Fortress Europe

The EU Equivalence Procedures in Banking and other Financial Services

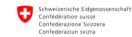
Prof. Dr. Susan Emmenegger



Swiss Financial Market Policy



Bern, 4. Dezember 2020



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 [...].

 u^{b}

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 Directive 2004/109/EC - Transparency Directive	Abu Dhabi	Argentina	Australia	Bermuda	Bosnia and Herzegovina	Brazil	Chile	China	Colombia	Dubai International	Faroe Islands	Greenland	Guernsey Hong Kong	India	Indonesia	Isle of Man	Israel Japan	Jersey	Malaysia	Mauritius	Monaco	New Zealand	North Macedonia	Saudi Arabia	perole	South Africa	South Korea	Switzerland	Taiwan	Thailand	United Arab Emirates	United Kingdom United States of America
Art. 23(4)(third) - Third-country GAAP with IFRS	_		_	_	_		_		_	т т	_	_	_	(1)	т т	_	-	_		_	_			_	_	_			_	$\overline{}$		×
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Directive 2006/43/EC - Statutory Audit Directive Art. 46(2) - Audit framework					_				_	I I	_			_				T	I I		_		_	_			T	x	x			-
Art. 40(2) - Audit framework Art. 47(3) - Competent authorities	X		X	\rightarrow	_	x >		X	-	X	\rightarrow		X .	+	X	X	X	X	X	X	+	X	-	+		X	X		×	X X	+	X
Directive 2013/34/EU - Accounting Directive		ш	X	_	_	x ,		X	_	X	_		×		X	X	×	X	X				_	_	_	X	X	×	X	X		X
Art. 47 - Country-by-country reporting	_		_	_	_		_	_	_	т т	_	_	_	_	т т	_	_	_		_	_	_	_	_	_	_	_		_	$\overline{}$		
Regulation (EC) No 1060/2009 - Credit rating agencies (CRAs)	\vdash	ш	_	_	_			_	_		_							_					_	_			_	\vdash	_	_		
Art. 5(6) - Legal and supervisory framework	_			$\overline{}$	_	_	_	_	т —	т т	_	_	-	_	т т	$\overline{}$	-	_	т т	_	_	_		_	_	_	_	т т	_	$\overline{}$	_	-
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Directive 2009/138/EC - Insurance and Reinsurance (Solvency II) Art. 172 - Third-country reinsurers	_		_]	-	_	_	_	_	T T		_	_	_	T T			_	T 1	_	_			_	_	_	_	v	_	$\overline{}$		
Art. 172 - Inird-country reinsurers Art. 227 - Capital requirements and own funds	\vdash	\vdash	x	X	_	x >	_	+	+	+	\rightarrow	+	_	+	+	-	-	+	+	_	_	+	-	+	+	+	+	X	\rightarrow	+	+	
	\vdash		X	X	_	X)		+	-	+	\rightarrow	+	_	+	+	+	-	+	\vdash		_	+	\rightarrow	+	+	+	+	X	\rightarrow	+	+	X
Art. 260 - Group supervision Regulation (EU) No 575/2013 - Capital Requirements Regulation (CRR)	\perp	ш	_	Х				_	_	\perp						_			\perp			\perp			_			X				$\overline{}$
Art. 107(4) - Credit institutions (Annex I)	_			_		x D	_		_			, ,	x x				-	1								· Γ×	×	v	_			-
	\vdash	Х	X	-	X	x >	_	X	-	 	X	X 2	x x	Х	\blacksquare	Х	X	X	 		X	Х	X	X :	_	X		X	\rightarrow	x	4	X
Art. 107(4) - Investment firms (Annex II)	\vdash	\vdash	^	\rightarrow	_		_	X	_	+	+	+	X		X	+	×	_	\vdash		_	+	_	X	_			\vdash	\rightarrow	+	+	_
