

# Fortress Europe

## The EU Equivalence Procedures in Banking and other Financial Services

Prof. Dr. Susan Emmenegger



Bern, 4. Dezember 2020



Schweizerische Eidgenossenschaft  
Confédération suisse  
Confederazione Svizzera  
Confederaziun svizra

Der Bundesrat

## **Weltweit führend, verankert in der Schweiz: Politik für einen zukunftsfähigen Finanzplatz Schweiz**

*The Federal Council is pursuing viable market access solutions with the European Union and neighboring countries [...].*

## Financial Services in the EU: Passporting

*Passporting means that a European financial institution which has been authorised by its domestic authority has the right to establish a branch or provide services in any other European Economic Area (EEA) Member State without the need to seek further authorisation or another licence.*

EU Parliament February 2017

## Financial Services in the EU: Passporting

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EU Parliament February 2017

## Relationship with Third Countries: Equivalence

*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.*

EU Commission COM equivalence 2019

# Equivalence Decisions

Equivalence decisions	Abu Dhabi	Argentina	Australia	Bermuda	Bosnia and Herzegovina	Brazil	Canada	Chile	China	Colombia	Dubai International	Faroe Islands	Greenland	Guernsey	Hong Kong	India	Indonesia	Ile of Man	Israel	Japan	Jersey	Malaysia	Mauritius	Mexico	Monaco	New Zealand	North Macedonia	Saudi Arabia	Serbia	Singapore	South Africa	South Korea	Switzerland	Taiwan	Thailand	Turkey	United Arab Emirates	United Kingdom	United States		
Directive 2004/109/EC - Transparency Directive																																									
Art. 23(4)(third) - Third-country GAAP with IFRS																																									
Directive 2006/43/EC - Statutory Audit Directive																																									
Art. 46(2) - Audit framework																																									
Art. 47(3) - Competent authorities																																									
Directive 2013/34/EU - Accounting Directive																																									
Art. 47 - Country-by-country reporting																																									
Regulation (EC) No 1060/2009 - Credit rating agencies (CRAs)																																									
Art. 5(6) - Legal and supervisory framework																																									
Directive 2009/138/EC - Insurance and Reinsurance (Solvency II)																																									
Art. 172 - Third-country reinsurers																																									
Art. 227 - Capital requirements and own funds																																									
Art. 260 - Group supervision																																									
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Regulation (EU) No 600/2014 - Markets in Financial Instruments Regulation (MIFIR)																																									
Art. 28(4) - Trading venues for the purposes of derivatives trading obligation (DTO)																																									
Regulation (EU) 2016/1011 - Benchmark Directive																																									
Art. 30(3) - Specific administrators or benchmarks (2) (3)																																									
Regulation (EU) No 648/2012 - European Market Infrastructure Regulation (EMIR)																																									
Art. 2(a) - Regulated markets																																									
Art. 13(2) - Transaction requirements																																									
Art. 25(6) - CCPs																																									
Exemptions																																									
Regulation (EU) No 648/2012 - European Market Infrastructure Regulation (EMIR)																																									
Art. 1(6) - Third-country central banks and public bodies																																									
Regulation (EU) N° 600/2014 - Markets in Financial Instruments Regulation (MiFIR)																																									
Art. 1(9) - Third-country central banks																																									
Regulation (EU) No 596/2014 - Market Abuse Regulation (MAR)																																									
Art. 6(5) - Third-country central banks and public bodies																																									

