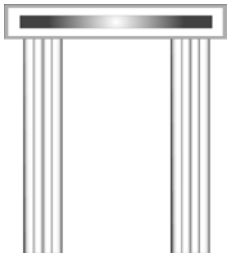
Barnabas Reynolds

A Template for Enhanced Equivalence

Creating a Lasting Relationship in Financial Services between the EU and the UK

POLITEIA

A FORUM FOR SOCIAL AND ECONOMIC THINKING



POLITEIA

A Forum for Social and Economic Thinking

Politeia commissions and publishes discussions by specialists about social and economic ideas and policies. It aims to encourage public discussion on the relationship between the state and the people. Its aim is not to influence people to support any given political party, candidates for election, or position in a referendum, but to inform public discussion of policy.

The forum is independently funded; and the publications do not express a corporate opinion, but the views of their individual authors.

www.politeia.co.uk

A Template for Enhanced Equivalence

Creating a Lasting Relationship in Financial Services between the EU and the UK

Barnabas Reynolds

POLITEIA

2017

First published in 2017
by
Politeia
14a Eccleston Street
London SW1W 9LT
Tel. 0207 799 5034

E-mail: secretary@politeia.co.uk
Website: www.politeia.co.uk

ISBN: 978-0-9955699-6-6

Cover design by John Marenbon

Politeia gratefully acknowledges support for this publication from

Foundation for Social and Economic Thinking (FSET)

Printed in the United Kingdom by:
Millnet Limited
6-7 Princes Court
11 Wapping Lane
London E1W 2DA

PREFACE

This preface is written by Sheila Lawlor, Director of Politeia, to set the wider context of politics and policy for the specialist legal analysis that follows.

As the UK begins its negotiations with the EU, the government will prepare to finalise its detailed proposals for future trade between the UK, the EU and the rest of the world. Since the UK's broad goals were set out earlier in 2017,[1] much of the focus is now on future trade arrangements for the financial services sector.

This sector has been a global success story for centuries. So much so that London today is rivalled only by New York as a world capital for financial services. Two other smaller centres have emerged, Singapore and Hong Kong, but all four are strengthened and underpinned by having a shared common law tradition. London, however, has the added advantage of a competitive, entrepreneurial ethos and global tradition built up over centuries, and a system of government and law which has, in general, sought to encourage businesses poised to exploit the opportunities of new circumstances. Although there have been times when that was less the rule, UK governments have learned (or been obliged to learn) from the consequences for the economy or the judgement by electorates of their mistakes.

The upshot is that London remains a magnet for global capital flows, and the financial sector has developed an unparalleled range of expertise across a number of areas: international insurance, foreign exchange and derivatives trading, investment and fund management to name but a few. Side by side with financial activities are the professional services which have also developed legal, actuarial, accounting and consulting activities, as well as insurance and pensions provision, led by UK firms based in the UK and across the world. The expertise and liquidity in London benefits those who buy, sell or invest there, and it is not surprising to learn that the sector employs around 7 per cent of the UK workforce, accounts for 12 per cent of total economic output and generates a trade surplus of £72 bn.

The EU today remains a part of that successful picture. And, just as with the UK's other arrangements globally, EU-UK trade in the sector brings mutual benefit to the bloc and to the UK. Over the decades since Britain joined the then EEC in 1973, both parties have developed complementary legal arrangements for the sector, and facilitated mutual trade and investment and mobility for businesses to operate without having to go through local legal hoops. The UK has, as a result, increased its access to EU-based customers, and the EU has benefited from access to London's 'know how', from the opportunities it offers EU partners of a global customer base and from London's capital and liquidity.

Given that the government's aim now is to continue free trade with the EU, there should be a clear incentive for both parties to move rapidly ahead to negotiate continued free trade, facilitated by a common legal framework developed together, by common goals for the sector and by the mutual advantages of continuing free trade arrangements. The reasons on both sides are strong to continue this mutual relationship on the same basis, with a bilateral trade agreement perpetuating free trade.

The initial sabre rattling by EU leaders about 'punishing' the UK may have ended, in particular in France following the departure of the Socialist Party's President Hollande, and it has been replaced by a wish in Britain's nearest neighbours to attract 'Brexit' business and talent to Paris, Frankfurt, and Dublin. UK based firms will now decide on the best course and indeed all are obliged to consider the implications of options to meet their duties to shareholders under law.

But, in a sector in which there is so much to play for, certain factors will be paramount. The cost of moving a business is significant, and even if the sums appear to be worth exploring, there will remain the uncertainty in the EU about the impact of closer political integration and the impact of current

[1] Theresa May speech, Lancaster House, 17 January 2017; White Paper: The United Kingdom's exit from, and new partnership with, the European Union, Department for Exiting the EU, 2 February 2017; Conservative and Unionist Party Manifesto 2017.

arrangements and future decisions. These costs are as yet unquantifiable. But above all, as in any deal, there are mutual gains or losses to be taken into account.

In this analysis, Barnabas Reynolds explains that without easy access, EU financial institutions and clients would cease to reap the full benefits of having a global financial centre on their doorstep – in the same time zone and allowing trouble-free access to a deep pocket and global liquidity in London's marketplace. Without such continued access, individuals and the real economy would face the costs of disruption and increased expense in the cost of everyday financial products, from pensions savings to insurance. While the UK government should be prepared for what some denounce as a 'no deal' outcome, even though in fact 90 per cent of world trade is conducted under the WTO umbrella, the likelihood is that real economics will, eventually, replace the posturing and politicking of the initial post-referendum era.

Reynolds, who heads Shearman and Sterling's Global Financial Institutions Advisory and Financial Regulatory practice, therefore proposes a deal based on arrangements which would continue the favourable framework for free trade under which both parties are now beneficiaries. That framework would be based on the principle of 'enhanced equivalence', in which each counterparty would accept the rules and legislative framework of the other as equivalent. Trade would continue as now, with businesses on both sides of the Channel continuing to have free access – for the UK to the EU clients and for the EU to London's capital market and global customer base. The only change would be in the starting position of the UK and the EU. The UK would be an external bilateral trade partner outside the EU and its Single Market and the EU would be trading with the UK, allowing the EU to maintain the integrity of its internal rules and 'four freedoms', each side trading under an agreed, equivalent framework of law. The EU would remain under the jurisdiction of the EU and the ECJ and the UK would be sovereign and subject only to UK law and the UK courts. The equivalence agreement would comply with World Trade Organisation rules, including the General Agreement on Trade in Services.

Such an expanded equivalence deal would, as Reynolds explains, build on the principles and existing corpus of UK and EU legislation for the sector and so provide an ideal ‘headstart’. It would bring the predictability and certainty on which UK and EU institutions depend and the breadth of scope that large businesses need for their variety of activities. And it would meet the needs of the whole economies and their consumers in curbing systemic risk.

The alternative course, of re-establishing London as its own free standing financial centre, compliant with international law, but supported by a competitive regime of pro-business tax breaks and a slimmed down set of regulations based on outcomes not process, would be welcomed by many in the sector. London as a financial centre could attract new business to the City from the EU and globally, poised to exploit the liquidity and global market base of London.

An outcome based on a financial centre model would not, however, be as beneficial as an enhanced equivalence deal to the EU. As the detailed proposals for the legal framework in this volume show, the enhanced equivalence model set out in this paper would allow EU businesses and customers to have the stability and continuity of the present free trade arrangements, and the advantages of operating in London, without the costs and complications of restructuring or a move.

Sheila Lawlor

Director, Politeia
10 July 2017

THE AUTHOR

Barnabas Reynolds is a partner at Shearman & Sterling LLP, where he is head of the global financial institutions advisory practice. He practises in UK and EU regulation and advises all types of financial markets participants on their legal and regulatory situations, difficulties and opportunities, and their legal risk profiles. He is the author of *A Blueprint for Brexit: The Future of Global Financial Services and Markets in the UK*, published by Politeia in November 2016.

After graduating in law from Downing College, Cambridge he took an LLM at Queens' College, Cambridge, and now lives in London.

Reynolds co-edits Sweet & Maxwell's *Journal of International Banking Law and Regulation* and is the co-author of *Shipowners' Limitation of Liability*, Kluwer Law, 2012. He writes regularly on financial services regulatory matters including, recently, client money and assets, MiFID II, shadow banking, margin for uncleared swaps, derivatives clearing and senior management liability.

FOREWORD

The decision has been made for the UK to leave the EU. The key question that arises now is how to establish a positive and mutually beneficial future relationship between the UK and the EU, in particular for financial services. The most promising basis for a long-term and stable relationship between the UK and the EU after Brexit can be found in the EU's concept of "equivalence". As currently constituted, however, the current equivalence framework has several shortcomings that would hinder its usefulness in this task.

This book proposes a bold and ambitious resolution to these shortcomings. It proposes the introduction of a new Equivalence Regulation, which would repeal the various existing measures and replace them with a comprehensive, stable and mutually beneficial framework for a lasting relationship. A draft Equivalence Regulation is set out at Annex A. A reciprocal UK measure would be adopted as part of and further to the Great Repeal Bill. Draft measures are set out at Annex B. The relationship would be strengthened by a Bilateral Agreement between the EU and the UK, which would provide additional predictability and foster deeper cooperation and friendship between the close neighbours. A draft Bilateral Agreement is set out at Annex C. The proposals are not presented as a *take-it-or-leave-it* option. There is much to be discussed, and the drafts include a great deal of optionality, points to be negotiated and ideas for different ways of doing things.

The status quo and the question at hand

For over 40 years, the UK and the EU have participated in a process of ever-increasing collaboration. In the financial services sector, this trend has been underlined by a gradual harmonisation of financial services laws and regulations. The integration was initially reflected in the content of laws and regulations. More recently, it has started to manifest itself in the application of those laws and regulations. This has taken place through the introduction of European Supervisory Authorities, whose role is to flesh out the agreed rules and to ensure interpretations are harmonised between member states.

The goal for the Brexit negotiations is to find a solution which maximises stability and predictability and allows financial institutions and clients in the EU and the UK to maintain their existing business models so far as possible, while paying due respect to both the internal integrity of the EU's single market and the sovereignty requirements of the UK as reflected in the Brexit referendum. It is a goal worth pursuing. EU financial institutions and clients need continued access to the deep pools of liquidity and services available from London and other international financial centres. They also need access to the UK client base, in particular in a retail context. In turn, it is advantageous for UK financial institutions, and the large number of global financial institutions which choose to carry out a substantial amount of their Europe, Middle East and Africa business from London, to have access to clients across the EU.

The reality is that, even in the absence of an agreement, almost all participants in the financial sector—both in the EU and the UK—will be able to continue much as they did before Brexit, but greater complexity and expense are likely to be involved. As banks and lawyers continue to develop solutions for a "no deal" outcome (as they must), what participants in the finance sector, both in the EU and the UK, really want is to be able to continue to execute upon their existing business models and continue to operate, so far as possible, without incurring additional complexity and cost.

A central question to be addressed is whether the extensive recent collaboration on financial services laws and regulations within the EU is to continue with the UK after Brexit.

The options at a high level

There are two ways forward for the future relationship between the UK and the EU in financial services. The first option involves close cooperation, where both parties work together on new law and rule-making initiatives. The EU and the UK would each be autonomous in implementing agreed outcomes. This is essential for systemic risk reasons, since otherwise the regulators in each system would lack the necessary dynamic ability to supervise and amend rules to deal with idiosyncratic and

systemic risk. This route preserves and builds on the years of collaboration and the mutual benefit inherent in the *status quo*.

The second option, which in my previous publication, *A Blueprint for Brexit: The Future of Global Financial Services and Markets in the UK*, I called the "Financial Centre Model", involves the UK separating off more fully and applying international standards but with less or no real coordination with the EU. This outcome is unlikely to benefit EU counterparties and consumers financially, since any additional costs would be pushed back onto them, nor would it be the simplest for UK financial businesses.

The choice is largely political. However, there is a heavy financial and economic element. The global financial markets located in the UK should in some ways be agnostic as to the route chosen. Generally speaking, it is intrinsic to such centres that clients come to the market and the UK is committed to protecting its status as such. However, many institutions would prefer a solution that minimises disruption to existing methods of service-delivery where possible provided that the UK regulatory framework is not saddled with inappropriate laws and regulations which run contrary to the requirements of an internationally competitive financial market.

Current ease of execution - dissipating fast

Executing on either of these options right now should be relatively easy politically, given the fact that the main UK and EU laws are essentially identical. However, already some member states are seeing Brexit as a potential business opportunity for themselves, and it is easy to see how very quickly the situation could evolve such that a more distant relationship is inevitable. The UK could be forced to protect the markets operating within it from fragmentation and to compete properly with some of the actions of its (soon to be former) partners. This could involve offering compensatory incentives to facilitate the stability of businesses and to retain the ability of those businesses to compete in the international arena from the City of London. If that is to be avoided, work on a realistic legal framework for future cooperation must begin now.

The equivalence solution

There is a pre-existing legal framework which can be used as the basis for a new close relationship between the UK and the EU, which is based on the "equivalence" of laws and regulations in both jurisdictions. This is an EU-based mutual recognition framework that is unprecedented in the financial services context throughout the world and which the UK, as part of the EU, has played its part in developing. As a result, it is a framework that should be broadly acceptable to the EU and the UK. It does not bring with it the EU's "four freedoms", which means that the UK would not be subject to the free movement of persons while maintaining the cohesiveness of the four freedoms for EU member states themselves.

However, given the size of the markets operating from the UK into the EU, and difficulties associated with the regime as currently implemented, equivalence as currently constituted will be insufficient for an optimum result. This book proposes enhancements to equivalence which would make it a stable and long-term solution to close UK-EU collaboration in financial services after Brexit. Properly implemented, the measures set out in this book have the potential to form the basis for a lasting and stable relationship that—ultimately—is in the interests of all in the EU and the UK.

Barnabas Reynolds

Partner, Shearman & Sterling LLP
10 July 2017

Special thanks to Oliver Linch, Ben McMurdo and Daniel Frost for their extensive help in writing this book. Many thanks also to Thomas Donegan for his friendship, help and advice, and to Aysuria Chang, Inyoung Song and Anna Tevini for all of their assistance. I would particularly like to thank Professor David Collins for his consideration of WTO issues and Martin Howe QC for his thoughts on EU constitutional powers. All faults that remain, and the views expressed, are my own.

Table of Contents

1. Overview

Given the importance of the financial services sector in both the UK and the EU, it is anticipated that a significant proportion of the forthcoming negotiations will aim to establish a strong and lasting relationship between the UK and the remaining 27 member states following the UK's withdrawal from the EU. The aim on both sides should be to protect and promote economic growth and job creation, minimise shocks to the system, and continue to facilitate financial success for financial institutions and clients across Europe – from multinational banks and financial conglomerates on the one hand, to individual savers and pension-holders on the other.

The UK has uniquely close political and economic ties to the EU. Both have adopted consistent financial regulatory approaches. The UK also has a significant position as an integral financial services centre for many EU financial institutions and corporates, providing valuable sources of expertise, product range, market depth and capital for (amongst others) corporate lending, securities, derivatives and repo trading, portfolio management, insurance and, crucially, financial markets infrastructure.[2]

Access to Global Markets and Financial Centres: the Position Today

The steady increase and globalisation of capital flows and financial services in recent decades has meant that financial markets have developed around four main financial centres, one in each of the main time-zones: London, New York; and then two smaller but nevertheless important centres, Hong Kong and Singapore. No longer the product of national or even regional concerns, these wholesale markets are truly global in nature and reflect modern business and practice. Of necessity, however, these wholesale markets are hosted in, and supervised by, a state. In Europe that has historically been – and will continue to be – the UK, in particular the City of London.

