

# Third Countries and EU Equivalence Assessments

BRIEFING

Brexit has greatly focused attention on the ability of third country firms to access the EU's financial markets. Financial service providers may be interested in reading a recent EU Commission staff working document which assesses EU equivalence decisions in financial services policy. Among other things, the document provides an overview of EU financial services legislation that contains equivalence provisions and explains how EU equivalence works. Points to note include the following:

- An equivalence decision is a unilateral and discretionary act of the EU, both as regards its adoption and any possible amendment or repeal. Equivalence empowerments do not confer a right on third countries to be assessed or receive a positive determination. However, a third country may express an interest in being assessed, which the Commission will consider. As a unilateral, discretionary EU act, an equivalence decision may change or even be withdrawn by the EU, as necessary, at any moment.
  - While equivalence may enhance the possibilities of doing business in the EU, its main purpose is to serve prudential regulatory purposes and it is a tool to reduce, or eliminate, overlaps in compliance in the interest of EU markets.
  - Since the financial crisis, the EU has adopted more than 40 new financial services measures to restore financial stability and market confidence. Some 16 of these measures contain provisions empowering the Commission to decide on the equivalence of foreign rules and supervision for EU regulatory purposes. The Commission has reached equivalence decisions under approximately half of those pieces of legislation. Overall it has adopted 212 equivalence decisions and a total of 32 jurisdictions have been positively assessed for at least one area.
  - Equivalence provisions are tailored to the needs of each specific legislative measure and operate in that context; considerable differences can therefore arise in how equivalence mechanisms operate, including as regards the assessment process, the criteria for assessing equivalence, the effects of an equivalence decision and the possibility of withdrawal.
- While the working document does not address Brexit specifically, it does point out that different third countries involve very different exposures for EU financial markets, which will impact on an equivalence assessment. Specifically, in the case of "high-impact" third countries for which an equivalence decision may be used intensively by market operators,



# MCCANN FITZGERALD

## *Third Countries and EU Equivalence Assessments*

*(continued)*

any shortcomings in the equivalence assessment could have a significant and adverse impact on the EU. Consequently, for such countries, the assessment process will need to address these risks

and the Commission will take them into consideration when making an equivalence decision.

You may access the document [here](#).

### *Further information is available from:*



#### **Josh Hogan**

*Partner, Head of Financial Services Regulatory Group*

DDI +353-1-607 1720

EMAIL [josh.hogan@mccannfitzgerald.com](mailto:josh.hogan@mccannfitzgerald.com)



#### **Darragh Murphy**

*Partner, Head of Insurance Group*

DDI +353-1-607 1433

EMAIL [darragh.murphy@mccannfitzgerald.com](mailto:darragh.murphy@mccannfitzgerald.com)



#### **Judith Lawless**

*Partner, Finance*

DDI +353-1-607 1256

EMAIL [judith.lawless@mccannfitzgerald.com](mailto:judith.lawless@mccannfitzgerald.com)



#### **Roy Parker**

*Partner, Finance*

DDI +353-1-607 1249

EMAIL [roy.parker@mccannfitzgerald.com](mailto:roy.parker@mccannfitzgerald.com)

*Alternatively, your usual contact in McCann FitzGerald will be happy to help you further.*

This document is for general guidance only and should not be regarded as a substitute for professional advice. Such advice should always be taken before acting on any of the matters discussed.

**Principal Office** Riverside One, Sir John Rogerson's Quay, Dublin 2, D02 X576  
Tel: +353-1-829 0000

**London** Tower 42, Level 38C, 25 Old Broad Street, London EC2N 1HQ  
Tel: +44-20-7621 1000

**New York** Tower 45, 120 West 45th Street, 19th Floor, New York, NY 10036  
Tel: +1-646-952 6001

**Brussels** 40 Square de Meeûs, 1000 Brussels  
Tel: +32-2-740 0370