# Equivalence Decisions

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Equivalence decisions	Abu Dhabi	Argentina	Australia	Bermuda	Bosnia and Herzegovina	Brazil	Canada	Chile	China	Colombia	Dubai	International	Faroe Islands
<b>Directive 2004/109/EC - Transparency Directive</b>													
Art. 23(4)(third) - Third-country GAAP with IFRS							x		x				
<b>Directive 2006/43/EC - Statutory Audit Directive</b>													
Art. 46(2) - Audit framework	x		x			x	x		x		x		
Art. 47(3) - Competent authorities			x			x	x		x		x		
<b>Directive 2013/34/EU - Accounting Directive</b>													
Art. 47 - Country-by-country reporting							x						
<b>Regulation (EC) No 1060/2009 - Credit rating agencies (CRAs)</b>													
Art. 5(6) - Legal and supervisory framework													
<b>Directive 2009/138/EC - Insurance and Reinsurance (Solvency II)</b>													
Art. 172 - Third-country reinsurers				x									
Art. 227 - Capital requirements and own funds			x	x		x	x						
Art. 260 - Group supervision				x									
<b>Regulation (EU) No 575/2013 - Capital Requirements Regulation (CRR)</b>													
Art. 107(4) - Credit institutions (Annex I)		x	x		x	x	x		x			x	
Art. 107(4) - Investment firms (Annex II)			x			x	x		x				
Art. 107(4) - Exchanges (Annex III)			x			x	x		x				
Art. 114(7), 115(4), 116(5) - Credit institutions (Annex IV)		x	x		x	x	x		x			x	
Art. 142(2) - Credit institutions (Annex V)		x	x		x	x	x		x			x	
Art. 142(2) - Investment firms (Annex V)			x			x	x		x				
Art. 391 - Credit institutions (Annex VI)		x	x		x	x	x		x			x	
Art. 391 - Investment firms (Annex VI)			x			x	x		x				
<b>Directive 2014/65 - Markets in Financial Instruments Directive (MiFID II)</b>													
Art. 25(4)(a) - Trading venues for the purposes of the share trading obligation (STO)			x										
<b>Regulation (EU) No 600/2014 - Markets in Financial Instruments Regulation (MiFIR)</b>													
Art. 28(4) - Trading venues for the purposes of derivatives trading obligation (DTO)													
<b>Regulation (EU) 2016/1011 - Benchmark Directive</b>													
Art. 30(3) - Specific administrators or benchmarks (2) (3)			x										
<b>Regulation (EU) No 648/2012 - European Market Infrastructure Regulation (EMIR)</b>													
Art. 2(a) - Regulated markets			x				x						
Art. 13(2) - Transaction requirements			x			x	x						
Art. 25(6) - CCPs			x			x	x	x	x	x	x	x	
<b>Exemptions</b>													
<b>Regulation (EU) No 648/2012 - European Market Infrastructure Regulation (EMIR)</b>													
Art. 1(6) - Third-country central banks and public bodies			x				x						
<b>Regulation (EU) N° 600/2014 - Markets in Financial Instruments Regulation (MiFIR)</b>													
Art. 1(9) - Third-country central banks			x			x	x		x				
<b>Regulation (EU) No 596/2014 - Market Abuse Regulation (MAR)</b>													
Art. 6(5) - Third-country central banks and public bodies			x			x	x		x				



equivalence champion: U.S. (21 positive assessments)\*



equivalence laggard: U.K. (4 positive assessments)\*



\* counting exemptions

# Equivalence Decisions: Exemptions

Equivalence decisions	Abu Dhabi	Argentina	Australia	Bermuda	Bosnia and Herzegovina	Brazil	Canada	Chile	China	Colombia	Dubai	International	Faroe Islands	Greenland	Guernsey	Hong Kong	India	Indonesia	Isle of Man	Israel	Japan	Jersey	Malaysia	Mauritius	Mexico	Monaco	New Zealand	North Macedonia	Saudi Arabia	Serbia	Singapore	South Africa	South Korea	Switzerland	Taiwan	Thailand	Turkey	United Arab Emirates	United Kingdom	United States of America	
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Directive 2014/65 - Markets in Financial Instruments Directive (MiFID II)																																									
Art. 25(4)(a) - Trading venues for the purposes of the share trading obligation (STO)			x													x																									x
Regulation (EU) No 600/2014 - Markets in Financial Instruments Regulation (MiFIR)																																									
Art. 28(4) - Trading venues for the purposes of derivatives trading obligation (DTO)																																									x
Regulation (EU) 2016/1011 - Benchmark Directive																																									
Art. 30(3) - Specific administrators or benchmarks (2) (3)			x																																						
Regulation (EU) No 648/2012 - European Market Infrastructure Regulation (EMIR)																																									
Art. 2(a) - Regulated markets			x				x															x																		x	
Art. 13(2) - Transaction requirements			x			x	x									x						x																		x	
Art. 25(6) - CCPs			x			x	x	x	x	x	x	x				x	x	x			x	x		x		x		x												x	
Exemptions																																									
Regulation (EU) No 648/2012 - European Market Infrastructure Regulation (EMIR)																																									
Art. 1(6) - Third-country central banks and public bodies			x				x									x						x																		x	
Regulation (EU) N° 600/2014 - Markets in Financial Instruments Regulation (MiFIR)																																									
Art. 1(9) - Third-country central banks			x			x	x			x						x	x					x																		x	
Regulation (EU) No 596/2014 - Market Abuse Regulation (MAR)																																									
Art. 6(5) - Third-country central banks and public bodies			x			x	x									x	x					x																		x	