All sophisticated financial institutions require access to these global markets as the only viable sources of deep liquidity and the full range of financial services. The existence of these global markets has had significant positive effects. These include avoiding the fragmentation of the capital markets, allowing countries to escape the constraint on their rate of investment imposed by national savings, promoting competition on the price of capital, lowering the cost of financing for both the private and public sector, diversifying product availability and lowering transaction costs.

Over the past decade, EU law has established a number of harmonised protections, rights and entitlements that have allowed EU financial institutions and corporate clients to have straightforward access to the global markets located in London in a way that reflects EU policies, and have in turn allowed UK-based financial institutions to access clients in a low-friction manner across Europe. These include the various financial services "passports", which enable financial institutions authorised in one member state to carry out regulated activities across the EU without additional local authorisation. This has made the provision of wholesale financial services seamless across the EU. It has also started to assist retail clients, who benefit from additional protection, imposed on top of the wholesale framework as necessary.

Indeed, under the rules of the single market, and the passporting rights associated with it, UK financial institutions have had straightforward access to clients across the EU and EU financial institutions have in turn had easy access to clients in the UK.[3] This mutually-

[2] A European Parliament briefing paper notes the following estimates of the UK market shares in various EU financial services sectors: 26% (Banking); 41% (Asset Management); 22% (Insurance and reinsurance). *Brexit: the United-Kingdom and EU financial services*, European Parliament Briefing Paper (IPOL: EGOV), PE 587.384, 9 December 2016.

[3] The EU cross-border passporting rights are used extensively but not necessarily uniformly. For example, there are five times more inbound passports used by EU banks to access the UK than outbound passports used by UK banks to access the EU under the banking services passport arrangements established by the capital requirements directive (Directive 2013/36/EU) (552 inbound passports compared to 102 outbound passports). See FCA letter to Andrew Tyrie, 17 August 2016.

advantageous set-up has also given rise to a number of ancillary yet useful options, such as the right to establish branches in other member states without additional local law authorisations.

Given the nature of financial services in the modern era, it is in the interests of both the EU and the UK to continue to facilitate this extensive network. Although obstacles to access can be circumnavigated and workarounds and solutions can be, and have been, devised which have the effect of minimising or negating the impact of Brexit in terms of access to client base, these solutions are likely to increase the costs of service provision to EU counterparties and customers.

The Impact of Brexit: the Implications for the Future

It is clear that neither the EU nor the UK consider that the continuation of the passport is a viable solution. The EU has stated that the passport comes as part of a package associated with EU membership, which includes the four freedoms, the authority of EU supranational bodies such as the European Supervisory Authorities and the European Commission, as well as the jurisdiction of the CJEU. The UK has in turn acknowledged its inability to "pick and choose" from this package. The UK government has stated that it would be unacceptable to sign up to a framework where it has no voice in drafting, formulating, implementing or enforcing EU legislation, simply for the purposes of maintaining the passport.[4]

In the absence of a deal or an alternative solution, EU financial institutions and clients will no longer automatically be entitled to access financial services and products from the wholesale global markets in the UK without either:

a. establishing a place of business in the UK, so that they receive their financial services and products solely within the UK's regulatory jurisdiction. This would be of minimal cost but would require administrative adjustment; or

b. through other such workarounds which have been developed in light of Brexit. These workarounds add to the cost of the service provision to the EU customer since they generally involve some form of physical presence within the EU, most notably for marketing purposes.

Without easy access, EU financial institutions and clients will cease to reap the benefits of having a global financial centre in their time-zones, and will lose frictionless access to the deep and liquid global markets in London. The effects on individuals and the real economy – disruption or increased expense in relation to pensions savings and other real economy activities in the EU – are likely to be significant. In focusing on the perceived cost of Brexit to the UK, some may have lost sight of or conveniently disregarded these significant costs to the EU.[5]

Unfortunately, posturing and threats on both sides jeopardise the chances that a close collaborative arrangement could be put in place. The UK would be forced to go its own way and to compete assiduously in the marketplace without reference to the EU.

While it is sensible to make contingency plans for a "no deal" outcome, market participants across all sectors are clear that they are looking to the UK and the EU to come up with a solution that maximises mutual ease of access and minimises disruption.

Equivalence: A Strong, Mutually-Beneficial Relationship

An equivalence-based relationship, rather than any continuation of the passporting regime, is likely to be a viable option. The EU concept of "equivalence" provides the route to a solution (for the financial services sector) premised on a good faith relationship. Properly

4 see, for example, *The United Kingdom's exit from, and new partnership with, the European Union*, Department for Exiting the EU, 2 February 2017, section 2.2 and 2.3.

5 *UK must pay price for Brexit, says François Hollande*, The Guardian, 7 October 2016; *UK hits out at European Commission after Brexit meeting leak*, The Financial Times, 1 May 2017.

implemented, it could provide a workable basis for continuing closely entwined business, while also respecting the UK's and EU's mutual autonomy and sovereignty, as an expression of international comity.

Equivalence as a viable replacement for the passporting regime has been discussed in a number of publications. These include my own "A Blueprint for Brexit: The Future of Global Financial Services and Markets in the UK", published by Politeia in November 2016, and publications, in 2017, by FSNForum/Norton Rose Fulbright, IRSG/Hogan Lovells, Legatum Institute Special Trade Commission/CMS and TheCityUK/Freshfields Bruckhaus Deringer.[6] Equivalence is a particularly promising basis for a lasting relationship, not only because of the deep historical, cultural and political connections involved, but because of the current similarity of the relevant regulatory requirements, and the history of close collaboration in regulatory supervision.

Both the UK and the EU would benefit from preserving the well-defined EU-UK financial ecosystem by way of an equivalence relationship. There should be no prudential concerns in the EU or UK in embarking on such a relationship considering the strong regulatory partnership that would be established, stringent monitoring that would be facilitated by extensive information-sharing and the proven expertise in managing systemic risk across both the EU and the UK.

Alternative Solutions

There are several other solutions to a post-Brexit relationship between the UK and the EU for the financial services sector. These include the following:

a. Mutual co-operation under a comprehensive free trade agreement. This would in essence replicate the proposals in this book but in a framework that is only capable of operating on a purely bilateral basis with the UK. The UK's request in this regard would be to establish and encrust a treatment that is significantly different from – and better than – that available to other third countries. This may be more difficult to achieve on a political level, as it would require unanimity amongst EU member states, rather than the qualified majority vote (in which the UK could participate) and majority vote in the European Parliament (on which UK MEPs could vote) required for the proposals in this book.[7]

   In addition, although such a free trade agreement could provide for direct access for UK financial institutions to offer regulated services to EU clients and *vice versa* as a replacement for the "direct access equivalence" provisions, it is not clear how EU financial institutions and clients could benefit by this route from the "indirect access equivalence" provisions which allow EU firms to treat third-country arrangements as if they were compliant with EU standards, which significantly reduces costs and logistical difficulties for EU financial institutions. Such indirect access arrangements are of necessity a matter of EU law, as they set out the basis on which EU financial institutions can treat non-EU clients. A free trade agreement could oblige the EU to introduce such rules, but this gives rise to difficulties around enforceability, in particular by individuals. In addition, it might not bring the predictability or stability that the more direct solution, namely an Equivalence

6 Barnabas Reynolds, *A Blueprint for Brexit: The Future of Global Financial Services and Markets in the UK*, Politeia, November 2016; FSNForum/Norton Rose Fulbright, *Examining Regulatory Equivalence*, January 2017; IRSG/Hogan Lovells, *Mutual Recognition – a Basis for Market Access after Brexit*, April 2017; Legatum Institute Special Trade Commission/CMS, *A new UK/EU relationship in financial services*, April 2017; TheCityUK/Freshfields Bruckhaus Deringer, *The legal impact of Brexit on the UK-based financial services sector*, May 2017.

7 The recent opinion from the CJEU in relation to the free trade agreement with Singapore (Opinion 2/15 dated 16 May 2017) confirmed that, as a result of the shared competence provisions of the proposed free trade agreement with Singapore, the EU does not have the power to conclude the agreement by itself, but rather may only be concluded by the EU and member states acting together. The eventual deal reached with the EU – in whichever form – must of course take into account the requirements set out in this opinion.

Regulation, would afford. See section 2 ("Types of Equivalence Provisions") below for further discussion on the differences between direct and indirect access equivalence provisions.

b. Reliance on the concept of "reverse solicitation". Currently, many member states allow third-country firms to carry out banking or investment services for clients in their member state that would otherwise require authorisation without such authorisation, provided that the client solicited those services themselves. The provisions enable EU clients to benefit from global financial services in conformity with the EU's wishes to remain open to the outside world. As this concept is not currently harmonised, member states have developed various different interpretations of the requirements associated with the concept. Some, such as the UK, have taken a very permissive view, whereas others, such as France, have adopted a much stricter approach.

   Under MiFID II[8] and MiFIR,[9] reverse solicitation provisions will be harmonised somewhat for investment business with the introduction of a pan-EU exemption for the "provision of services at the exclusive initiative of the client"[10] The text for the new provisions, however, lacks detail and is open to interpretation in various ways. It is anticipated that, although the new wording will not necessarily map on to member states' existing reverse solicitation regimes precisely, national regulators will interpret the new provisions so far as possible in alignment with existing practices. As such, it is to be expected that although the more restrictive member states will be required, to some extent, to widen their approach, this is unlikely to herald a significant enough change, even for those financial institutions whose approach to business might seemingly benefit, to form the basis for a stable business model.

   Given the scope for interpretation in the wording of MiFID II and MiFIR, ESMA could issue interpretive guidance on the approach it expects to be taken in all member states. If that guidance were calibrated to be sufficiently wide, it could allow for a more robust basis for the future EU-UK relationship. Such guidance could differentiate between wholesale and retail clients, allowing for a more permissive approach in the case of the former.

   By way of example, ESMA guidance could state that for wholesale customers the exclusion is satisfied if the third-country institution markets its services in the relevant member state in accordance with the marketing restrictions in that member state. The third-country institution would then sign up the client to terms and conditions under which the client asks to be informed and advised of all services of the service provider for all of its needs as identified by the service provider. Further, once those terms and conditions are in place, it could be deemed that every transaction under those terms and conditions has been solicited solely by the EU client – in that the EU client has established a relationship under which it clearly wishes to be apprised of opportunities and to execute transactions in this manner.

   A more onerous interpretation could be applied for retail clients. For high net worth clients it could require periodic confirmation by the EU-based customer of their wish to be marketed to. For general retail clients, it could include more regular confirmations and restrictions on how the client is handled in accordance with EU and local member state consumer protection laws.

c. Even absent such a permissive interpretation of the new MiFID II/MiFIR wording by ESMA, individual member states looking to make their own jurisdictions more attractive could introduce a regime under their national laws to allow third-country firms to carry out activities cross-border and unhindered with clients in their member states. These could

---

8 Directive on markets in financial instruments (Directive 2014/65/EU).

9 Regulation on markets in financial instruments (Regulation (EU) No 600/2014).

10 Article 42, MiFID II; Article 46(5), MiFIR.

be modelled on the UK's "overseas person" exclusion, whereby persons who do not carry on a regulated activity (or offer to do so) from a permanent place of business in the UK are excluded from the requirements for authorisation in many instances so long as, in essence, they comply with the UK's financial services and product marketing restrictions.

Again, these individual member states could adopt such an approach in a way that differentiated between wholesale and retail clients, so as to provide a more straightforward path for wholesale clients, and build in additional protections for retail clients.[11] There is a risk, of course, that a complex network of state-specific overseas persons regimes would develop if this approach were followed, making it difficult for third-country firms to navigate the mesh of regimes and to carry out pan-EU financial services activities. This would limit the utility of the solution.

It is recognised that solutions (b) and (c) would involve a significant shift in EU financial regulation, and that they have been considered and then not implemented by the EU only relatively recently.[12] In the current climate, they may prove to be overly ambitious and difficult to adopt.

[11] A variation that the EU could consider would be to allow third-country firms to do business in the EU on an "overseas person" type basis, but subject to additional criteria such as only conducting a small amount of business within the EU, or where operating from jurisdictions that have rules which, although not "equivalent" in the sense used in this book, are at least considered acceptable (or of minimal systemic risk) in light of the nature and extent of the proposed activities.

[12] For instance, in the context of MiFID II.

2. Introducing Equivalence: The EU and the Concept of International Mutual Recognition

The international community, particularly since 2008, has recognised the interconnectedness of financial markets around the world, and has sought to develop relationships and supervisory standards which enhance multi-jurisdictional access to financial products and services. A key tenet of this is the mutual recognition of developed markets, rules and standards which allow financial institutions and clients – at least in the wholesale context, but also increasingly in the retail markets – access to required financial services and products, unhindered by territorial restraints and duplicative or even contradictory rules. In the EU, that has manifested itself in the concept of "equivalence", which is explored in this section.

Globalisation and Mutual Recognition

Financial institutions and clients require and expect seamless access to multinational corporations, banks and other market participants. This means that international cooperation to implement effective and consistent regulation and supervision has never been more important. As the financial services sector becomes more and more international in scope, global standards instituted within the G20 framework by the FSB, the Basel Committee and IOSCO have increasingly driven regulatory developments. They have been carefully crafted with input from all major countries with financial centres, with the UK playing a very significant role in their formulation. This increased internationalism, which has led to a convergence of many key requirements, has allowed countries to start to rely more on each other's authorities to implement and enforce these global standards, and to allow other countries' financial institutions cross-border access without a requirement for additional local authorisation.

The EU Approach: Equivalence

The EU's approach to this international mutual recognition has been to develop a concept of "equivalence", similar in many ways to the "substituted compliance" or "exemptive relief" concepts developed elsewhere.[13] Unlike the passporting system, "equivalence" is an expression of international comity in financial services, allowing for sovereign-to-sovereign recognition of supervisory responsibility. The premise is that, having ascertained that the third-country's regulatory environment is sufficiently equivalent to its own, the EU trusts the third country to regulate and supervise its financial services businesses effectively. On that basis, and subject to cooperation agreements, information sharing and so on, the EU permits its own institutions and citizens to obtain financial services from that third country. When implemented on a reciprocal basis, institutions and people can obtain services from each other with minimal disruption and without additional legal risks, compliance or authorisation requirements.

An equivalence-based relationship means that a third country can take alternative approaches and adopt different rules, provided the agreed regulatory and prudential outcomes are achieved by those rules.[14] Equivalence presumes that the third country has laws which are not identical, but are nevertheless sufficiently similar in the protection they provide to the EU system and its regulatory outcomes. In such arrangements, third countries still have the sovereign capacity to legislate independently, constrained only by the mutual recognition relationship requiring sufficiently similar outcomes to be achieved by the relevant regulations.

The EU considers equivalence to be an instrument for the "effective management of cross-border activity of market players in a sound and secure prudential environment with third countries that adhere to, implement and enforce rigorously the same high standards of

---

13 Such as the CFTC's regime of allowing substantial compliance as regards non-US swap regulations or the SEC's regime of exemptive relief from compliance with certain federal securities laws.