Art. 107(4) - Exchanges (Annex III)	\vdash		х	-	_	x >	_	X	_	+				X	х		X		\vdash	,				X	_	(X			\rightarrow	_		x
Art. 114(7), 115(4), 116(5) - Credit institutions (Annex IV)	\vdash	х	х	_		x >	_	Х	-	 		-	x x	_	-	X	х	x	-			х	x	X 3	_	(X			\rightarrow	x	_	X
Art. 142(2) - Credit institutions (Annex V)	\vdash	Х	х	-	Х	x >	_	X	-	+	х	x >	x x	Х	-	Х	X	X	-		X	Х	Х	x :	K 2		х	х	\rightarrow	X	4	
Art. 142(2) - Investment firms (Annex V)	\vdash		х	-	_	x >	_	Х	-	 	_	_	х		Х	_	х		\vdash)				х		(X	Х		\rightarrow	_		x
Art. 391 - Credit institutions (Annex VI)	-	Х	х	_	Х	x >	_	X	-	-	х	x >	x x	Х	_	Х	X	Х	-		X	Х	х	x :	K 2	(X	х	Х	\rightarrow	X	4	х
Art. 391 - Investment firms (Annex VI)	\perp	ш	Х	_	_	X)		X	_	\perp	_		X		Х	_	X	_	\perp			\perp		X		X	Х	\sqcup	_			X
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)	\perp	ш	Х	_	_			_	_	\perp	_		X		$\perp \perp$	_		_	\perp			\perp					_	\perp	_			Х
Regulation (EU) No 600/2014 - Markets in Financial Instruments Regulation (MiFIR)	_	_	_	_	_		_	_	_		_	_		_		_	_	_			_	_	_	_	_	_	_		_	—	-	
Art. 28(4) - Trading venues for the purposes of derivatives trading obligation (DTO)	\perp	ш						_	_	\perp					\perp				\perp									\perp			ш	X
Regulation (EU) 2016/1011 - Benchmark Directive	_		_	_	_		_	_	_		_	_	_	_		_	_	_			_	_		_	_	_	_		_	—	_	$\overline{}$
Art. 30(3) - Specific administrators or benchmarks (2) (3)	ш	ш	Х	_				_	_	\perp					$\perp \perp$				\perp			\perp				(\perp			ш	\perp
Regulation (EU) No 648/2012 - European Market Infrastructure Regulation (EMIR)	_		_	_	_	_	_	_	_		_	_	_	_		_	_	_			_	_		_	_	_	_		_	—	_	
Art. 2(a) - Regulated markets	\vdash		х	\rightarrow	_)	_	+	-	+	\rightarrow	+	_	_	+	-	х	_	\vdash	_	_	+	-	+		(+	\vdash	\rightarrow	+	+	X
Art. 13(2) - Transaction requirements	\vdash	\vdash	х	\rightarrow	_	x >	_		-	+	\rightarrow	+	х		-	_	X	_	\vdash	_	_		\rightarrow	+		(_		_	+	\bot	Х
Art. 25(6) - CCPs	-		х			X)	X	Х	Х	X			Х	Х	X		x x		X)		Х				(X	Х	Х	Х	\bot	Х	хх
Exemptions																																
Regulation (EU) No 648/2012 - European Market Infrastructure Regulation (EMIR)																																
Art. 1(6) - Third-country central banks and public bodies			х	\Box	-T)				TT	\Box		х				х		ГΤ)						(T	х	\Box T		T	х х
Regulation (EU) N° 600/2014 - Markets in Financial Instruments Regulation (MiFIR)																																
Art. 1(9) - Third-country central banks			х	\neg		x >		x		ITT	\Box	T	х	х		\top	х		I	,				T	1	(х	х	\neg	×		хх
Regulation (EU)No 596/2014 - Market Abuse Regulation (MAR)																																
Art. 6(5) - Third-country central banks and public bodies			Х	\Box		x >		Х				\perp	x	x			x)				\perp	-	(x	х		x		х х



