5.2013, p. 1–33.

<sup>19</sup> Nine Commission Implementing Decisions adopted together with this Communication, including four renewals: Hong-Kong (Commission Implementing Decision C(2019)5808), Japan (Commission Implementing Decision C(2019)5807), Mexico (Commission Implementing Decision C(2019)5804), the United States (Commission Implementing Decision C(2019)5803), and five repeals: Argentina (Commission Implementing Decision C(2019)5806), Australia (Commission Implementing Decision C(2019)5800), Brazil (Commission Implementing Decision C(2019)5805), Canada (Commission Implementing Decision C(2019)5801), Singapore (Commission Implementing Decision C(2019)5802). Drafts were published for public feedback between 11 June 2019 and 9 July 2019.

As reflected in the recent amendments to the equivalence regimes, the European Supervisory Authorities are well placed to engage and take the lead in specific monitoring tasks (following regulatory developments in a third country and its supervisory record, cooperation between supervisors in the EU and in a third country). For instance, the European Insurance and Occupational Pensions Authority conducted an on-site assessment of the situation in Bermuda, to monitor the implementation of the equivalence decision on insurance. Effective monitoring is possible only if good cooperation arrangements have been put in place between the Commission and the European Supervisory Authorities on the one side, and third-country authorities and supervisors on the other side.<sup>20</sup> Regulatory dialogues and forums with third countries are key for this purpose.

Equivalence monitoring consists of technical work examining the effects of an existing equivalence decision. Among other things, the Commission needs to keep under scrutiny whether an equivalence decision:

- continues to fulfil the EU objectives for which it was taken, which might depend for instance on changes in the regulatory framework of the third country;
- may raise new risks for financial stability, market integrity or investor protection and whether the activities of the firms or services covered by the decision respect the integrity of the EU internal market for financial services and preserve the level playing field in the EU;
- is impacted, where relevant, by the listing of the third country on the EU lists of non-cooperative tax jurisdictions<sup>21</sup> or of high-risk third countries presenting strategic deficiencies in their Anti-Money Laundering / Counter Financing of Terrorism regimes.<sup>22</sup>

Monitoring contributes to understanding market and regulatory developments, assessing how third-country or EU financial institutions use an equivalence decision, and examining third-country supervisory practices. As a result, monitoring results would feed into a potential review of an equivalence decision. Specifically, a review can be undertaken in response to a significant finding stemming from the monitoring exercise. In that respect, effective monitoring allows potentially serious divergences to be identified early and addressed accordingly, thereby minimising the risk of possible withdrawal later on. It should thus be regarded as a helpful means to ensure stability in equivalence arrangements and not as a source of uncertainty in those arrangements.

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<sup>20</sup> Lack of timely cooperation by third-country authorities in sharing information on legislative developments, or supervisory practice or implementation policies could be a ground for starting an ad-hoc review of an equivalence decision.

<sup>21</sup> EU list of noncooperative jurisdictions for tax purposes, as included in the Council Conclusions of 5 December 2017, with subsequent amendments.

<sup>22</sup> Directive (EU) No 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (OJ L 141, 5.6.2015, p. 73–117)

## *Reviews of equivalence decisions*

An equivalence review involves a more structured and more strictly defined analysis. Such review relates to the relevant equivalence empowerment for the Commission in EU law or to a specific mandate for the Commission in an equivalence decision itself. In essence, a review examines all equivalence criteria and specific conditions contained in an equivalence decision, so as to ascertain that they continue to be respected (e.g. after the EU framework in a given sector has changed). It may be pursued on an ad-hoc or regular basis and may result in the Commission unilaterally withdrawing equivalence. It involves careful dialogue with the third-country authorities concerned which may still demonstrate that their regime delivers the outcomes as set out in the corresponding EU framework.

In the coming months, the Commission will work closely with the European Supervisory Authorities in order to step up cooperation on monitoring, in line with their respective mandates and the changes implied by the entry into force of the recent legislative improvements mentioned above.

### **7. Outline of priorities for 2019-2020**

The Commission is working on equivalence assessments or decision proposals in a number of areas. Most advanced in that respect is the current work in the areas of statutory audit (adequacy)<sup>23</sup> and benchmarks. In that last area, a number of other third-country jurisdictions are preparing or adopting new regulatory frameworks for the administration and use of benchmarks, sometimes largely inspired by the EU Benchmarks Regulation.

Furthermore, there are a number of priorities on which monitoring should be focused:

- **Changes in the EU legislative framework:** areas in which the EU legislative framework on which previous equivalence assessments were based has been reviewed – this results in repealing existing decisions where the third-country framework no longer delivers the outcomes as set out in the new EU framework<sup>24</sup>;
- **High-impact areas or third countries:** areas and countries covered by equivalence decisions which have a high impact on the EU in terms of financial stability, market activity and investor protection<sup>25</sup>;
- **Impending review or expiry of an equivalence decision:** areas where equivalence decisions include a review deadline or where a time limit is approaching<sup>26</sup>;

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<sup>23</sup> Pursuant to Directive (EC) No 2006/43 of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts (OJ L 157, 9.6.2006, p. 87–107)

<sup>24</sup> For example, see the renewal or repealing equivalence decisions after the entry into application of the new EU Credit Rating Agencies framework.

<sup>25</sup> For example, see the equivalence decisions on central counterparties (Art. 25 of Regulation (EU) No 648/2012), where the European Securities and Markets Authority needs to monitor regulatory and supervisory developments in third countries.

<sup>26</sup> For example, under the Regulation (EU) No 575/2013, the first equivalence decision for a number of jurisdictions was adopted in December 2014, envisaging that the list of countries would be reviewed every 5 years. Since then, a number of decisions added countries to the list of equivalent jurisdictions. The work will need to continue, including on monitoring the third countries on the list.

- **Market developments:** market segments which are undergoing dynamic or structural changes, or evolution in the use of an equivalence decision by EU financial market participants<sup>27</sup>.

In the coming months, further equivalence or monitoring areas may require specific action from the Commission, in cooperation, where appropriate, with the relevant European Supervisory Authorities.

## 8. Conclusion

The EU equivalence policy emerges today as a flexible regulatory instrument capable of building bridges across jurisdictional fault-lines. The EU equivalence approach, including both its initial assessment mechanisms and its ex-post monitoring, will continue to deliver genuine added value to the regulatory and supervisory architecture and to safe and efficient financial markets both in the EU and globally.

In the context of bilateral relationships, equivalence will bring tangible benefits for the EU and third-country jurisdictions in terms of narrowing cross-border divergences and incompatibilities and will contribute to reducing global market fragmentation. Equivalence decisions will best do so by ensuring strong standards of financial stability, market integrity and investor protection, supporting and enhancing regulatory and supervisory cooperation between the EU and third-country authorities in a meaningful way, while at the same time maintaining open and globally integrated EU financial markets.

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<sup>27</sup> For example, under Regulation (EU) No 600/2014 – Art. 23 and 28 (trading obligation for shares and derivatives), the dynamic situation in the segment of trading venues justifies a continuous monitoring of the developments relevant for EU issuers and investors using those infrastructures which have been deemed as equivalent by the EU. Monitoring in relation to derivatives should also assess whether EU venues are afforded equivalent treatment by the third countries.