14 For example, the recitals relating to equivalence in MiFIR state that: "[t]he equivalence assessment should be *outcome-based*; it should assess to what extent the respective third country regulatory and supervisory framework achieves *similar and adequate regulatory effects* and to what extent it meets the same objectives as Union law." (emphasis added).

prudential rules as the EU".[15] According to the European Commission, an equivalence determination should achieve some or all of the following:

a. reduce or even eliminate overlaps in compliance for the EU entities concerned and in the supervisory work of EU competent authorities,

b. allow the application of a less burdensome prudential regime in relation to EU financial institutions' exposures to an equivalent third country than would otherwise be the case for exposures to non-equivalent third countries,

c. provide EU firms and investors with a wider range of services, instruments and investment choices originating from third countries that can satisfy regulatory requirements in the EU.[16]

Types of Equivalence Provisions

EU law currently provides for multiple equivalence provisions under different pieces of legislation rather than one overarching equivalence regime.[17] There are different criteria and processes for obtaining equivalence statuses under each equivalence provision. Once an equivalence status is declared, this has varying legal effects for financial institutions established in the relevant third country. This lack of harmonisation inhibits the EU equivalence framework from reaching its full potential in facilitating comprehensive mutual recognition relationships with third countries.

The various types of equivalence can broadly be divided into two categories:

a. **Direct access equivalence:** These equivalence determinations allow firms from third countries that have been deemed equivalent to offer regulated services to clients across the EU without additional EU or member state authorisation. The various permutations of equivalence provisions within this category include restrictions on client type (e.g. professionals or retail clients), restrictions on business model (e.g. through a branch or offering only cross-border services), registration requirements (e.g. a requirement to register with an EU regulator), or endorsement by an EU-authorised firm.

b. **Indirect access equivalence:** These equivalence determinations do not provide a route that allows third-country firms to access EU clients directly, but instead they lessen regulatory reporting burdens for EU-regulated institutions dealing with third-country firms, and reduce supervisory overlaps for EU regulators. These regimes enable EU firms to treat third-country arrangements as if they were compliant with EU standards. Examples include EU regulators disapplying separate capital standards for EU subsidiaries within groups that apply equivalent third-country (i.e. Basel) standards; and the treatment of derivative contracts traded on a third-country venue as not over-the-counter and therefore not subject to additional EU compliance requirements.

Equivalence arrangements have already been finalised in various sectors with numerous different third countries. Many of these countries have legal regimes and regulatory requirements which, superficially at least, appear quite different from those in place in the EU. It has involved significant effort on the part of the EU to satisfy itself both that the applicable rules and the method by which those rules are applied and markets are supervised are sufficiently similar to its own. In such cases the EU has allowed EU financial institutions and clients to be exposed to that third country's financial services provider and markets, without additional authorisation requirements. This has also often involved establishing detailed procedural requirements for the equivalence relationships, such as collaboration agreements, information-sharing obligations, and the two parties working closely together to ensure

---

15 *EU equivalence decisions in financial services policy: an assessment*, European Commission Staff Working Document, SWD (2017) 102 final, 27 February 2017.

16 *Ibid.* (emphasis in original).

17 see the European Commission's overview table listing the various equivalence provisions in EU law and current equivalence status of or number of countries.

continued equivalence and cooperation. As set out below (section 3, "Equivalence and the UK"), this process has the potential to be much more straightforward in the case of the UK.

3. Making Equivalence Work

An equivalence-based relationship has the potential to replicate most of the benefits to the UK and the EU of the single market financial services passports, subject and to the extent to which the proposed framework is politically viable. It would, if achieved, preserve the benefits of extensive legislative collaboration while the UK was within the EU. An equivalence-based relationship would enable strong economic growth to be fostered, and would facilitate joint work on stable and appropriately-calibrated regulatory requirements, and would form the basis of a strong supervisory partnership. In this section, the requirements for a successful equivalence framework, and the changes to the existing regimes that would be needed, are explored in detail.

Shortcomings of Equivalence as Currently Constituted

The EU's equivalence system is already among the most sophisticated in the world. Nevertheless, the EU's equivalence regimes, as currently constructed, are unlikely to form a solid enough basis for the foundation of a lasting relationship between the EU and the UK. The European Commission itself has stated that while the existing range of equivalence mechanisms in operation under discrete pieces of EU law is "broadly satisfactory", there are various shortcomings in the framework.[18] The shortcomings identified below would hinder extensive reliance on the EU's present-day equivalence structure.

From the perspective of the UK's and the EU's financial services sectors, these shortcomings would hinder extensive reliance on the EU's current equivalence set-up and will need to be addressed in order to achieve the best possible outcome for the EU and the UK following Brexit:

a. **Gaps**. "Equivalence" is not as things stand a single route to the single market; rather it is a patchwork of measures across various sectors, some of which are more wide-ranging than others. Third-country equivalence provisions are already in place in many sectors, but as a result of the patchwork way in which equivalence has been developed in the EU, there are certain sectors where equivalence regimes have not yet been developed. These include lending, primary insurance, insurance mediation, mortgage credit, settlement finality and other matters. In addition, even in sectors where there are equivalence regimes in place, these are sometimes unnecessarily limited in scope. For example, the current third country equivalence provisions under MiFID II will not allow third-country investment firms to provide investment services to retail clients across the EU, and EU institutions cannot use credit ratings produced by equivalent third-country credit ratings agencies if the credit ratings are deemed to be of systemic importance. Such gaps in the equivalence framework will need to be resolved in order to minimise the amount of EU-UK cross-border business which will be disrupted by Brexit. Resolving this issue will most likely involve the EU legislative process.

b. **Inconsistency of Process**. Each type of equivalence has its own process for determination of the requisite status by the EU. Suspensions of equivalence provisions are also subject to varying triggers and processes. This makes the process for obtaining an equivalence determination opaque, complex and uncertain, and increases costs for firms and countries seeking to demonstrate equivalence. Replacing the various routes to equivalence with a single, predictable route would eliminate this concern. In addition, in some cases the equivalence process includes determinations by political bodies, whereby equivalence is found on the basis of a combination of technical and discretionary decisions, with a reasonably low level of transparency and no mechanism for effective dispute resolution. Promoting objectivity could be achieved by utilising global standards as primary benchmarks for assessing the material aspects of equivalence status, with the result that granting and withdrawing equivalence recognitions becomes a technical legal exercise.

[18] *EU equivalence decisions in financial services policy: an assessment*, European Commission Staff Working Document, SWD (2017) 102 final, 27 February 2017.

c. **Stability**. Equivalence recognitions tend not to have procedural safeguards, and can be withdrawn at short notice if the relevant third country is subsequently deemed not to have standards equivalent to EU standards, for instance due to legislative changes in the third country or the EU. Suspensions of equivalence status can generally take effect within 30 days, and there is sometimes no clear procedure for the suspension of an equivalence recognition. Financial institutions and clients require stability and legal certainty. This issue could be remedied by enabling the EU and the relevant third country to agree to additional, binding advance notice, consultation, mediation and dispute resolution procedures to govern their equivalence-based relationship and any proposed suspensions of equivalence status. A coordination process in relation to proposed regulatory developments in either the third country or the EU would also mitigate the risks of any unilateral suspension of equivalence status.

None of these issues is fatal to the equivalence project. Indeed many financial institutions in various sectors have already established successful business lines in reliance on the existing equivalence framework. However, if it is to form the basis for a more comprehensive relationship between the EU and the UK, these issues must be resolved.

Requirements for an Equivalence-based Solution

The ability to rely on equivalence as the basis for a continuing relationship between the EU and the UK requires the new framework to satisfy two considerations:

a. First, it must be robust enough to underpin a relationship on which financial institutions and clients can rely, build business models and operate with predictability and certainty.

   There is a risk that this point can be overplayed, and that existing equivalence regimes are unfairly characterised as too "flimsy" for a stable way forward. While it is true that the political dimension to the current equivalence determination process adds a layer of uncertainty, two points should be born in mind which suggest that such a risk is limited: (i) this kind of political decision-making is a feature of existing equivalence regimes, on which important financial infrastructure – such as clearing houses – already rely and build business models without undue concern as to stability; and (ii) it should be possible to depoliticise much of the process so that the determination of equivalence becomes more of a matter of technical analysis than political will. In order to allay sector fears around any temporary or flimsy nature of equivalence, additional time periods and processes for determining and withdrawing equivalence will need to be built in.

b. Second, it must be expansive enough so that it can form the basis of a platform for large financial institutions operating across multiple sectors with sophisticated and interconnected business lines. This is not to say that an equivalence arrangement must cover every single aspect of financial regulation or every sector. In some areas – for example in relation to alternative investment funds – it may not be in the interests either of the EU or the UK to align their rules so as to maintain equivalence.

   However, if EU financial institutions are to have easy ongoing access to the global financial markets located in London, they will require a sufficiently expansive equivalence regime with respect to wholesale activities to render such access frictionless. In the retail context, there is perhaps more scope for a non-comprehensive approach, based on mutual convenience of access to each other's retail clients on a sector-by-sector basis.

Enhancing the Equivalence Framework

There are two main ways to remedy the shortcomings of the current equivalence framework:

a. **Piecemeal Amendment Route**. This would involve a piecemeal fix to the current patchwork approach by "plugging the gaps" and adding equivalence provisions that currently do not exist. Depoliticisation and the introduction of procedural safeguards could similarly be introduced by amending existing legislation, on which the UK could vote in the Council through qualified majority voting and by majority in the European

Parliament before Brexit. The result would be an equivalence framework that was still "patchwork" in design, but with more and better coverage.

Not all changes to the equivalence framework to eliminate the shortcomings would require new legislative measures. Some may be effected by other methods which are quicker and more straightforward in execution and still form part of the Piecemeal Amendment Route. For example, stability and depoliticisation could be effected by the European Commission or the European Supervisory Authorities issuing further guidance as to how they approach granting and suspending equivalence declarations.[19]

There are three main disadvantages of the Piecemeal Amendment Route. First, it is possible that certain gaps will continue to exist and, as financial institutions and clients continue to innovate and devise ever more complex and interrelated business models, new gaps could appear. Second, identifying and plugging the gaps, as well as introducing new depoliticised decision-making processes and procedural safeguards, will involve a significant amount of legislative activity whatever route is chosen. With limited time available, and the significant legislative time required, there may not be the practical or political will to see the process through. Third, it is difficult to see how the various routes to equivalence could be replaced by a single process without a root-and-branch re-write of all the equivalence provisions. It is likely, absent a significant legislative effort, that the result of the Piecemeal Amendment Route would be an improvement on the status quo, but would not realise the full potential of equivalence as the basis for a continuing relationship between the EU and the UK.

b. **Equivalence Regulation Route**. This route would involve implementing a reforming, omnibus instrument to repeal existing equivalence regimes and replace them with an Equivalence Regulation that provides an enabling mechanism whereby the EU and the UK are able to enter into a more sophisticated arrangement than under the current laws. This route would work in conjunction with a Bilateral Agreement, as explained in section 4 below.

Equivalence and the UK

The use of equivalence as the basis for the relationship between the EU and the UK is particularly promising. The initial – and often most complex – step in reaching an equivalence arrangement with a third country is ascertaining whether their rules and regulations are similar to the EU's. This step is likely to be considerably more straightforward than in any precedent example for the following reasons:

a. first, the UK has announced that, initially at least, all EU standards will be adopted into UK law by way of a "grandfathering in" of all EU legislation.[20] Thus the process of determining whether the UK's rules are "equivalent" to the EU's will be simple; they will in fact be identical, save for necessary procedural changes, such as appointing appropriate domestic regulatory authorities;

b. second, as and when the UK does move away over time from EU rules, the UK regulatory system is likely to continue to be recognisably similar to the EU's as a result both of starting from the EU framework and of developing its rules within the context and constraint of international standards and norms which guide so much regulation in the

19 Section 4, *EU equivalence decisions in financial services policy: an assessment*, European Commission, Staff Working Document, SWD (2017) 102 final, 27 February 2017. The difficulty here is that existing equivalence provisions do not provide the capacity for the European Supervisory Authorities or the European Commission to establish a binding process or procedural safeguards for the withdrawal of equivalence status.

20 "…the Government will bring forward legislation that will repeal the Act of Parliament – the European Communities Act 1972 – that gives effect to EU law in our country. This legislation will, wherever practical and appropriate, in effect convert the body of existing European Union law into UK law. This means there will be certainty for UK citizens and for anybody from the European Union who does business in the United Kingdom", *Prime Minister's letter to Donald Tusk triggering Article 50*, Prime Minister's Office, 29 March 2017.

modern era.[21] Although doubtless some ongoing verification of compatibility will be necessary, this process is likely to be less burdensome than assessments as regards regulatory systems that are not recognisably similar; and

c. third, the UK and the EU have a history of strong collaboration on financial services regulation. The mechanisms for sharing information and working closely together are already largely in place. Continuing this close relationship, particularly in vital matters such as the detection of money laundering and other financial impropriety, should preserve alignment and require little additional infrastructure.

[21] Many EU measures go beyond international norms, such as those developed by the G20, the FSB, the Basel Committee on Banking Standards, and IOSCO. In these cases, international standards are overlaid with social or political requirements based on considerations which the UK may no longer be minded to apply.

4. An Equivalence Regulation

The EU's equivalence regime is a promising foundation on which to start to build a long-term relationship between the UK and the EU following Brexit. However, the shortcomings identified in section 3 must be addressed, and the solution must satisfy the requirements set out above. As described in this section, the most sophisticated way of achieving this would be to replace the existing patchwork of equivalence regimes with a single, consolidated equivalence mechanism, with comprehensive coverage of the financial services sector: an Equivalence Regulation. This, further enhanced in appropriate cases by a Bilateral Agreement, would render the concept of equivalence more usable, consistent and therefore a more workable basis for a long-term relationship.

A draft Equivalence Regulation can be found at Annex A and modifications to the UK's regime to achieve the same enhanced equivalence regime are to be found at Annex B. Illustrative sections of a potential Bilateral Agreement that could govern the EU-UK mutual recognition relationship are also included at Annex C. There are many ways the various elements could be couched, and it is recognised that the Brexit negotiations will be the determinant for many such issues. The Equivalence Regulation and Bilateral Agreement, as drafted, are therefore intended to be starting points for each. They contain multiple layers and options for the areas they cover.

Structuring the Regulation: Key Elements

The Equivalence Regulation would lay out a framework for equivalence determinations across the financial services sector and would address the current shortcomings identified in this book. Three key shortcomings affecting the EU's current equivalence system were identified in section 3 above: gaps in the equivalence framework, inconsistency of process and a lack of stability. The Equivalence Regulation would address these shortcomings by including the following elements:

a. the replacement of the existing patchwork equivalence framework with a single, overarching concept of equivalence by establishing a comprehensive list or "menu" of available equivalence provisions from which a third country state can select, with an appropriate mechanism for reviewing and updating the menu as new equivalence regimes become available in light of developing regulation;

b. the introduction of a single, standardised and depoliticised process for the determination of equivalence. This would provide for a clearer understanding of the decision-making process and the standards to be applied in determining equivalence; and

c. the introduction of base-line procedural safeguards and mechanisms relating to the granting, suspension and termination of equivalence determinations, including notice requirements, coordination obligations and dispute resolution mechanisms.