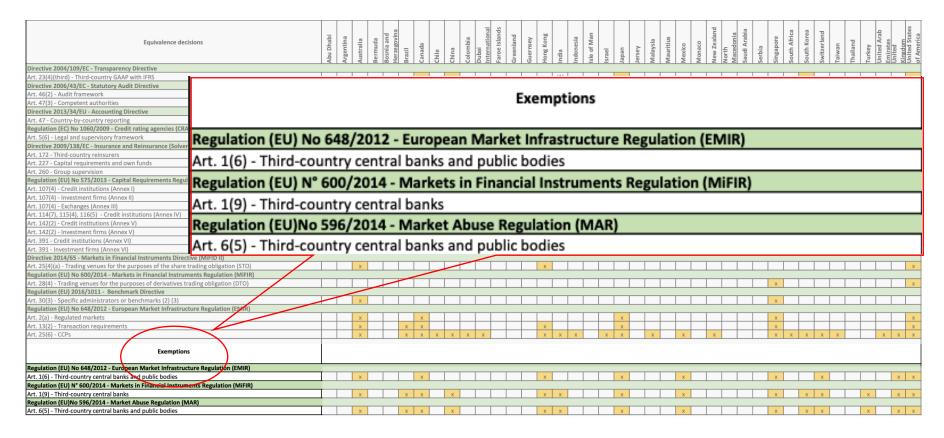
Equivalence decisions	Abu Dhabi	Argentina	Australia	Bermuda	Bosnia and Herzegovina	Brazil	Canada	Chile	China	Colombia	Dubai International	Faroe Islands
Directive 2004/109/EC - Transparency Directive												
Art. 23(4)(third) - Third-country GAAP with IFRS					Г		х		х			
Directive 2006/43/EC - Statutory Audit Directive					_							
Art. 46(2) - Audit framework	х		х			х	х		х		х	
Art. 47(3) - Competent authorities			х			х	х		х		х	
Directive 2013/34/EU - Accounting Directive												
Art. 47 - Country-by-country reporting							х					\Box
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				х								
Art. 227 - Capital requirements and own funds			х	х		х	х					
Art. 260 - Group supervision				х								
Regulation (EU) No 575/2013 - Capital Requirements Regulation (CRR)												
Art. 107(4) - Credit institutions (Annex I)		х	х		х	х	х		х			х
Art. 107(4) - Investment firms (Annex II)			х			х	х		х			
Art. 107(4) - Exchanges (Annex III)			х			х	х		х			
Art. 114(7), 115(4), 116(5) - Credit institutions (Annex IV)		х	х		х	х	х		х			х
Art. 142(2) - Credit institutions (Annex V)		х	х		х	х	х		х			х
Art. 142(2) - Investment firms (Annex V)			х			х	х		х			
Art. 391 - Credit institutions (Annex VI)		х	х		х	х	х		х			х
Art. 391 - Investment firms (Annex VI)			х			х	х		х			
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									
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)			Х									
Regulation (EU) No 648/2012 - European Market Infrastructure Regulation (EMIR)												
Art. 2(a) - Regulated markets			Х		_		х					
Art. 13(2) - Transaction requirements			Х		_	Х	х					
Art. 25(6) - CCPs			Х			х	Х	Х	Х	х	х	
Exemptions												
Regulation (EU) No 648/2012 - European Market Infrastructure Regulation (EMIR)												
Art. 1(6) - Third-country central banks and public bodies			х				х					
Regulation (EU) N° 600/2014 - Markets in Financial Instruments Regulation (MiFIR)	_				_							
Art. 1(9) - Third-country central banks			х			х	х		х			
Regulation (EU)No 596/2014 - Market Abuse Regulation (MAR)					_							
Art. 6(5) - Third-country central banks and public bodies			х			х	х		х			

