

MEMO# 33012

January 4, 2021

Brexit: Trade and Cooperation Agreement

[33012]

January 4, 2021 TO: ICI Members

ICI Global Members

ICI Global Brexit Task Force SUBJECTS: International/Global RE: Brexit: Trade and Cooperation Agreement

On 24 December 2020, the United Kingdom (UK) and the European Union (EU) agreed a Trade and Cooperation Agreement (TCA)[\[1\]](#) that provisionally entered into force on 1 January 2021, pending scrutiny and adoption by the European Parliament before 28 February 2021.[\[2\]](#)

The TCA only contains high level provisions relating to financial services[\[3\]](#) and does not include any equivalence decisions. As briefly outlined below, two aspects of the overall agreement reached in respect of the TCA are of particular relevance for regulated funds and their managers.

Joint declaration on regulatory cooperation

Alongside the TCA, the UK and the EU published a joint declaration[\[4\]](#) in which they agreed to establish “structured regulatory cooperation on financial services, with the aim of establishing a durable and stable relationship between autonomous jurisdictions.”

The UK and EU envisage that cooperation arrangements will seek to “preserve financial stability, market integrity, and the protection of investors and consumers” and allow for the following:

- bilateral exchanges of views and analysis relating to regulatory initiatives and other issues of interest;
- 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.

The UK and EU are seeking to agree a Memorandum of Understanding establishing the framework for this cooperation by March 2021.

Equivalence assessment

Alongside the TCA, the European Commission stated that it is seeking clarification from the UK on the following aspects before taking any equivalence decisions concerning financial services “when they are in the EU’s interest”:

- how the UK will diverge from EU frameworks after 31 December;
- how the UK will use its supervisory discretion regarding EU firms; and
- how the UK’s temporary regimes will affect EU firms.

The European Commission has stated that its equivalence assessments will continue once it has received the clarifications. The UK has already granted equivalence in several areas.^[5] The UK and EU had previously endeavoured to conclude equivalence assessments by June 2020.^[6]

Next Steps

Subject to the completion of scrutiny by the European Parliament, the TCA will formally enter into force before 28 February 2021.

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endnotes

[1] Trade and Cooperation Agreement between the EU and the European Atomic Energy Community, of the one part and the United Kingdom of Great Britain and Northern Ireland, of the other part, *available from* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948119/EU-UK_Trade_and_Cooperation_Agreement_24.12.2020.pdf and [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22020A1231\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22020A1231(01)&from=EN)

[2] Press Release: European Parliament to scrutinise deal on future EU-UK relations, 28 December 2020, *available from* <https://www.europarl.europa.eu/news/en/press-room/20201228IPR94701/european-parliament-to-scrutinise-deal-on-future-eu-uk-relations>

[3] Section 5, Article SERVIN.5.37-5.44

[4] p2, Joint Declaration on Financial Services Regulatory Cooperation between the European Union and the United Kingdom, *available from* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948105/EU-UK_Declarations_24.12.2020.pdf

[5] <https://www.gov.uk/government/publications/hm-treasury-equivalence-decisions-for-the-eea-states-9-november-2020>

[6] Part IV, Political Declaration setting out the framework for the future relationship

between the European Union and the United Kingdom, *available from*
<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1592316528275&uri=CELEX%3A12019W/DCL%2801%29>

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