Enhancing the Relationship: Bilateral Agreements

The Equivalence Regulation would apply to all third countries seeking an equivalence determination. As an optional addition in cases – like the UK – where a deeper and more comprehensive (rather than limited or sector-specific) relationship is desired, the European Commission would also be empowered to enter into a bilateral agreement with third countries. This would allow for augmentation or entrenchment of the various rights and obligations arising from equivalence determinations on a bilateral basis. This could include enhanced procedural protections, streamlined processes and refined definitions. This bilateral agreement would be an optional extra in instances where both sides would find an enhanced relationship useful.

With or without this bilateral agreement, it is anticipated that the granting of equivalence would normally be a reciprocal process, and that access and relief granted or generated pursuant to an equivalence determination should be available both to and from the EU and the third country in mirror images. The Equivalence Regulation as drafted recognises, however, that in certain limited circumstances it may be appropriate or desirable to depart from a strict application of this requirement.

UK Implementation

Legislation in the UK would have to reflect the Equivalence Regulation so as to provide for reciprocity. If an Equivalence Regulation were passed into EU law before the UK withdrew from the EU, this would be transposed domestically by way of the grandfathering process announced by the Government as part of the proposed 'Great Repeal Bill'.[22] Subject to any necessary amendments for national implementation, the UK would "inherit" the enhanced equivalence framework created by the Equivalence Regulation as part of the EU *acquis*. Annex B contains draft secondary legislation which illustrates the approach that could be taken to grandfather the Equivalence Regulation with necessary domestic amendments.

[22] Section 1, *The United Kingdom's exit from, and new partnership with, the European Union*, Department for Exiting the EU, 2 February 2017.

5. Exploring the Elements

In this section, the various elements which constitute the substance of the draft Equivalence Regulation are examined in detail. There are multiple ways the various issues arising could be resolved. The draft Equivalence Regulation set out at Annex A contains optionality, offering differing routes to addressing, framing and resolving such issues.

Core Principles

The proposed Equivalence Regulation contains a number of overarching principles. These are designed to ensure that any mutual recognition relationship is based on the following ideals:

a. both parties are committed to acting in good faith[23] and in a non-discriminatory[24] and transparent manner;[25]

b. both parties act consistently with agreed equivalence provisions and with the enhanced equivalence relationship established by any bilateral agreements.[26] Notably, parties should not act in a manner inconsistent with the enhanced cross-border financial services arrangements that have been established under a bilateral agreement.[27] This should cover new national legislative developments, non-discrimination between national and foreign financial institutions, and a guarantee of transparent and objective regulation and supervision;[28] and

c. assessments of equivalence are objective[29] and, assuming this is agreeable to the parties, disputes over equivalence status are subject to binding resolution under the applicable dispute resolution mechanisms.[30]

A key principle which should apply to both tracks of any equivalence relationship between the EU and a third country is a general "non-interference" principle.[31] Neither party should act inconsistently with the intended legal effect of an agreed recognition provision, subject to any designated advance notice and other procedures being complied with.

Comprehensive Equivalence

The Annexes to the draft Equivalence Regulation contain a comprehensive menu of equivalence determinations that can be made.[32] These constitute a menu of available determinations from which a third-country applicant can select the sector(s) in which it wishes to pursue an equivalence-based relationship. The composition of this menu has been designed to eliminate the various gaps, deficiencies and other infelicities identified in the existing equivalence regime.

There is also a mechanism for adding new equivalence regimes to the menu to address gaps which might later appear as regulation advances and firms continue to innovate.[33]

---

23 see Recital 15, draft Equivalence Regulation.

24 see Recital 16, draft Equivalence Regulation.

25 see Recital 10, draft Equivalence Regulation.

26 see Recital 7, draft Equivalence Regulation.

27 see Recital 8, draft Equivalence Regulation.

28 see Recitals 14, 15 and 16, draft Equivalence Regulation.

29 see Recital 11, draft Equivalence Regulation.

30 see Recital 17 and Article 13, draft Equivalence Regulation.

31 see Recital 8, draft Equivalence Regulation.

32 see Annex I and Annex II, draft Equivalence Regulation.

33 see Article 6 and 7, draft Equivalence Regulation.

Existing equivalence determinations could be kept in place by way of "grandfathering" provisions, automatically extending them into the new regime without requirements for further action on either part.[34] No new process is required; existing decisions would continue in full force and effect. Going forward both these and any new determinations would be subject to the enhanced protections and processes under the Equivalence Regulation.

A Standardised Equivalence Process

The draft Equivalence Regulation proposes a standard process for the making of equivalence determinations.[35] This has been based on the most commonly-used route for making existing equivalence determinations. The revamped process ensures that all equivalence determinations involve:

a. the same decision-maker in the EU, namely the European Commission, which has the ability to request technical assistance and base its decision not only on input from the relevant European Supervisory Authorities, but also from international bodies as appropriate;[36]

b. the same practical requirements being in place. These include requirements that the third country has effective supervision and enforcement, data protection, anti-money laundering and anti-terrorist financing arrangements, as well as a requirement that there be cooperation and information-sharing arrangements with the EU in place;[37] and

c. the same criteria always being applied to determine whether the third country is equivalent. This is effected by way of a revamped definition of "equivalent", which applies across the board.[38]

As is currently the case, equivalence in some sectors would be subject to additional conditions above and beyond the conditions applicable to all equivalence determinations, to reflect particular concerns in a given sector. These additional conditions are set out in the Annexes to the draft Equivalence Regulation itself.[39] As access to the wholesale global financial markets in London is of particular importance to EU financial institutions and clients, it is anticipated that conditions in the wholesale context – if any – will be fewer than those which might apply in the retail context.

To provide additional flexibility, the draft Equivalence Regulation provides that transitional equivalence statuses may be granted, subject to time limits and other conditions.[40] The EU has a long history of establishing transitional equivalence regimes, for example under the Transparency Directive for US GAAP[41] and under the Capital Requirements Regulation for qualifying central counterparties.[42] The European Commission has also previously noted the benefits provided by the capacity to grant time-bound and transitional equivalence recognitions.[43]

---

34 see Articles 1 and 15(1), draft Equivalence Regulation.

35 see Article 3, draft Equivalence Regulation.

36 see Article 3(3), draft Equivalence Regulation.

37 see Article 3(2), draft Equivalence Regulation.

38 see Article 2(36), draft Equivalence Regulation.

39 see Annex I and Annex II, draft Equivalence Regulation.

40 see Articles 3(4), 14(6) and 15, draft Equivalence Regulation.

41 see Commission Decision 2008/961/EC accepting US (and Japanese) GAAP as equivalent to IFRS; see also Commission Implementing Decision 2008/961/EC, which granted temporary equivalence to the GAAP of China, Canada, South Korea and India. In 2012, Commission Implementing Decision 2012/194/EU granted permanent equivalence to the GAAP of China, Canada and South Korea.

42 see, e.g. Article 497, Regulation (EU) No 575/2013.

43 *EU equivalence decisions in financial services policy: an assessment*, European Commission Staff Working Document, SWD (2017) 102 final, 27 February 2017.

Definition of Equivalence

At the core of the draft Equivalence Regulation is a revamped definition of "equivalence".[44] The premise behind the concept of equivalence is that the EU recognises that, notwithstanding differences both in approach and outcomes, the rules and regulations applied in a third country are sufficiently similar to those of the EU – often as a result of the fact that both are based on international standards – for the EU to be willing to permit financial institutions established and regulated in that third country to carry out activities that would otherwise be regulated in the EU without a requirement for local authorisation.

A determination of equivalence should therefore look to outcomes, rather than form,[45] and must recognise that alternative approaches are legitimate and not automatically non-equivalent. For example, the UK's approach to regulation, based on the common law and precedent principles, and the UK courts' interpretation of UK laws should not affect its equivalence status. Third countries should not be required to adopt a direct "rule-taker" status.

The outcomes to be ensured must be clear: (i) minimising systemic risk within the EU; and (ii) in a retail context, consumer protection.[46] In particular, EU-specific social policy, competition measures and rules designed to further the EU's "single market" should not be relevant to determining whether equivalent standards are reflected in global financial services regimes.

The draft Equivalence Regulation prioritises an assessment based on international standards, and the concept of materiality contained within it establishes a level of objectivity and consistency with international market standards.[47] The principles of equivalence will also inform the determination process.

Optionality for an "international competitiveness" principle is also included,[48] reflecting the European Commission's conception of the key effects of equivalence determinations. It is in the interests of EU firms and investors that the equivalence concept encourages the acceptance of standards which maintain free global competition and diverse choices of financial services products and services. This outcome is not directly related to the prudential or supervisory roles that the European Commission envisages equivalence provisions to have. However it is an objective that merits consideration. The European Commission has itself acknowledged that promoting the EU's competitiveness is a positive effect of an equivalence determination. [49] Additionally, "promoting the competitiveness of the EU" was included in the (now-abandoned) 2016 proposed settlement between the UK and the EU negotiated by David Cameron. This indicates that its inclusion here is likely to be viable and politically acceptable.[50]

---

44 see Article 2(36), draft Equivalence Regulation.

45 see Recital 12, draft Equivalence Regulation.

46 see Article 2(36)(a) and (b), draft Equivalence Regulation.

47 see Recitals 10 and 11 and Articles 2(36) and 3(3), draft Equivalence Regulation.

48 see Recital 13, draft Equivalence Regulation.

49 "In some other cases, the positive effects of an equivalence finding have to be assessed by taking into consideration the impacts on EU market participants and non-EU financial sector entities, in particular to allow EU market participants [to] have a wider range of services and transaction choices that would be compliant with EU regulatory purposes", *EU equivalence decisions in financial services policy: an assessment*, European Commission, Commission Staff Working Document, SWD (2017) 102 final, 27 February 2017.

50 Promoting the competitiveness of the EU was agreed as part of the UK Settlement. See *New Settlement for the United Kingdom within the European Union* (2016/C 69 1/01), which stated that the EU must "enhance its competitiveness" (Section B: Competitiveness) which means "lowering administrative burdens and compliance costs… and repealing unnecessary legislation".

Increasing Predictability and Objectivity: Procedural Safeguards and Dispute Resolution

Stability is key for financial institutions. Valuable and complex transactions cannot be subject to unexpected disruptions, and firms need adequate opportunity to restructure or find alternative remedies. Any mutual recognition arrangement must, crucially, be stable enough for institutions established in either the EU or the relevant third country to justify relying solely on authorisation in their home country when carrying out cross-border business.

Basic procedural safeguards are included in the draft Equivalence Regulation. These would apply to all equivalence determinations. Enhanced safeguards can be agreed as part of the bilateral agreement between the EU and key third countries. The Equivalence Regulation, which provides the framework for such bilateral agreements, acknowledges that commitments regarding suspensions or withdrawals may be made in bilateral agreements.[51] The proposed Equivalence Regulation includes optionality for the European Commission to retain an ultimate right to suspend equivalence recognitions in certain circumstances.[52]

The procedural safeguards proposed as a base-line include:

a. enhanced notification requirements with regard to legislative developments in the EU to allow for new recognitions to be adopted as necessary;[53]

b. stability provisions to ensure that equivalence is only suspended or withdrawn if the third country becomes non-equivalent in the given area when its rules and regulations are considered holistically, with the result that changes to individual requirements in the third country would not jeopardise its equivalence determination provided that it remained equivalent overall;[54]

c. a one-year delay before suspension measures may take effect;[55] and

d. coordination obligations as regards legal or supervisory developments which could affect the recognition conditions, including the possibility of establishing a regulatory committee, which would monitor the overall equivalence relationship.[56]

Stability and predictability are also advanced by providing for a dispute resolution mechanism to resolve difficulties surrounding the granting, suspension and cancellation of equivalence determinations.[57] There is scope for enhanced dispute resolution provisions to be agreed as part of the bilateral agreement between the EU and key third countries.

Cooperation

Both the Equivalence Regulation and a Bilateral Agreement (when applicable) will contain provisions relating to cooperation between the EU and the third country during the life of the equivalence determination.[58] This is a further example of the international comity which underpins the concept of equivalence.

It is anticipated that the EU-UK Bilateral Agreement will contain significant cooperation requirements, both at a high level to monitor the overall relationship and at a technical, detailed level. These would include information-sharing obligations, and information and

51 see Article 14, draft Equivalence Regulation.

52 see Article 14(4), draft Equivalence Regulation.

53 see Article 6, draft Equivalence Regulation.

54 see Articles 14(2) and (3), draft Equivalence Regulation.

55 see Article 14(6), draft Equivalence Regulation.

56 see Articles 6 and 10, draft Equivalence Regulation.

57 see Articles 12 and 13, draft Equivalence Regulation.

58 see Article 3(2)(e), draft Equivalence Regulation; see Article 4, draft EU-UK Bilateral Agreement.

disclosure requirements. An option is also included for the regulatory committee to coordinate efforts in relation to new rules and regulatory developments in the EU and third country, so as to minimise the possibility of significant divergence or conflict.[59]

Bilateral Agreements

The draft Equivalence Regulation empowers the European Commission to enter into bilateral agreements with third countries in cases where a deeper and more comprehensive (rather than limited or sector-specific) relationship is desirable. A broad negotiating mandate and framework for cooperating with third country regimes is set out in the proposed Equivalence Regulation. Current mandates to recognise third countries as equivalent are narrowly defined and tied to each discrete equivalence provision in EU law.

These bilateral agreements would confirm an array of agreed reciprocal recognitions, and could establish enhanced coordination, cooperation, procedural protection and dispute resolution processes. Some of these elements (e.g. procedural safeguards, regulatory cooperation and conflict resolution procedures) are tied to the general mandate for negotiating bilateral agreements. However, flexibility is preserved and there is minimal prescription for the form in which these elements need to be reflected in the bilateral agreement. It is appropriate to leave these arrangements to be tailored and agreed bilaterally, taking into account state-to-state negotiations and the particular relationship in question.

Sections of a draft EU-UK Bilateral Agreement are included at Annex C, to illustrate how the EU and the UK could choose to govern their mutual recognition relationship. They provide an illustrative sketch of the structure that a bilateral agreement under the Equivalence Regulation could take, but are not exhaustive nor intended to be conclusive. Draft recognition principles have been included, based on the recitals of the Equivalence Regulation.[60] The draft Bilateral Agreement also contains a broad consultation process which may be initiated for any matters arising under the agreement, which could potentially include new regulatory developments or requests to change agreed equivalence recognitions.[61]

A mediation and dispute resolution process has been included, based on the Canada-EU Comprehensive Economic Trade Agreement.[62] This corresponds to the option of establishing enhanced dispute resolution procedures that are envisaged in the Equivalence Regulation.[63] In addition, an extensive private law rights section has been included, proposing a traditional arbitration system, while at the same time incorporating certain aspects of the investor state chapter of the CETA agreement.[64] The inclusion of private rights may trigger the requirement for member state unanimity in executing the agreement, unless it is accepted that the Article 50 exit process applies, which provides for qualified majority voting in Council and a majority in the European Parliament. Further, the extent to which the inclusion of private law rights will be politically acceptable is unclear at this stage, and it may be controversial for both the EU and the UK to include a compensation mechanism which private parties may use in the event of unilateral suspensions of equivalence recognitions in breach of the Bilateral Agreement. Finally, change and suspension mechanisms have been provided, as has a template schedule for agreed equivalence recognitions and any agreed special conditions which attach to them.[65]

---

59 see Article 10(4)(b), draft Equivalence Regulation; see Article 6(13), draft EU-UK Bilateral Agreement.

60 see Article 2, draft EU-UK Bilateral Agreement.