positive equivalence champion: U.S. (21 equivalence laggard: U.K. (4 positive assessments)

** counting exemptions

Equivalence Decisions: Exemptions







Directive 2004/109/EC - Transparency Directive Reporting 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 and Audit 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 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) 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) 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

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	



Credit Rating Agencies

Equivalence decisions Directive 2004/199/CC-Transparency Directive	Abu Dhabi	Argentina	Australia	Bosnia and	Herzegovina Brazil	Canada	Chile	China	Colombia	International Faroe Islands	Greenland	Guermey	Hong Kong	India	Indonesia	Isre of Man	Japan	Jersey	Malaysia	Mauritius	Monaco	New Zealand	North	Saudi Arabia	Serbia	Singapore	South Africa	South Korea	Switzerland	Thailand	Turkey	United Arab Emirates	Kingdom United States of America
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Art. 23(4)(third) - Third-country GAAP with IFRS Directive 2006/43/EC - Statutory Audit Directive		_	_	_	_	X	_	×	_		_	_	\mathbf{L}	(1)	_		X		_	_	_	_	_	ш	_	_	_	×	_	_		_	×
Art. 46(2) - Audit framework	-	_		_	-		_		_		_	-		_							_	-	_				_	_	x s		1		
Art. 47(3) - Audit framework Art. 47(3) - Competent authorities	X	_	X	+	X	×	-	×	_	X	+	X		_	X I	×	X	X	X	×	+	X	-	\vdash	\rightarrow	×	X	X	X 2	X X	×	\vdash	×
Directive 2013/34/EU - Accounting Directive	-	_	X	_	X	×	_	×	_	X	_	X	_	_	X I	×	Х	х	X	_	-	_	_	ш	_	_	×L.	×L.	X >	x	_	_	X
		_	_	_	_		_	$\overline{}$	_	_	_	_		_	_	_			_	_	_	_	_			_	\neg	$\overline{}$	_	_	_	_	$\overline{}$
Art. 47 - Country-by-country reporting Regulation (EC) No 1060/2009 - Credit rating agencies (CRAs)		_	_	_	_	×	_	_	_		_	_	\mathbf{L}	_	_		_		_	_	_	_	_	ш	_	_	_	_	_	_		_	
Art. 5(6) - Legal and supervisory framework		_	_	_	_	_		$\overline{}$	_	_	_	_			_	$\overline{}$						_	_		$\overline{}$	_	\neg	\neg	$\overline{}$	$\overline{}$	_	$\overline{}$	
 Directive 2009/138/EC - Insurance and Reinsurance (Solvency II)	-	_	_	_	_	_	_	_	_	_	_	_	X	_	_	_	X	\vdash	_			_	-	_	_	_	_	_	_	_	_	_	X
Art. 172 - Third-country reinsurers		_	_		_				_	_	_	_		_	_	_			_		_	_				$\overline{}$	\neg	_		$\overline{}$	_		$\overline{}$
Art. 227 - Capital requirements and own funds	\vdash	_		×	v	v	\rightarrow	-	+	_	+	_	Н	\rightarrow	+	+	_	-	_	_	_	+	+	\vdash	$\overline{}$	-	+	-	×	+	+	\vdash	-
Art. 260 - Group supervision	-	_	^	-	_	1	\rightarrow	-	-	-	+	_	Н	_	+	-		-	-		_	+	-	-	\neg	-	+	-	-	+	+	-	_
Regulation (EU) No 575/2013 - Capital Requirements Regulation (CRR)	_	_	_	_	_	_	_	_	_	_	_	_		_	_		_		_	_	-	_	_	_	_	_	_	_		_	_	_	_
Art. 107(4) - Credit institutions (Annex I)		× I	Y.		×	l v	\neg	v I	\neg		T x	- X	×	×	_	v	¥	×	$\overline{}$	-	r x	T x	×	x	×	×	x	×	×	$\overline{}$	×	$\overline{}$	T x
Art. 107(4) - Investment firms (Annex II)	-		Y	_	×	Y Y		Y.	\neg		_		×		×		¥		-			_	-	Y Y		×		Ÿ	_	-	_	-	- X
Art. 107(4) - Exchanges (Annex III)	-		Y	-	Y	T V		v	\neg	-	+	-		×	¥	-	Y		-			+	-	Y Y	\neg			Ÿ	-	+	+	-	- T
Art. 114(7), 115(4), 116(5) - Credit institutions (Annex IV)		×	¥	-	×	×		×	\neg	×	×	×	×	×		×	×	×	-		C X	×	×	x	x	×	×	×	×	-	×	$\overline{}$	×
Art. 142(2) - Credit institutions (Annex V)		×	x	,	×	×		×	\neg	×	×	×	×	X		x	×	×			(X	×	×	x	x	×	x	×	x	+	×		×
Art. 142(2) - Investment firms (Annex V)			x		×	×	\neg	×	\neg		\neg		×		x		×			,		$\overline{}$		х	\neg	×	x	x	\neg	\top	\top	\Box	×
Art. 391 - Credit institutions (Annex VI)		×	x	,	×	×		×	\neg	×	×	×	×	×		×	×	х		,	c x	×	×	х	x	×	x	x	×	\top	×	\Box	×
Art. 391 - Investment firms (Annex VI)			x		×	×		×	\neg		-		×		x		x			,		$\overline{}$		×	\neg	×	×	×	\neg	\top		\Box	×
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					-					х												П		\top	\perp	\perp			\Box	×
Regulation (EU) No 600/2014 - Markets in Financial Instruments Regulation (MiFIR)																																	
Art. 28(4) - Trading venues for the purposes of derivatives trading obligation (DTO)				Т				-	\neg		-				-					Т	\top				\neg	×	т	\top	\Box	\top	\Box	\Box	×
Regulation (EU) 2016/1011 - Benchmark Directive																																	
Art. 30(3) - Specific administrators or benchmarks (2) (3)			x					\perp																		×	\perp	\perp					
Regulation (EU) No 648/2012 - European Market Infrastructure Regulation (EMIR)				_	_				_						_							_											
Art. 2(a) - Regulated markets			x	\perp		х	\rightarrow	-	_							\perp	X								\Box	×	\perp	\perp	\perp	\perp	\perp	\vdash	×
Art. 13(2) - Transaction requirements			x	\perp	X	х		\perp	_				х				х								\Box	×	_	_			\perp	\vdash	×
Art. 25(6) - CCPs			x	- [×	x	x	x	x	x			×	x	×	×	×		x	,	C	X				×	x	×	x >			×	x x