# Equivalence Decisions

Reporting  
and Audit

Equivalence decisions	Abu Dhabi	Argentina	Australia	Bermuda	Brazil	Canada	Chile	China	Colombia	Czechia	Denmark	Egypt	France	Germany	Greece	Hong Kong	India	Indonesia	Israel	Italy	Japan	Jersey	Malaysia	Mexico	Morocco	New Zealand	Norway	Qatar	Romania	Saudi Arabia	Senegal	Singapore	South Africa	South Korea	Spain	Sweden	Switzerland	Taiwan	Thailand	Turkey	United Arab Emirates	United Kingdom	United States of America
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Art. 47(3) - Competent authorities																																											
<b>Directive 2013/34/EU - Accounting Directive</b>																																											
Art. 47 - Country-by-country reporting																																											
<b>Regulation (EU) No 1095/2009 - Credit Rating Agencies (CRAs)</b>																																											
Art. 5(6) - Legal and supervisory framework																																											
<b>Directive 2009/138/EC - Insurance and Reinsurance (Solvency II)</b>																																											
Art. 172 - Third-country reinsurers																																											
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<b>Regulation (EU) No 648/2012 - European Market Infrastructure Regulation (EMIR)</b>																																											
Art. 26(1) - Regulated markets																																											
Art. 13(2) - Transaction requirements																																											
Art. 25(6) - CCPs																																											

**Directive 2004/109/EC - Transparency Directive**

**Art. 23(4)(third) - Third-country GAAP with IFRS**

**Directive 2006/43/EC - Statutory Audit Directive**

**Art. 46(2) - Audit framework**

**Art. 47(3) - Competent authorities**

**Directive 2013/34/EU - Accounting Directive**

**Art. 47 - Country-by-country reporting**

# Equivalence Decisions

Credit Rating Agencies

Equivalence decisions	Abu Dhabi	Argentina	Australia	Bermuda	Brazil	Canada	Chile	China	Colombia	Czechia	Denmark	France	Germany	Guernsey	Hong Kong	India	Indonesia	Italy	Japan	Jersey	Malaysia	Mexico	Morocco	New Zealand	Norway	Poland	Portugal	South Korea	Spain	Sweden	Switzerland	Taiwan	Thailand	Turkey	United Arab Emirates	United Kingdom	United States
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<b>Regulation (EU) No 848/2012 - European Market Infrastructure Regulation (EMIR)</b>																																					

Regulation (EC) No 1060/2009 - Credit rating agencies (CRAs)

Art. 5(6) - Legal and supervisory framework

# Equivalence Decisions

Insurance

Equivalence decisions	Algeria	Argentina	Australia	Bermuda	Brazil	Canada	Chile	China	Colombia	Czechia	Denmark	France	Germany	Greece	Guatemala	Hong Kong	India	Indonesia	Israel	Italy	Japan	Jersey	Malaysia	Mexico	Morocco	New Zealand	Norway	Poland	Portugal	South Korea	Spain	Sweden	Switzerland	Taiwan	Thailand	Turkey	United Arab Emirates	United Kingdom	USA
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Art. 47 - Country-by-country reporting																																							
<b>Regulation (EU) No 1093/2010 - Credit rating agencies (CRAs)</b>																																							
Art. 5(6) - Legal and supervisory framework																																							
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Art. 261 - Regulated markets																																							
Art. 13(2) - Transaction requirements																																							
Art. 25(6) - CCPs																																							

## Directive 2009/138/EC - Insurance and Reinsurance (Solvency II)

Art. 172 - Third-country reinsurers

Art. 227 - Capital requirements and own funds

Art. 260 - Group supervision

# Equivalence Decisions

Bank Capital

Equivalence decisions	Abu Dhabi	Argentina	Australia	Bermuda	Bolivia and Paraguay	Canada	Chile	China	Colombia	Czechia	Denmark	France	Germany	Hong Kong	India	Indonesia	Israel	Japan	Jersey	Malaysia	Mexico	Morocco	New Zealand	Peru	Qatar	South Korea	Switzerland	Taiwan	Thailand	Turkey	United Arab Emirates	United Kingdom	United States of America
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575/2013 - Capital Requirements Regulation (CRR)

## Regulation (EU) No 575/2013 - Capital Requirements Regulation (CRR)

Art. 107(4) - Credit institutions (Annex I)

Art. 107(4) - Investment firms (Annex II)

Art. 107(4) - Exchanges (Annex III)

Art. 114(7), 115(4), 116(5) - Credit institutions (Annex IV)

Art. 142(2) - Credit institutions (Annex V)

Art. 142(2) - Investment firms (Annex V)

Art. 391 - Credit institutions (Annex VI)

Art. 391 - Investment firms (Annex VI)

[illegible]

<b>Directive 2014/65 - Markets in Financial Instruments Directive (MiFID II)</b>
Art. 25(4)(a) - Trading venues for the purposes of the share trading obligation (STO)
<b>Regulation (EU) No 600/2014 - Markets in Financial Instruments Regulation (MiFIR)</b>
Art. 28(4) - Trading venues for the purposes of derivatives trading obligation (DTO)