61 see Article 6, draft EU-UK Bilateral Agreement.

62 see Articles 7 and 8, draft EU-UK Bilateral Agreement.

63 see Articles 12 and 13, draft Equivalence Regulation.

64 see Article 9, draft EU-UK Bilateral Agreement. Chapter 8, CETA contains private law remedies in the event of investor-state disputes, e.g. in the event of expropriation. In contrast to CETA, the proposed mechanism does not include a standing tribunal system.

65 see Articles 10 and 11, draft EU-UK Bilateral Agreement.

6. Compliance with WTO Rules

Any future relationship between the UK and the EU based on the draft Equivalence Regulation, the UK Implementation and Bilateral Agreement proposed in this book must comply with requirements of the World Trade Organisation including specifically, in the area of services, the General Agreement on Trade in Services. The Equivalence Regulation, UK Implementation and Bilateral Agreement proposals set out in this book have been designed to be compliant with WTO law, and can be implemented for financial services alone, or as part of a wider agreement, as set out in this section.

Background

Each member of the WTO must comply with the GATS, which includes general obligations and specific trade commitments. The GATS comprises articles (which provide for the framework agreement), schedules of specific commitments relating to (i) market access, (ii) national treatment, and (iii) GATS Schedules of additional commitments, lists of exemptions from the Most Favoured Nation principle, and eight annexes (including, amongst others, the Annex on Financial Services). WTO members each have their own tailored and often specially-negotiated GATS Schedule which were initially bilaterally negotiated but accepted as a single undertaking during the WTO Uruguay trade round. Currently, the UK is not a stand-alone member of the WTO, but participates through its EU membership. However, it is anticipated that the UK will continue as a member of the WTO upon its withdrawal from the EU, adopting the EU GATS Schedule (apart from sections that relate to the other EU member states).[66]

WTO rules govern trading relationships for members. In particular, trade discrimination is broadly prohibited through the Most Favoured Nation principle i.e. countries cannot normally grant certain trading partners favourable treatment without extending such special treatment to all WTO members. This principle cannot be excluded through the GATS Schedules although WTO members were permitted to submit specific lists of Most Favoured Nation Exemptions at the time of the formation of the GATS or, if they acceded to the WTO only later, at the time of their accession.

However, there are more general exceptions to the Most Favoured Nation principle. The most important exception in the area of services trade is Article V of the GATS (Economic Integration), which permits agreements liberalising trade in services between two or more contracting parties, such as Free Trade Agreements and other trading blocs in the area of services (such as the EU), on the condition they have "substantial sectoral coverage" and provide for the absence or elimination of substantially all discrimination among the contracting parties. While the requirement of "substantial sector coverage" has not been defined, it is clear that it requires coverage of more than one services sector or services mode of supply, as well as coverage of a significant volume of trade. Accordingly, any bilateral agreement liberalising market access could not be limited only to the financial services sector. No Free Trade Agreement has ever been found to violate the "substantial sectoral coverage" requirement, but this does not remove the risk of a third country disputing the validity of a Free Trade Agreement and its compliance with WTO rules and the "substantial sectoral coverage" requirement.

Article V GATS, however, does not apply to bilateral equivalence recognition agreements, but rather only to liberalisation agreements removing the market access and national treatment restrictions listed in the GATS Schedules. Instead, Article VII of the GATS (Recognition) expressly acknowledges the right of WTO members to recognise, either autonomously or by way of an agreement with the country concerned, the standards and other requirements for the supply of services of one or several other countries. While recognition must occur on a

66 see pages 447-492 of the 2006 EU GATS Schedule and the Understanding on commitments in financial services for financial services aspects of the EU's GATS Schedule. Both the EU and the UK may need unilaterally to update their GATS Schedule if equivalence arrangements are sought for any sector not included in the existing Schedule. This would introduce market access, on a Most Favoured Nation basis, to all such sectors. Access would be conditional upon receipt of an equivalence determination in the relevant sector.

non-discriminatory basis and not result in a "disguised restriction on trade in services", there is no obligation to extend a recognition agreement on a "Most Favoured Nation" basis to all other WTO members. The contracting parties must, however, accord "adequate opportunity" to other WTO members to either accede to the mutual recognition agreement or negotiate comparable agreements. Moreover, unlike an economic integration agreement under Article V, a mutual recognition agreement can be limited to a single services sector or sub-sector. Additionally, negotiations on a mutual recognition agreement must promptly be notified to the Council for Trade in Services "as far in advance as possible of the opening of negotiations." Further, any new recognition measures and significant modifications of existing ones must promptly be notified to the WTO.

A UK-EU Bilateral Equivalence Agreement Would Be Compliant with WTO Law

The proposed UK-EU Bilateral Agreement would be compliant with WTO law. In particular, as a mutual recognition agreement under Article VII of the GATS, it could be limited to the financial services sector. To comply with Article VII, the UK and the EU would have to comply with the notification duties to the Council for Trade in Services, be willing to offer other WTO members an opportunity to join the UK-EU Bilateral Agreement or to negotiate a similar agreement on a non-discriminatory basis, and accord recognition on a non-discriminatory basis. The latter obligation would be violated, for example, if the UK failed to recognise standards operating in the US even though such standards are equivalent to EU standards which it recognises under the Bilateral Agreement.

Article VII alternatively provides for mutual recognition on a unilateral basis. Although the UK and the EU could each unilaterally accept the equivalence of one another's standards and other requirements for the supply of financial services, such acceptance could be unilaterally withdrawn at any time, without procedural protection and certainty as to its revocability or continued existence. As such, this is not as appealing a route as that set out above.

Annex A: Draft Equivalence Regulation

REGULATION (EU) [•]/20[•] OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of [•]

on the recognition of the equivalence of third country financial services regimes

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION

Having regard to the [Treaty on the Functioning of the European Union] and in particular [Article 114, 207, 212, 216, 290 and 291][67] thereof,

Having regard to the proposal from the European Commission,

[After transmission of the draft legislative act to the national parliaments,]

Having regard to the opinion of [•],

Whereas:

(1) The current trend in financial services regulation in the Union and many third countries has been to participate in the development, adoption and recognition of standards that are consistent with international norms. These include those developed by the International Organization of Securities Commissions, the Financial Stability Board, the Basel Committee on Banking Supervision, the International Monetary Fund, the International Association of Insurance Supervisors and the International Accounting Standards Board.

(2) Having regard to the interests of the consumers and participants in the Union's financial services sector (including, credit institutions, financial institutions, insurers, reinsurers, fund managers, central counterparties, regulated markets, OTFs, MTFs, trade repositories; and their customers), it is in the interests of the Union to develop an enhanced framework for the Union to make individual recognition decisions and to negotiate and conclude bilateral mutual recognition agreements with third countries to establish enhanced equivalence relationships.

(3) The recognition of equivalence is intended to promote regulatory convergence with international norms, reduce prudential and supervisory burdens, and increase the choice of financial services and products available to customers and undertakings in the Union.

(4) The current framework for recognising the equivalence of standards applied by the financial services regimes of third countries pursues a number of general objectives. The ability to recognise the equivalence of regulatory requirements imposed by third-country financial services regimes with corresponding regulatory requirements applicable in the Union is in the interests of the Union. First, this balances the needs of financial stability and investor protection in the Union with the benefits of maintaining open and globally integrated EU financial markets. Secondly, regulatory convergence around international standards is promoted in addition to reinforcing supervisory co-operation between the Union and relevant third countries. Thirdly, the cross-border activities of financial markets participants are managed effectively and proportionately in a secure prudential environment with third countries that adhere to, implement, and rigorously enforce equivalent high standards of prudential rules as the Union.

---

[67] NOTE: Article 114 of the Treaty on the Functioning of the European Union has not been chosen as the sole base for the Regulation as this relates to measures for the harmonisation of the internal market only. Articles 207, 212 and 290 of the Treaty have been included as well for consideration. Article 207 relates to the common commercial policy of the Union. Article 212 relates to economic, financial and technical cooperation measures. Article 216 relates to the Union's competence to conclude agreements with third countries for the objectives contained in, inter alia, a legally binding Union act. Articles 290 and 291 relate to the Commission's powers to adopt legal and non-legal delegated acts.

(5) Where a third country's financial services regime is recognised as applying equivalent standards to those applied in the Union, there are benefits to the Union and to the relevant third country. These benefits include, but are not limited to, the following: (i) reductions and eliminations of overlaps in compliance for undertakings authorised in the Union and for Union competent authorities; (ii) a less burdensome prudential regime for Union financial institutions' exposures to third-country entities; and (iii) a wider range of choice for Union firms and investors in terms of services, products and investment choices originating from third countries. Similar benefits will also apply from the third country's perspective.

(6) The Union's current equivalence framework consists of provisions recognising the equivalence of third country financial services regimes that are interspersed amongst various Union legislative acts and are of divergent scope and effect in Union law. The effectiveness and value of the current equivalence framework can therefore be enhanced by a consolidated and consistent equivalence concept and assessment process, additional procedural safeguards, and the ability to establish broad and comprehensive enhanced equivalence relationships governed by and subject to any additional procedural protection established by bilateral mutual recognition agreements.

(7) Equivalence is based on the Union and the third country giving legal effect to agreed equivalence recognitions and third-country provisions corresponding to an equivalence provision (subject to any specific terms and conditions contained in a relevant mutual recognition decision or agreement) on a reciprocal basis.

(8) The Union and third countries should not adopt measures in their legal systems which are inconsistent with the legal effect that the agreed recognition provisions and the third-country provisions corresponding to equivalence provisions (subject to any specific conditions contained in a relevant mutual recognition decision or agreement) are intended to have, unless the appropriate procedures, if any have been established under any mutual recognition agreement (including any advance notice periods) have been complied with.

(9) Equivalence is intended to enable the Union to rely on the compliance by undertakings established in third countries with the third country's regulatory framework and, for undertakings established in the Union, for the third country to rely on supervision and compliance in the Union, ensuring compliance with the Union's regulatory framework.

(10) Assessments of equivalence shall be transparent and involve consideration of material factors based on relevant technical advice, including advice requested from any relevant specialist bodies (and any previously issued guidance from such bodies) and in a manner which is proportionate to the level and nature of access or recognition that is, or would be, granted.

(11) In undertaking assessments of equivalence, the Commission (and any relevant European Supervisory Authority) is obliged to consider the views of, or any technical data or market evidence provided by, market participants, including but not limited to market participants established in the Union and the relevant third country, and where relevant, international bodies such as the Basel Committee on Banking Supervision, the Financial Action Task Force, the Financial Stability Board, the International Association of Insurance Supervisors, the International Accounting Standards Board, the International Monetary Fund and International Organization of Securities Commissions. Where there are concerns regarding confidentiality, national competent authorities within the Union may coordinate with market participants in their jurisdiction, including handling any data received from market participants.

(12) Equivalence is premised on the Union and the relevant third country achieving the same key outcomes, but not necessarily adopting the same approach or legal wording. Alternative approaches from those taken in the Union to reducing prudential risk (or other regulatory outcomes) may legitimately be adopted within the framework of continuing equivalence, so long as those approaches remain equivalent. Where divergence of approaches is a concern, an assessment of the materiality of said divergence, including its impact on the Union and the relevant third country should be undertaken.

(13) [The Union and the relevant third country should commit to implementing reforms to their respective legal and supervisory regimes to further competitiveness in their financial services sectors. Consistent with one of the objectives of equivalence recognition, furthering competitiveness and increasing the choice of third country financial services and products available in the Union may require the implementation of new equivalence provisions in future Union legislation.][68]

(14) The Union and the relevant third country should commit to ensuring that requirements and obligations under their legal regimes relating to the authorisation, licensing and supervision of financial services businesses are clear, transparent, objective, established in advance, and made publicly accessible. Where discretionary powers are established they should be exercised consistently with those principles should not be exercised arbitrarily.

(15) The Union and the third country must act in good faith in developing future laws based on independent standards referenced in this Regulation. It is in the interests of the Union to further develop and add to existing equivalence recognition provisions if these may: (i) reduce or eliminate overlaps in compliance and supervision for relevant institutions and Union regulators; (ii) allow the application of a less burdensome prudential regime for Union financial institutions' exposures to equivalence third countries; and (iii) provide firms and investors in the Union with a wider range of services, instruments and investment choices that may still satisfy the regulatory objectives that are pursued in the Union.

(16) The Union and the relevant third country should commit to acting in a non-discriminatory manner in the application of any requirements under their respective financial services regimes generally and should ensure that other legal requirements do not discriminate between undertakings in the Union and undertakings in the third country. [In particular, discrimination between natural or legal persons based on the official currency of the jurisdiction, or the currency that has legal tender in the jurisdiction, where that natural or legal person is established is prohibited.][69]

(17) [Union or third country undertakings shall be able to seek legal remedy regarding the resolution of disputes between private parties and the parties to the mutual recognition agreement [(where provision has been made for such purposes in the relevant mutual recognition agreement)] where private parties have suffered loss or damage as a result of the Union or relevant third country's suspension of the legal effect of agreed equivalence, recognition or other legislative developments in the Union or third country which are inconsistent with the agreed equivalence recognition (and any reciprocal third country recognition provisions) applicable between the Union and the relevant third country. Union or third country undertakings should only be entitled to a legal remedy where the suspension or legislative development was not effected in accordance with the applicable notice and change procedures, including any that have been agreed in the relevant mutual recognition agreement. Such Union or third country entities shall not be prevented from seeking any other legal remedy that they may be entitled to under the legal regime of the third country or of the Union, or public international law.][70]

---

68 NOTE: Promoting competitiveness is one of the fundamental aims of the single market, and it should be noted that promoting competitiveness of the Union has previously been agreed to by the EU before (see *New Settlement for the United Kingdom within the European Union* (2016/C 69 1/01). The Settlement states that the EU must "enhance its competitiveness" (Section B: Competitiveness) which means "lowering administrative burdens and compliance costs…and repealing unnecessary legislation". While the Settlement was conditional on a referendum result to remain in the EU, the Settlement may still be an indication of what is politically viable.

69 NOTE: This is another aspect from the Settlement mentioned above, and again may be indicative of what is politically viable.

70 NOTE: A principle regarding the availability of private law claims against either party to a mutual recognition agreement is included as an option for consideration.

(18) [Equivalence should provide stable and certain effects for participants in the Union's and relevant third country's financial services sectors. Assessments of equivalence should consider financial services regimes as a whole, and a failure to meet any of the recognition conditions should be determined on relevant outcomes not being achieved due to the overarching approach adopted by a financial services regime, instead of a specific requirement in one jurisdiction's regime being precisely reflected in the legal drafting of laws in the other jurisdiction.][71]

(19) [Where additional requirements for a third-country entity that carries out cross-border financial services activities to register with Union authorities are imposed under an existing equivalence provision even though the relevant third country has been determined to be equivalent, equivalence decisions or mutual recognition agreements may provide for alternative and substitutive registrations (and the conditions applicable to such alternative and substitutive registrations) which shall be treated as satisfying such requirements (as described in the relevant recognition decision or mutual recognition agreement).][72]

(20) Mutual recognition agreements may incorporate any further principles as agreed between the Union and the relevant third country, providing these do not conflict with the principles set out in this Regulation.