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

Art. 5(6) - Legal and supervisory framework



Insurance

Equivalence decisions	Abu Dhabi	Argentina	Australia	Bosnia and	Herzegovina Brazil	Canada	Chile	Colombia	Dubai International	Faroe Islands	Greenland	Hong Kong	India	Indonesia Isle of Man	Israel	Japan	Jersey	Mauritius	Mexico	Monaco	New Zealand North	Macedonia Saudi Arabia	Serbia	Singapore	South Africa	Switzerland	Taiwan	Thailand	United Arab Emirates	United Kingdom United States of America
Directive 2004/109/EC - Transparency Directive																														
Art. 23(4)(third) - Third-country GAAP with IFRS						x	x						(1)			x														×
Directive 2006/43/EC - Statutory Audit Directive																														
Art. 46(2) - Audit framework	×		x		X	x	×		х		×			x x		х	x x	×			x			х	х :	c x	x	x x		x
Art. 47(3) - Competent authorities			x		X	x	×		х		×			x x		х	x x								х :	c x	x	x		x
Directive 2013/34/EU - Accounting Directive																														
Art. 47 - Country-by-country reporting						x																								
Regulation (EC) No 1060/2009 - Credit rating agencies (CRAs)																														
Art. 5(6) - Legal and supervisory framework												×				X			X											X
Directive 2009/138/EC - Insurance and Reinsurance (Solvency II)																														
Art. 172 - Third-country reinsurers				x																						×		\Box	\top	
Art. 227 - Capital requirements and own funds			×	x	×	×			П		\neg		П		T				x					\neg		×	-	\neg	TT	×
Art. 260 - Group supervision				x					П	\neg	\neg	-	П	\neg	T			\neg		\neg				\neg	\neg	×	$\overline{}$	\neg	\top	
Regulation (EU) No 575/2013 - Capital Requirements Regulation (CRR)																														
Art. 107(4) - Credit institutions (Annex I)		x	x	,	c x	x	x			x	x x	×	х	×		х	x		X	х	х :	c x	×	×	x :	c x				×
Art. 107(4) - Investment firms (Annex II)			x		x	x	x					×		x		x			x			x		×	x :					×
Art. 107(4) - Exchanges (Annex III)			x		x	×	x						x	x		x			x			×		×	x :					×
Art. 114(7), 115(4), 116(5) - Credit institutions (Annex IV)		×	x)	C X	х	X			х	x x	×	X	×		х	x		X	х	x :	c x	х	х	х :	(X				X
Art. 142(2) - Credit institutions (Annex V)		×	x)	C X	x	×			х	x x	×	X	×		х	x		X	х	x :	c x	х	х	х :	c x				X
Art. 142(2) - Investment firms (Annex V)			x		X	x	×					×		x		x			X			x		х	х :	(x
Art. 391 - Credit institutions (Annex VI)		x	x	,	c x	x	x			x	x x	×	х	×		х	x		x	х	х :	c x	x	х	x :	c x				x
Art. 391 - Investment firms (Annex VI)			x		x	x	x					×		x		x			x			×		×	x :					×
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									×															\Box		\top	×
Regulation (EU) No 600/2014 - Markets in Financial Instruments Regulation (MiFIR)																														
Art. 28(4) - Trading venues for the purposes of derivatives trading obligation (DTO)				Т																				х			Т		\Box	×
Regulation (EU) 2016/1011 - Benchmark Directive																														
Art. 30(3) - Specific administrators or benchmarks (2) (3)			x																					х						
Regulation (EU) No 648/2012 - European Market Infrastructure Regulation (EMIR)																														
Art. 2(a) - Regulated markets			×			X			$\Gamma \Box$							x				-T				х			$\perp \perp$			×
Art. 13(2) - Transaction requirements			×		×	х						X				×								х			$\perp \perp$			×
Art. 25(6) - CCPs			x		x	x	x x	×	х			×	х	x	×	x			х		x			×	x :	c x	x		x	x x