## Benchmarks

**Art. 30(3) - Specific administrators or benchmarks (2) (3)**

# Equivalence Decisions

Derivatives  
Trading

Equivalence decisions	Algeria	Argentina	Australia	Bermuda	Brazil	Canada	Chile	China	Colombia	Croatia	Czechia	Denmark	Egypt	France	Germany	Greece	Hong Kong	India	Indonesia	Israel	Italy	Japan	Jersey	Malaysia	Mexico	Morocco	New Zealand	Norway	Poland	Portugal	Romania	Saudi Arabia	Senegal	Singapore	South Africa	South Korea	Spain	Sweden	Switzerland	Taiwan	Thailand	Turkey	United Arab Emirates	United Kingdom	USA	Uruguay			
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Art. 391 - Credit institutions (Annex VII)																																																	
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<b>Directive 2014/65/EU - Markets in Financial Instruments Directive (MiFID II)</b>																																	</																

Regulation (EU) No 648/2012 - European Market Infrastructure Regulation (EMIR)
Art. 2(a) - Regulated markets
Art. 13(2) - Transaction requirements
Art. 25(6) - CCPs

# Equivalence Decisions: Summary

Public Bodies, Regulators, Central Banks
Art. 47(3) Audit D.
Art. 260 Solvency II
Art. 114(7) CRR

Third-country firms listed or traded in EU
Art. 23(4) Transp. D.
Art. 46(2) Audit D.
Art. 47 Accounting D.

EU FSPs requiring services by non-EU FSPs
Art. 5(6) CRA
Art. 172 Solvency II
Art. 25(4)(a) MiFID II
Art. 28(4) MiFIR
Art. 30(3) Benchm. D.
Art. 2(a) EMIR
Art. 13(2) EMIR
Art. 25(6) EMIR

EU FSP outbound activity (esp. lending)
Art. 227 Solvency II
Art. 107(4) CRR/CI
Art. 107(4) CRR/IF
Art. 107(4) CRR/Exch
Art. 107(4) CRR/CI
Art. 115(4) CRR/CI
Art. 116(5) CI
142(2) CRR/CI
Art. 142 CRR/IF
Art. 391 CRR/CI
Art. 391 CRR/IF

# Les Grands Absents

- Numerous equivalence proceedings have not yet been activated. Among them:
  - Art. 47(1) MiFIR: Cross-border services *into* the EU for professional clients
  - Art. 67 AIFMD: Distribution of EU-AIFMs and Non-EU-AIFMs *into* the EU, cross-border management of EU-AIFs
- Core financial services are outside the scope of equivalence procedures
  - Banking: Deposit taking, Lending
  - Payment Services
  - Insurance: Sales and Brokerage
  - Investment services (advice and asset management) for retail clients
  - Investment Funds: UCITS

## When it's all said and done

### EQUIVALENCE....

- Is a unilateral decision by the EU
- Is a a technical decision determined by politics
- Is not proactively pursued by the EU Commission
- Does not cover core financial services
- Does not cover retail clients
- Only very exceptionally leads to a market access which could be assimilated to the EU passport

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*The adjustments with regard to equivalence should serve to improve market access and must not diminish competitiveness.* [Federal Council, Financial Policy Report 2012]

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# Expectation Gap?

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*Equivalence Decisions primarily benefit EU market participants [...] Equivalence decisions in a few areas may enhance the possibilities of doing business in the EU (e.g. investment firms under MiFID II), but the equivalence as such serves primarily prudential regulatory purposes and is a tool to reduce overlaps in compliance in the interest of EU markets.* [EU Commission Staff working Document, EU equivalence decisions in financial services policy: an assessment, SWD(2017) 102 final, 27. February 2017 27. February 2017]

# Any hope for change?

EU Commission Website as of June 2023

## Equivalence of non-EU regulatory frameworks

In certain cases the EU may determine that the regulatory or supervisory regime of a non-EU country is equivalent to the corresponding EU framework. This may bring benefits to both parties, such as for example

- it allows authorities in the EU to rely on supervised entities' compliance with equivalent rules in a non-EU country
- it reduces or even eliminates overlaps in compliance requirements for both EU and foreign market players
- it makes certain services, products or activities of non-EU companies acceptable for regulatory purposes in the EU
- it allows EU banks to benefit from more favourable capital requirements as regards their exposures in non-EU countries
- in specific equivalence areas, it may allow third-country firms to provide services without establishment in the EU single-market

# Any hope for Change?

| 29 July 2019 | Directorate-General for Financial Stability, Financial Services and Capital Markets Union

## Commission sets out its equivalence policy with non-EU countries and presents its recent EU equivalence decisions EN | ...

The European Commission takes stock of its overall approach to equivalence in the area of financial

27 FEBRUARY 2017



**EU equivalence decisions in financial services policy: an assessment -  
Commission staff working document**

English (621.56 KB - PDF)

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# Fortress Europe

## The EU Equivalence Procedures in Banking and other Financial Services

Prof. Dr. Susan Emmenegger