HAVE ADOPTED THIS REGULATION

Chapter I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject Matter

1. This Regulation is intended to enhance and supplement Union legislation regarding the equivalence of third country legal and supervisory regimes for various purposes, by harmonising the concepts, rationale and process applicable to existing equivalence regimes under other pieces of Union legislation, by consolidating the areas where equivalence can be determined and ensuring that all aspects of the relevant regimes are covered by equivalence determinations, and by establishing a consolidated framework for recognising the equivalence of third country legal and supervisory regimes for financial services and applying uniform conditions for such recognitions and processes for the continued application of equivalence determinations.

2. This Regulation aligns the existing equivalence regimes under other pieces of Union legislation by setting out a consistent equivalence concept and assessment process and establishing principles which shall apply to the determination of third country equivalence status under all equivalence recognition provisions, whether or not a mutual recognition agreement is in place between the Union and that third country.

3. This Regulation consolidates the existing equivalence regimes, and extends equivalence provisions to areas which are currently not covered, but which it would be desirable to be covered by an equivalence determination, and subject to an equivalence process.

---

[71] NOTE: This recognition principle emphasises that equivalence status and recognition depends on a 'holistic' assessment, and should not rely entirely on specific rules being implemented in the relevant third country.

[72] NOTE: Some existing equivalence provisions in EU legislation require equivalent third-country firms to register with Union authorities before they are entitled to the benefits granted under the particular equivalence provision. This option considers alternative, substitutive registration requirements to be treated as having satisfied the Union's registration requirements e.g. if such firms are already listed on the third country's financial services register for a particular regulated activity.

4. This Regulation also enables equivalence recognitions to be granted under mutual recognition agreements to be concluded with third countries to establish a comprehensive range of equivalence recognitions governed by additional procedural safeguards to be negotiated with such third countries.

5. Existing recognitions granted pursuant to equivalence provisions regarding the relevant third country will continue in full force and effect until such time as a mutual recognition agreement is adopted, or they are otherwise amended or revoked in accordance with the procedure in the relevant Union legislation or the transitional procedures set out in Article 15.

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

(1) 'additional equivalence criteria' means the additional criteria listed in the column headed 'additional equivalence criteria' in the relevant rows of the tables at Annex I [and Annex II] of this Regulation that correspond to and that are applicable to a specific equivalence recognition provision, and describe material outcomes to be considered amongst other recognition conditions. Additional equivalence criteria are indicative and do not necessarily, in themselves, require a specific standard, rule or approach to be adopted for equivalence recognition under Article 3;

(2) 'administrator of benchmarks' means an administrator within the meaning of Article 3(6) of Regulation (EU) 2016/1011;

(3) 'agreed equivalence recognition' means an equivalence recognition provision that has been included in a particular mutual recognition agreement or that has been adopted by the Commission by an implementing act pursuant to Article 3 of this Regulation;

(4) 'AIF' means an AIF within the meaning of point (a) of Article 4(1) of Directive 2011/61/EU;

(5) 'AIFM' or 'alternative investment fund manager' means an AIFM within the meaning of Article 4(1)(b) of Directive 2011/61/EU;

(6) 'ancillary insurance intermediary' means an ancillary insurance intermediary within the meaning of point (4) of Article 2(1) of Directive (EU) 2016/97;

(7) 'ancillary risks' means risks that may be insured in addition to a particular primary risk pursuant to Article 16 of Directive 2009/138/EC;

(8) 'appointed representative' means an appointed representative within the meaning of Article 4(8) of Directive 2014/17/EU;

(9) 'approved publication arrangement' or 'APA' means an approved publication arrangement within the meaning of point (52) of Article 4(1) of Directive 2014/65/EU;

(10) 'arbitration panel' means the arbitrators that are appointed in accordance with Article 12 and the arbitration process established therein and for the purposes of resolving disputes relating to a particular mutual recognition agreement;

(11) 'arbitration process' means the arbitration process that may be established under a mutual recognition agreement, and that complies at least with the provisions of Article 12, for the purposes of resolving any dispute concerning the interpretation, application and implementation within the Union or relevant third country of a mutual recognition agreement;

(12) 'ARM' means an approved reporting mechanism within the meaning of point (54) of Article 4(1) of Directive 2014/65/EU;

(13) 'audit firm' means an audit firm within the meaning of Article 2(3) of Directive 2006/43/EC;

(14) 'benchmark' means a benchmark within the meaning of Article 3(3) of Regulation (EU) 2016/1011;

(15) 'card-based payment transaction' means a card-based payment transaction within the meaning of Article 2(7) of Regulation (EU) 2015/751;

(16) 'central bank' means a central bank within the meaning of point 46 of Article 4(1) of Regulation (EU) No 575/2013;

(17) 'central counterparty' or 'CCP' means a CCP within the meaning of Article 2(1) of Regulation (EU) No 648/2012;

(18) 'central securities depository' or 'CSD' means a central securities depository within the meaning of point 1 of Article 2(1) of Regulation (EU) No 909/2014;

(19) 'collateral security' means collateral security within the meaning of Article 2(m) of Directive 98/26/EC;

(20) 'consumer credit activities' means operating as, or carrying out services typically carried out by, a creditor,[73] or a credit intermediary, including ancillary services, in relation to credit agreements[74] and consumers;

(21) 'consumer' means a consumer within the meaning of Article 3(a) of Directive 2008/48/EC;

(22) 'credit agreement' means a credit agreement within the meaning of Article 4(3) of Directive 2014/17/EU or a credit agreement within the meaning of Article 3(c) of Directive 2008/48/EC;

(23) 'credit institution' means a credit institution within the meaning of point (1) of Article 4(1) of Regulation (EU) No 575/2013;

(24) 'credit intermediary' means a credit intermediary within the meaning of Article 4(5) of Directive 2014/17/EU;

(25) 'credit rating agency' means a credit rating agency within the meaning of point (b) of Article 3(1) of Regulation (EC) No 1060/2009;

(26) 'creditor' means a creditor within the meaning of Article 4(2) of Directive 2014/17/EU or within the meaning of Article 3(b) of Directive 2008/48/EC;

(27) 'CTP' means a consolidated tape provider within the meaning of point (53) of Article 4(1) of Directive 2014/65/EU;

(28) 'data reporting services provider' means a data reporting services provider within the meaning of point (63) of Article 4(1) of Directive 2014/65/EU;

(29) 'derivatives' means those financial instruments defined in point (44)(c) of Article 4(1) of Directive 2014/65/EU; and referred to in Annex I, Section C, (4) to (10) thereto;

(30) 'electronic money institution' means an electronic money institution within the meaning of Article 2(1) of Directive 2009/110/EC;

---

[73] In this paragraph, the term "creditor" means a creditor within the meaning of Article 3(b) of Directive 2008/48/EC.

[74] In this paragraph, the term "credit agreement" means a credit agreement within the meaning of Article 3(c) of Directive 2008/48/EC.

(31) 'electronic money issuer' means an electronic money issuer within the meaning of Article 2(3) of Directive 2009/110/EC;

(32) 'electronic money' means electronic money within the meaning of Article 2(2) of Directive 2009/110/EC;

(33) 'eligible counterparties' means parties that may be recognised as eligible counterparties pursuant to Article 30 of Directive 2014/65/EU;

(34) 'ELTIF' means an ELTIF within the meaning of Article 1(1) of Regulation (EU) 2015/760;

(35) 'equivalence recognition provision' means a provision listed in the rows of the table at Annex I [and Annex II] of this Regulation recognising that the legal and/or supervisory regime of a third country applies requirements that are at least equivalent to those that are applied in the Union for the purposes of enabling entities supervised in third countries to carry out financial services business in the Union;

(36) 'equivalent' means requirements or standards that are materially similar to the corresponding requirements or standards that are applied in the Union. Whether requirements or standards are equivalent shall be determined, primarily, upon whether the following outcomes are achieved, taking into account that alternative approaches achieving the same outcomes may legitimately be adopted and that legislation and regulation may address matters in different ways and still achieve the same outcome:

(a) there is, in a retail context, adequate protection for consumers, investors, deposit holders, policy holders and/or any other persons who may be owed a fiduciary or other similar duty;

(b) there is no significant risk of increased systemic risk in the market for financial services in the Union.

[The fact that a specific standard or requirement is applied in the Union shall not affect whether non-Union standards are equivalent, unless the specific Union standard or requirement is also applied generally in relevant international standards, guidance, or conventions, or unless the outcomes listed in points (a) - (b) are not satisfied];

(37) 'EU AIF' has the meaning given to EU AIFs in point (k) of Article 4(1) of Directive 2011/61/EU;

(38) 'European Banking Authority' or 'EBA' means the body established by Regulation (EU) No 1093/2010;

(39) 'European Insurance and Occupational Pensions Authority' or 'EIOPA' means the body established by Regulation (EU) No 1094/2010;

(40) 'European Securities and Markets Authority' or 'ESMA' means the body established by Regulation (EU) No 1095/2010;

(41) 'European Supervisory Authorities' comprises supervisory authorities that are responsible for microprudential oversight at the European Union Level, namely the European Banking Authority, European Securities and Markets Authority and the European Insurance and Occupational Pensions Authority;

(42) 'existing equivalence regimes' means the provisions contained in various pieces of Union legislation recognising that, for various purposes and effects, the legal regime of a third country applies requirements at least equivalent to those that are applied in the Union, and which are listed in Annex III;

(43) 'existing recognitions' means implementing measures or decisions that have been adopted which recognise the equivalence of the legal and supervisory regime of a particular third

country (or categories of entities of that third country) pursuant to an existing equivalence regime;

(44) 'financial counterparty' means a financial counterparty within the meaning of Article 3(3) of Regulation (EU) 2015/2365;

(45) 'financial holding company' means a financial holding company within the meaning of point (20) of Article 4(1) of Regulation (EU) No 575/2013;

(46) 'financial instrument' means a financial instrument within the meaning of point (15) of Article 4(1) of Directive 2014/65/EU;

(47) 'financial sector entity' means a financial sector entity within the meaning of point (27) of Article 4(1) of Regulation (EU) No 575/2013;

(48) 'financial services' means services of a financial nature offered by a financial service supplier of a Party and for which a Party has made specific commitments in its GATS Schedule, including financial markets infrastructure and insurance and insurance-related services. Financial services include the following (or, where relevant, are similar to or would correspond to the following if they were carried out entirely within the Union):

(a) carrying out any of the activities listed in Annex I of Directive 2013/36/EU;

(b) consumer credit activities and mortgage credit activities;

(c) insurance distribution;

(d) investment services and activities;

(e) operating as, or carrying out services typically carried out by an insurance or reinsurance undertaking (including direct life insurance and non-life insurance, and reinsurance services);

(f) operating as, or carrying out services typically carried out by an insurance distributor;

(g) carrying out reinsurance distribution;

(h) operating as, or carrying out services typically carried out by, an institution;

(i) operating as, or carrying out services typically carried out by, a CCP;

(j) operating as, or carrying out services typically carried out by, an administrator of benchmarks;

(k) operating as, or carrying out services typically carried out by, a trade repository;

(l) operating as, or carrying out services typically carried out by, a central securities depository;

(m) operating as, or carrying out services typically carried out by, an AIFM or Non-EU AIFM;

(n) operating as, or carrying out services typically carried out by, an AIF or Non-EU AIF;

(o) operating as, or carrying out services typically carried out by, a management company;

(p) operating as, or carrying out services typically carried out by, an investment company or UCITs;

(q) operating as, or carrying out services or activities relating to OTC derivatives typically carried out by, a financial counterparty, non-financial counterparty which is above the threshold set out in Article 10 of Regulation (EU) 648/2012, or any other participants in the OTC derivatives markets subject to regulation under Regulation (EU) 648/2012;

(r) operating as, or carrying out services typically carried out by, a credit ratings agency;

(s) operating as, or carrying out services typically carried out by, a management company;

(t) operating as, or carrying out services typically carried out by, an investment company;

(u) operating as, or carrying out services typically carried out by, an institution for occupational retirement provision;

(v) operating as, or carrying out services typically carried out by, an auditor, audit firm or statutory auditor;

(w) operating as, or carrying out services typically carried out by, a payment services provider;

(x) operating as, or carrying out services typically carried out by, a data reporting services provider, APA, CTP or ARM);

(y) operating as, or carrying out services typically carried out by, a transfer system;

(z) operating as, or carrying out services typically carried out by, a service provider;

(aa) operating as, or carrying out services typically carried out by, an electronic money institution or an electronic money issuer;

(bb) operating as, or carrying out services, including payment services, typically carried out by, a payment institution or a payment service provider;[75]

(cc) operating as, or operating or managing a trading venue;

(dd) operating or managing a regulated market;

(ee) operating as, or operating, a depositary that has been appointed in respect of an AIF;

(ff) carrying out the activities typically carried by an issuer of securities or issuers of financial instruments;

(gg) operating as, or operating, a money market fund; or

(hh) operating as, or operating, a systematic internaliser;

(49) 'institution for occupational retirement provision' means an institution for occupational retirement provision as defined in Article 6(a) of Directive 2003/41/EC;

(50) 'institution' means an institution within the meaning of Article 4(3) of Regulation (EU) No 575/2013;

(51) 'insurance distribution' means insurance distribution within the meaning of point 1 of Article 2(1) of Directive (EU) 2016/97;

---

[75] In this paragraph the term "payment service provider" means a payment service provider within the meaning of Article 4(11) of Directive (EU) 2015/2366 or Article 2(24) of Regulation (EU) 2015/751.