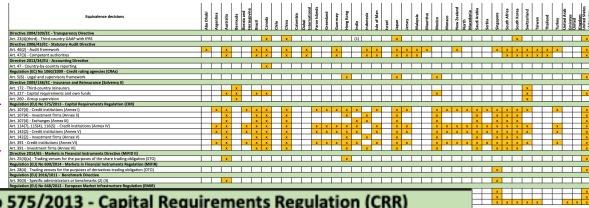
Directive 2009/138/EC - Insurance and Reinsurance (Solvency II)

Art. 172 - Third-country reinsurers

Art. 227 - Capital requirements and own funds

Art. 260 - Group supervision





Bank Capital

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)

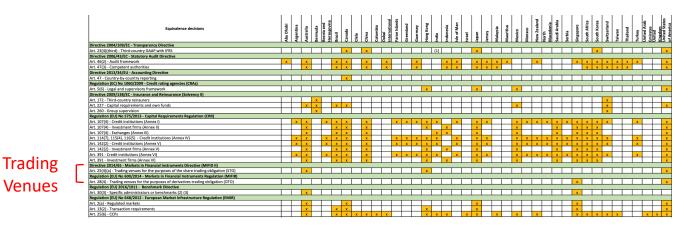
Art. 142(2) - Credit institutions (Annex V)

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

Art. 391 - Credit institutions (Annex VI)

Art. 391 - Investment firms (Annex VI)





Venues

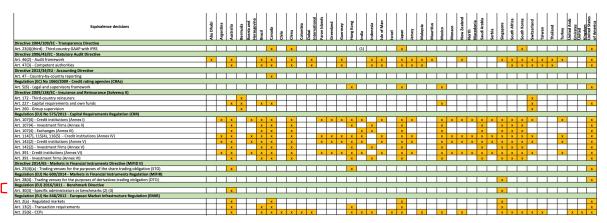
Directive 2014/65 - Markets in Financial Instruments Directive (MiFID II)

Art. 25(4)(a) - Trading venues for the purposes of the share trading obligation (STO)

Regulation (EU) No 600/2014 - Markets in Financial Instruments Regulation (MiFIR)

Art. 28(4) - Trading venues for the purposes of derivatives trading obligation (DTO)



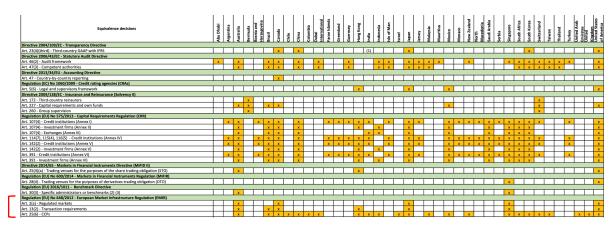


Benchmarks C

Regulation (EU) 2016/1011 - Benchmark Directive

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





Derivatives Trading

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

Ar.t 142 CRR/IF

Art. 391 CRR/CI

Art. 391 CRR/IF

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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

When it's all said and done



EQUIVALENCE....

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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]

The Federal Council is pursuing viable market access solutions with the European Union and neighboring countries, including the recognition of the equivalence of Swiss regulation and supervision where this proves economically beneficial. [Federal Council, Financial Policy Report 2020]

Expectation Gap?



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The Federal Council is pursuing viable market access solutions with the European Union and neighboring countries, including the recognition of the equivalence of Swiss regulation and supervision where this proves economically beneficial. [Federal Council, Financial Policy Report 2020]

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?

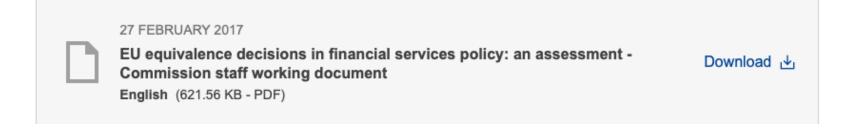


29 July 2019

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



Fortress Europe

The EU Equivalence Procedures in Banking and other Financial Services

Prof. Dr. Susan Emmenegger