(52) 'insurance distributor' means an insurance distributor within the meaning of point 8 of Article 2(1) of Directive 2009/138/EC;

(53) 'insurance intermediary' means an insurance intermediary within the meaning of point (3) of Article 2(1) of Directive (EU) 2016/97;

(54) 'insurance undertaking' means an insurance undertaking within the meaning of Article 13(1) of Directive 2009/138/EC;

(55) 'investment company' means an investment company authorised in accordance with Directive 2009/65/EC;

(56) 'investment firm' means an investment firm within the meaning of Article 4(1)(1) of Directive 2014/65/EU;

(57) 'investment services and activities' means investment services and activities within the meaning of Article 4(1)(2) of Directive 2014/65/EU;

(58) 'IOSCO' means the International Organisation of Securities Commissions;

(59) 'issuer of financial instruments' means a legal entity which issues or proposes to issue financial instruments;

(60) 'issuer of securities' means a legal entity which issues or proposes to issue securities;

(61) 'large financial sector entity' means a large financial sector entity within the meaning of Article 142(4) of Regulation (EU) No 575/2013;

(62) 'life insurance' means any of the classes of life insurance listed in Annex II of Directive 2009/138/EC;

(63) 'management company' means a management company within the meaning of point (b) of Article 2(1) of Directive 2009/65/EC;

(64) 'manager of an ELTIF' means a manager of an ELTIF within the meaning of Article 2(1)(12) of Regulation (EU) 2015/760;

(65) 'manager of a qualifying social entrepreneurship fund' means a manager of a qualifying social entrepreneurship fund within the meaning of Article 3(1)(c) of Regulation (EU) No 346/2013;

(66) 'manager of a qualifying venture capital fund' means a manager of a qualifying venture capital fund within the meaning of Article 3(c) of Regulation (EU) No 345/2013;

(67) 'material' and 'materially' shall be interpreted primarily with reference to relevant international standards, guidance, conventions and agreements, any relevant technical guidance issued by international bodies or financial services markets associations and the principles of proportionality;

(68) 'material financial services business' means financial services business that is quantitatively material in comparison to the other economic activities of an undertaking, taking into account the value of the business, transaction volume, proportion of clients and other relevant factors[, as specified in regulatory technical standards produced by ESMA in accordance with Article [•] or as specified in legislation or regulations adopted by the third country, as applicable]/[Unless a mutual recognition agreement contains specific provisions which specify a different threshold, material financial services business shall be where a third country undertaking derives more than [20%] of its income from business in the Union and the nominal value of such income derived from the Union is in excess of [EUR 50 million], and where a Union undertaking derives more than [20%] of its income from business in the

relevant third country and the nominal value of such income derived from the relevant third country is in excess of [EUR 50 million];

(69) 'mediation and/or consultation process' means the processes indicated in Article 12 for the purposes of facilitating discussions between the Commission on behalf of the Union and the third country recognition body on behalf of the relevant third country relating to any matters arising from a mutual recognition agreement;

(70) 'Member State of reference' has the meaning given to Member State of reference in point (z) of Article 4(1) of Directive 2011/61/EU;

(71) 'mixed financial holding company' means a mixed financial holding company within the meaning of point (21) of Article 4(1) of Regulation (EU) No 575/2013;

(72) 'money market fund' means a collective investment undertaking to which Article 1 of the [Regulation on Money Market Funds][76] is applicable;

(73) 'mortgage credit activities' means operating as, or carrying out services typically carried out by, a creditor[77] or credit intermediary,[78] including ancillary services,[79] in relation to credit agreements[80] and consumers;[81]

(74) 'mutual recognition agreement' means an agreement entered into by the Union pursuant to Article 8 of this Regulation with a third country, under which the Union recognises the equivalence of the third country's legal and supervisory regime for financial services to enable the provision of financial services in the Union by entities supervised in that third country, and vice versa, or for other purposes including reducing regulatory and prudential burdens;

(75) 'non-EU AIF' means a non-EU AIF within the meaning of point (aa) of Article 4(1) of Directive 2011/61/EU;

(76) 'non-EU AIFM' means a non-EU AIFM within the meaning of point (ab) of Article 4(1) of Directive 2011/61/EU;

(77) 'non-life insurance' means any of the classes of non-life insurance listed in Annex I of Directive 2009/138/EC;

(78) 'OTC derivatives' means OTC derivatives within the meaning of Article 2(7) of Regulation (EU) No 648/2012;

(79) 'parent undertaking' means a parent undertaking within the meaning of Article 2(9) and 22 of Directive 2013/34/EU;

(80) 'participating undertaking' means a participating undertaking within the meaning of point (a) of Article 212(1) of Directive 2009/138/EC;

---

76 NOTE: The Regulation on Money Market Funds is expected to be published in the Official Journal in the course of 2017.

77 In this paragraph, the term "creditor" means a creditor within the meaning of Article 4(2) of Directive (EU) 2014/17.

78 In this paragraph, the term "credit intermediary" means a credit intermediary within the meaning of Article 4(5) of Directive (EU) 2014/17.

79 In this paragraph, the term "ancillary service" means an ancillary service within the meaning of Article 4(4) of Directive (EU) 2014/17.

80 In this paragraph, the term "credit agreement" means a credit agreement within the meaning of Article 4(3) of Directive (EU) 2014/17.

81 In this paragraph, the term "consumer" means a consumer within the meaning of Article 4(1) of Directive (EU) 2014/17.

(81) 'payee' means a payee within the meaning of Article 2(13) of Regulation (EU) 2015/751;

(82) 'payer' means a payer within the meaning of Article 2(14) of Regulation (EU) 2015/751;

(83) 'payment institution' means a payment institution within the meaning of Article 4(4) of Directive (EU) 2015/2366;

(84) 'payment service provider' means a payment service provider within the meaning of Article 4(11) of Directive (EU) 2015/2366;

(85) 'payment service' means a payment service within the meaning of Article 4(3) of Directive (EU) 2015/2366;

(86) 'payment services provider' means a payment services provider within the meaning of Regulation (EU) 2015/751;

(87) 'professional client' means a professional client within the meaning of point (10) of Article 4(1) of Directive 2014/65/EU;

(88) 'public sector entity' means a public sector entity within the meaning of point (8) of Article 4(1) of Regulation (EU) No 575/2013;

(89) 'qualifying social entrepreneurship fund' means a qualifying social entrepreneurship fund within the meaning of Article 3(1)(a) of Regulation (EU) No 346/2013;

(90) 'qualifying venture capital fund' means a qualifying venture capital fund within the meaning of Article 3(b) of Regulation (EU) No 345/2013;

(91) 'recipient of the e-society service' means a recipient of the service within the meaning of Article 2(d) of Directive 2000/31/EC;

(92) 'recognition conditions' means the conditions contained in points (a) to (f) of Article 3(2) of this Regulation[, or if relevant the conditions that are applicable to equivalence decisions adopted under the processes set out in an existing equivalence regime];

(93) 'recognition principles' means the overarching principles as they have been implemented in a particular mutual recognition agreement and that have been designated as recognition principles for the purposes of this paragraph, or where no mutual recognition agreement is in place the overarching principles at the recitals to this Regulation;

(94) 'regulated market' means a regulated market within the meaning of point (21) of Article 4(1) of Directive 2014/65/EU;

(95) 'regulatory committee', means the committee that may be established under a mutual recognition agreement, and that complies with the provisions of Article 10;

(96) 'regulatory purposes' means regulatory purposes within the meaning of point (g) of Article 3(1) of Regulation (EC) No 1060/2009;

(97) 'reinsurance distribution' means reinsurance distribution within the meaning of point (2) of Article 2(1) of Directive (EU) 2016/97;

(98) 'reinsurance intermediary' means a reinsurance intermediary within the meaning of point (5) of Article 2(1) of Directive (EU) 2016/97;

(99) 'reinsurance undertaking' means a reinsurance undertaking within the meaning of Article 13(4) of Directive 2009/138/EC;

(100) 'reinsurance' means reinsurance within the meaning of Article 13(7) of Directive 2009/138/EC including the activity consisting in accepting risks, ceded by any member of Lloyd's, by an

insurance or reinsurance undertaking other than the association of underwriters known as Lloyd's;

(101) 'retail client' means a retail client within the meaning of point (11) of Article 4(1) of Directive 2014/65/EU;

(102) 'securities financing transaction' or 'SFT' means a securities financing transaction within the meaning of Article 3(11) of Regulation (EU) No 2015/2365;

(103) 'securities' means transferable securities within the meaning of point (44) of Article 4(1) of Directive 2014/65/EU;

(104) 'service provider' means a service provider within the meaning of Article 2(b) of Directive 2000/31/EC;

(105) 'statutory auditor' means a statutory auditor within the meaning of Article 2(2) of Directive 2006/43/EC;

(106) 'subsidiary' means a subsidiary undertaking within the meaning of Articles 2(10) and 22 of Directive 2013/34/EU, including any subsidiary of a subsidiary undertaking of an ultimate parent undertaking;

(107) 'supply of a financial service' means the supply of a service through the four modes of supply set forth in paragraph 2 of Article I of the GATS;

(108) 'systematic internaliser' means a systematic internaliser within the meaning of Article 4(1)(20) of Directive 2014/65/EU;

(109) 'third country firm' means a third country firm within the meaning of point 57 of Article 4(1) of Directive 2014/65/EU;

(110) 'third country recognition body' means the body that is designated in a mutual recognition agreement for the purposes of representing the relevant third country in all matters relating to equivalence recognition provisions;

(111) 'third-country insurance undertaking' means a third-country insurance undertaking within the meaning of Article 13(3) of Directive 2009/138/EC;

(112) 'third-country resolution proceedings' means third-country resolution proceedings within the meaning of point (88) of Article 2(1) of Directive 2014/59/EU;

(113) 'trade repository' means a trade repository within the meaning of Article 2(2) of Regulation (EU) No 648/2012 or a trade repository within the meaning of Article 3(1) of Regulation (EU) 2015/2365;

(114) 'trading venue' means a trading venue within the meaning of Article 4(1)(24) of Directive 2014/65/EU;

(115) 'transfer system' means a transfer system within the meaning of Article 2(a) of Directive 98/26/EC;

(116) 'transferable securities' means transferable securities within the meaning of point (n) of Article 2(1) of Directive 2009/65/EC;

(117) 'undertakings in collective investments' or 'UCITs' means UCITs within the meaning given to that term in Article 1(2) of Directive 2009/65/EC.

Chapter II

EXISTING EQUIVALENCE FRAMEWORKS

Article 3

Determination of equivalence

1. For the purposes of the equivalence recognition provisions listed in the tables in Annex I [and Annex II] of this Regulation, the following process shall be used for the determination of a third country's legal regime as being equivalent to that in the Union.

2. The Commission shall adopt an equivalence recognition by an implementing act or by including it in a mutual recognition agreement if:

   (a) the third country applies requirements which are equivalent in terms of outcome to the legally binding requirements applicable in the Union that correspond to a particular agreed equivalence recognition set out in the table in Annex I [or Annex II], as determined by the Commission based on the technical advice received from European Supervisory Authorities in accordance with Article 3(3);

   (b) the third country applies equivalent ongoing and effective supervision and enforcement to entities that are authorised and supervised in that third country;

   (c) equivalent standards of professional secrecy and data protection are in place and enforced in that third country;

   (d) equivalent standards or requirements relating to anti-money laundering and anti-terrorist financing are in place and enforced in that third country;

   (e) appropriate cooperation agreements (including regulatory enforcement, information sharing and tax information exchange and regulatory cooperation) are or have been entered into between the relevant third country's financial services regulators and the Commission in respect of each relevant sector (and, if the Commission deems necessary, Union supervisory authorities) that include at the least provisions relating to:

      (i) notifications between relevant third country regulators, and the Commission (and if the Commission deems necessary, Union supervisory authorities);

      (ii) the establishment of public registers of the third country entities that carry out financial services business in the Union pursuant to any agreed equivalence recognition; and

      (iii) prompt notifications to the Commission (and if the Commission deems necessary, European Supervisory Authorities) by the relevant third country financial services regulators where entities authorised or supervised in that third country that carry out financial services business in the Union pursuant to arrangements established pursuant to this Regulation are subject to disciplinary or infringement proceedings in the third country, are subject to a variation, termination or suspension of authorisation to carry out any particular financial service under that third country's legal and supervisory regime, or enter into any insolvency, administration, receivership, resolution or any other similar event or process; and

   (f) [the third country sets out reciprocal recognitions that are, or will be, effective in the third country's legal system specifically corresponding to each agreed equivalence recognition [(this condition may be disapplied completely or in relation to any agreed equivalence recognition, if the Commission does not intend to require reciprocal

recognitions from the third country in deciding to adopt a recognition decision or to conclude a mutual recognition agreement)]].[82]

3. In assessing whether the recognition conditions have been met, the Commission must consider the views of, or any technical data or market evidence provided by, market participants, including but not limited to market participants established in the Union and the relevant third country, and where relevant, European Supervisory Authorities and international bodies such as the Basel Committee on Banking Supervision, the Financial Action Task Force, the Financial Stability Board, the International Association of Insurance Supervisors, the International Accounting Standards Board, the International Monetary Fund and International Organization of Securities Commissions. Where there are concerns regarding confidentiality, national competent authorities within the Union may coordinate with market participants in their jurisdiction, including handling any data received from market participants.

4. Until such time as an equivalence recognition is made by the Commission, the Commission may implement the transitional provisions referred to in Article 15.

5. The Commission shall consider adopting an equivalence recognition by way of an implementing act upon its own initiative or if requested by the Council [or if requested by a third country].

Article 4

Overall principles for equivalence recognition

1. Equivalence recognition provisions should be construed, and given effect in Union law, in accordance with the recognition principles in the manner in which they have been incorporated in this Regulation or as further specified in a mutual recognition agreement.

2. The equivalence provisions agreed between the Union and a third country (subject to any specific conditions contained in a relevant mutual recognition agreement or the recognition decision) shall be given legal effect in Union law.

3. Equivalence recognition is based on the Union and each relevant third country applying, and continuing to apply, equivalent requirements and standards, taking into account:

   (a) material legal, supervisory and prudential standards and requirements; and

   (b) the proportionate application of equivalent legal, supervisory and prudential standards and requirements [(including, to the extent necessary, whether material financial services are carried out)].

4. The Commission shall ensure that agreements made between the Union and a third country recognition body (including those made pursuant to a mediation and/or consultation process or adopted by an [arbitration panel]/[judicial decision procedure]), [as well as any recommendations made by a regulatory committee (subject to any terms agreed between the Union and the relevant third country as to when recommendations are required to be implemented)], are given legal effect in Union law if this has been agreed or if the Commission otherwise deems necessary, and may implement any such agreements, recommendations and decisions by adopting delegated regulations.

[82] NOTE: A reciprocity requirement is only needed if there is to be a two-way deal. A facility for non-reciprocal recognitions may provide more flexibility.

Article 5

Effect of equivalence recognition in the Union

1. Agreed equivalence recognitions shall include any of the equivalence recognition provisions listed in the tables at Annex I to this Regulation[, and any of the additional equivalence recognition provisions set out in Annex II as further determined in accordance with the provisions of Chapter III].[83]

2. Agreed equivalence recognitions shall (subject to the terms of any relevant mutual recognition agreement and without the need for further legal implementation) be recognised under Union law as having direct legal effect in accordance with the description contained in the column headed "Description of effect of agreed equivalence recognition in the Union" of the table[s] at Annex I [and Annex II] to this Regulation. However, the Commission shall take any measures necessary, including issuing guidance and adopting delegated or implementing regulations, to further implement or clarify the effect in Union law of any agreed equivalence recognitions.

Article 6

Coordination between the Union and the third country

1. The Commission shall notify any relevant third country financial services regulator, third country recognition body, and any relevant regulatory committee, promptly upon becoming aware of proposed relevant legislative developments in the Union relevant to any agreed equivalence recognitions or which are relevant to whether the recognition conditions remain satisfied.

2. The Commission shall ensure that any relevant third country financial services regulator or third country recognition body commits to notifying the Commission, and any relevant regulatory committee, promptly upon becoming aware of proposed legislative developments in the third country relevant to any agreed equivalence recognitions or which are relevant to whether the recognition conditions remain satisfied.

3. The Commission shall cooperate with any relevant third country financial services regulator, third country recognition body, and any relevant regulatory committee, in discussing the effects that a relevant proposed legislative development in the Union or the third country may have on the recognition conditions continuing to be satisfied. Such cooperation shall be in accordance with any procedures established by the relevant cooperation agreement, mutual recognition agreement or any regulatory committee.

4. The Commission shall cooperate with any third country financial services regulator, third country recognition body, and any relevant regulatory committee, in seeking to ensure that legislative developments in the Union or the relevant third country consider the incorporation of third country equivalence provisions in accordance with the objectives of this Regulation.

[83] NOTE: It should be considered whether "filling the gaps" should be included within the Regulation, which may lead to delays or complications, or whether the additional equivalence recognition provisions proposed in Annex II should be delegated to ESMA as a technical matter, or otherwise left to further legislation.

Chapter III

CONSOLIDATION PROVISIONS

Article 7

Identification of additional equivalence recognition provisions

1. The Commission shall be able to identify additional equivalence recognition provisions in addition to the existing equivalence regimes set out in Annex I, so that a third country's regime is considered equivalent to that in the Union for the purposes of a specified part of the relevant Union legislation.

2. The Commission shall be assisted by technical advice from relevant European Supervisory Authorities including the European Banking Authority, the European Insurance and Occupational Pensions Authority, the European Securities and Markets Authority.

3. The Commission will adopt delegated regulations to identify additional equivalence recognitions, and will include a description of the effect of the equivalence recognition in the Union, as well as the procedure for determining such equivalence.

4. The Commission shall be able to amend the equivalence recognition provisions included in Annex I [or Annex II] or the delegated regulations adopted under this Article as necessary where there is a legislative development in Union law which will have the effect of altering or repealing the underlying Union legislation relating to that equivalence recognition provision.

5. [The Commission has identified a number of additional equivalence provisions, which shall come into effect on the same date as this Regulation. The table in Annex II of this Regulation sets out the equivalence recognition provisions that have been identified by the Commission and if included as an agreed equivalence provision would therefore be recognised under Union law as having direct legal effect in accordance with the description contained in the column headed "Description of effect of agreed equivalence recognition in the Union" of the table at Annex II to this Regulation.][84]

Chapter IV

MUTUAL RECOGNITION AGREEMENTS

Article 8

Negotiation of mutual recognition agreements by the Commission

1. At the request of the Council the Commission shall initiate [, or upon a request received by the Commission from a third country the Commission shall consider initiating,] negotiations relating to mutual recognition agreements to be concluded with third countries on behalf of the Union.

2. The Commission shall negotiate the provisions of permanent mutual recognition agreements and, additionally, the provisions of interim or transitional mutual recognition agreements, as necessary.

3. Mutual recognition agreements negotiated by the Commission on behalf of the Union may be concluded by the Council making a decision to adopt the agreement in accordance with Article 218(6) of the Treaty on the Functioning of the European Union.

[84] NOTE: Additional equivalence regimes could be included as part of the Regulation, or could be implemented by delegated legislation.

4. In negotiating the provisions of mutual recognition agreements, the Commission should take into account the recognition principles included in the recitals to this Regulation and shall ensure that the recognition principles are incorporated into all mutual recognition agreements negotiated and concluded between the Union and a third country. The Commission may include further recognition principles in a mutual recognition agreement, as negotiated with the third country.

5. The terms of concluded mutual recognition agreements shall be recognised and given legal effect within the Union.

Article 9

Conditions for mutual recognition agreements[85]

1. Mutual recognition agreements shall confirm how the recognition conditions are satisfied by provisions of the third country's legal and supervisory regime or how the recognition conditions may be satisfied subject to other arrangements or commitments set out in a particular mutual recognition agreement.

2. Mutual recognition agreements may contain any or all of the provisions regarding the establishment of a regulatory committee in accordance with Article 10, provisions establishing a mediation and/or consultation process in accordance with Article 12, provisions establishing an [arbitration/judicial decision] process in accordance with Article 13, and provisions setting out a procedure for the suspension of agreed equivalence recognitions in accordance with Article 14.

3. [Nothing in this Article or this Regulation shall prohibit or restrict the finding of equivalence regarding a third country under existing Union legislation in accordance with the process set out in that relevant legislation [as amended and supplemented in this Regulation].][86]

Article 10

The regulatory committee

1. Mutual recognition agreements may establish a regulatory committee, or where appropriate, multiple regulatory committees with oversight over different types of market participants (e.g. separate committees for systemically important firms, credit institutions, market infrastructure and investment firms) in accordance with the terms of this Article.

2. The regulatory committee will consist of a chairperson and permanent members as specified under the provisions of the mutual recognition agreement.[87]

3. Permanent members and chairpersons shall be selected on the basis of expertise or experience in financial services law and regulation and in accordance with the relevant provisions established in a mutual recognition agreement.

---

85 NOTE: Consider whether there should be an additional condition such that equivalence can only be determined for Union markets (i.e. those contained in the EU, rather than world markets that the EU accesses) such that the EU recognises the sovereignty of UK or world markets.

86 NOTE: Not all existing equivalence decisions require all the requirements set out in Article 3. There is an option to consider whether all existing equivalence procedures are replaced under the consolidated equivalence assessment processes in this Regulation or may exist in parallel leaving an option as to whether equivalence decisions are made under the original equivalence procedure, or the consolidated process established under this Regulation.

87 NOTE: Regulatory committees are optional and it is for the parties to consider the establishment of a committee and its role in the relevant bilateral mutual recognition agreement.

4. The regulatory committee shall [(subject to any other roles concluded in the relevant mutual recognition agreement)] have the following functions:[88]

   (a) [periodic] reviews of international developments and/or standards relevant to the cross-border financial services arrangements established under agreed equivalence recognitions[, as requested by the Commission or the third country recognition body];

   (b) consulting with the Commission, the third country recognition body, relevant Union and third country supervisory authorities or other relevant third parties, and issuing recommendations to the Commission and third country recognition body regarding the implementation of the terms of the relevant mutual recognition agreement, and coordinating developments and reforms in the legal regimes of the Union and the relevant third country[, as requested by the Commission or the third country recognition body];

   (c) [at its own initiative, or]where requested by the Commission or the third country recognition body, considering whether the terms of a mutual recognition agreement, the recognition conditions or the recognition principles are not satisfied or complied with, and issuing recommendations [or initiating the mediation and/or consultation process where it deems necessary];

   (d) [at its own initiative, or]where requested by the Commission or the third country recognition body, considering whether proposed changes or reforms ought to be made to the respective legal regimes of the Union or the relevant third country in accordance with developments in international standards or developments in the legal regime of the Union or third country and issuing recommendations [where it deems necessary];

   (e) monitoring developments in the legal systems of the Union and the third country, and [where requested] making recommendations to the Commission or the third country recognition body, or, where a mutual recognition agreement provides for a mediation and/or consultation process, initiating the mediation and/or consultation process where the regulatory committee believes there is a risk of breach of the terms of a mutual recognition agreement or the recognition conditions; and

   (f) to the extent that a mutual recognition agreement provides for a mediation and/or consultation or [arbitration/judicial decision] process, participating in the mediation and/or consultation or [arbitration/judicial decision] processes of a mutual recognition agreement pursuant to the specific procedures established in a mutual recognition agreement.

5. Decisions taken by the permanent members of the regulatory committee shall be taken on the basis of simple majority. In the event of a tied vote, the chairperson shall take the final binding vote.

6. The regulatory committee shall act in accordance with the specific provisions and procedures established in a mutual recognition agreement.

7. The regulatory committee shall be able to request specialist technical, legal or other advice if it considers necessary.

8. Costs of the regulatory committee shall be shared equally between the Union and the relevant third country.

---

[88] NOTE: The regulatory committee's functions (for example whether it may act on its own initiative) could be established in the Regulation, but might be more appropriately left to the agreement of the parties in the relevant bilateral mutual recognition agreement.

9. The Commission is enabled to adopt delegated regulations or take other measures with legal effect in Union law to implement the recommendations of the regulatory committee as the Commission considers appropriate.

Article 11

Supervision of cross-border services

1. The relevant national competent authority of the relevant third country will have supervisory and prudential oversight over any cross-border activities of a relevant third country firm. Similarly, the relevant national competent authority of member state of the Union will have supervisory and prudential oversight over any cross-border activities of a firm authorised in a member state of the Union.

2. Article 11(1) above shall apply equally to subsidiaries and branches of both relevant third country firms and firms authorised in a member state of the Union.

Article 12

Mediation and consultation process

1. Mutual recognition agreements may establish a mediation and/or consultation process in accordance with the terms of this Article.[89]

2. The mediation and/or consultation process shall function as a forum for cooperative discussion between the third country (represented by the third country recognition body) and the Union (represented by the Commission), and, to the extent that the mutual recognition agreement establishes a regulatory committee, the regulatory committee regarding any matter arising under a mutual recognition agreement.

3. The Commission and the third country recognition body may agree to extend the duration of the mediation and/or consultation process once it has commenced.

4. Specific procedures relating to the mediation and/or consultation process shall be provided for in a mutual recognition agreement.

5. The Commission is enabled to adopt delegated regulations or take other measures with legal effect in Union law to implement the terms of any agreement between the Commission and the third country recognition body arising out of the mediation and/or consultation process.

Article 13

[Arbitration] / [Judicial Determination] process

1. Mutual recognition agreements may establish [an arbitration] / [a judicial determination] process.[90]

2. The Commission or the third country recognition body may initiate the [arbitration][judicial determination] process by submitting a request to the relevant responding party and, to the

---

89 NOTE: It is optional whether the parties wish to establish a mediation and/or consultation process under the relevant bilateral mutual recognition agreement, and under what terms. Including a mediation and/or consultation process may or may not affect the risk of revocation of agreed equivalence recognitions.

90 NOTE: If the Union and the third country wish to agree a bespoke disputes resolution process, they may do so by including it in a mutual recognition agreement. It is optional whether mutual recognition agreements should be enabled to establish an arbitration or judicial determination process, or it may be preferable for the only option to be termination of the agreed equivalence recognition(s) without an arbitration or judicial process.

extent that the mutual recognition agreements establish a regulatory committee, sending a notice to the regulatory committee.

3. Where a mutual recognition agreement provides for a mediation and/or consultation process, the [arbitration][judicial determination] process may only be initiated where a matter has not been resolved in accordance with the mediation and/or consultation process.

4. [The arbitration panel shall be selected on the basis of experience in financial services law and regulation.

5. The arbitrators shall adopt decisions by simple majority. In the event of a tied vote, the chairperson of the arbitration panel shall take the final binding vote.

6. Specific procedures relating to the arbitration process shall be provided for in a mutual recognition agreement.]

7. [The judicial determination process shall involve [three] judges appointed in agreement between the Union and the relevant third country. In the event that no agreement can be reached regarding any one of the judges, the other judges already chosen shall decide between them and confirm the remaining judge or judges.][91] In the event that no agreement can be reached regarding any judges, the judges shall be appointed by a [neutral third party].

8. Decisions made by the [arbitration panel][judges] shall be made public (redacted as necessary to the extent that they involve confidential information) and shall include the rationale for the decision bearing in mind the recognition principles and the outcomes listed at points (a) and (b) of Article 2(36) of this Regulation.

9. The Commission is enabled to pass delegated or implementing regulations or to take other measures with legal effect in Union law to implement the terms of the decision of the [arbitration panel][judicial determination] arising out of the [arbitration][judicial determination] process as it may deem necessary.

Chapter V

Article 14

Suspension of mutual recognition agreements or equivalence recognitions

1. Mutual recognition agreements may specify that the Commission shall be empowered to take action [suspending the effect of a mutual recognition agreement] / [suspending the effect of agreed equivalence recognition provisions, contained in a mutual recognition agreement] [including on a [partial,]temporary or conditional basis]. Agreed equivalence recognitions contained in a mutual recognition agreement shall continue to have effect in Union law unless the Commission has adopted a delegated regulation pursuant to this Article suspending their legal effect. [92]

2. The Commission may, by delegated regulations, take the suspensive actions referred to in Article 14(1) in relation to the agreed equivalence recognitions established under a mutual recognition agreement. [The Commission should exercise its powers under this Article in accordance with the recognition principles and the terms of the mutual recognition agreement.

---

[91] NOTE: If a judicial process will be available, there may be issues concerning national sovereignty especially as to the relevant law to be used to determine disputes. Public scrutiny should also be considered, especially the extent to which judicial or arbitral procedures are made public, although this may increase uncertainty/instability.

[92] NOTE: Options are provided concerning the extent to which agreed equivalence recognitions may only be suspended entirely (which may mean that suspensions are less likely to be used), or whether suspensions of individual agreed recognitions should be possible and on a partial, temporary or conditional basis.

The Commission's power to suspend the legal effect of a mutual recognition agreement in the event of a third country's financial services regime not being equivalent to the Union's financial services regime may only be exercised where the overarching approach adopted by the third country's financial services regime means that the outcomes listed at points (a) to (b) of Article 2(36) of this Regulation will not be achieved.][93]

3. The Commission may by delegated regulation suspend the legal effect of any agreed equivalence recognitions (where no mutual recognition agreement is in place) and existing recognitions [including on a [partial,]temporary or conditional basis] in the event of a third country's financial services regime not being equivalent to the Union's financial services regime [if the overarching approach adopted by the third country's financial services regime means that the outcomes listed at points (a) and (b) of Article 2(36) of this Regulation will not be achieved. Existing recognitions may only be suspended in accordance with the provisions of this Regulation.]

4. Notwithstanding paragraph 2 above, the Commission may choose to exercise its powers under this Article as it deems necessary, notwithstanding whether the exercise is in accordance with the applicable procedures specified in a mutual recognition agreement.

5. To provide legal certainty to undertakings in the Union and the relevant third country, delegated regulations adopted by the Commission pursuant to this Article shall take effect one year after the date that they are published in the *Official Journal*.

6. Notwithstanding the adoption of a delegated regulation suspending the legal effect of agreed equivalence recognitions, the Commission shall be entitled to adopt a delegated regulation pursuant to this Article whereby part or all of the agreed equivalence recognitions are deemed to continue to apply for transitional period as determined by the Commission.

Chapter VI

EXISTING, ADDITIONAL AND TRANSITIONAL EQUIVALENCE PROVISIONS

Article 15

1. Existing equivalence recognitions pursuant to an existing equivalence regime and equivalence recognitions made pursuant to this Regulation shall continue in full force until such time as a mutual recognition agreement is entered into with a third country. Where a mutual recognition agreement is entered into with a third country the mutual recognition agreement shall contain transitional provisions regarding any existing recognitions pursuant to an existing equivalence regime already adopted in respect of that third country.

2. The Commission is enabled to pass delegated regulations or take other measures with legal effect in Union law to further implement or clarify the legal effect that any existing recognitions are intended to have pursuant to the transitional provisions contained in a mutual recognition agreement.

3. The Commission is enabled to pass delegated regulations at the request of the Council or its own initiative as it deems necessary to supplement or otherwise amend the equivalence recognition provisions contained in Annex I [and Annex II] or the existing equivalence regimes contained in Annex III of this Regulation.

4. The Commission is enabled to pass delegated regulations at the request of the Council or its own initiative as it deems necessary to determine that all or part of a third country's regime is considered equivalent on a temporary, transitional or interim basis for the purposes of any of

[93] NOTE: Suspensions may only be justified if the third country regime is, overall, non-equivalent. This may reduce the risk of suspensions being made on the basis of the relevant third country not implementing a precise Union-specific requirement.

the equivalence recognition provisions listed in the table[s] at Annex I [and Annex II]. The temporary, transitional or interim period shall last for a period as determined by the Commission in the relevant delegated regulations.

5. Mutual recognition agreements may provide for the terms under which the Union and the third country may supplement an existing mutual recognition agreement with additional agreed equivalence provisions.

Chapter VII

FINAL PROVISIONS

Article 16

Exercise of delegated powers

1. The power to adopt delegated or implementing acts as referred to in Articles 3(2), 4(4), 5(2), 7(3), 7(4), 10(9), 12(5), 13(9), 14, 15(2), 15(3), and 15(4) is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated or implementing acts referred to in point 1 of this article shall be indefinitely conferred on the Commission from [•].

3. The delegation of power referred to in Articles 3(2), 4(4), 5(2), 7(3), 7(4), 10(9), 12(5), 13(9), 14, 15(2), 15(3), and 15(4) may be revoked by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of power specific in the decision. It shall take effect within 60 days following notification by the Commission to the relevant third country recognition body corresponding to the mutual recognition agreement that is affected by the decision and the publication of the decision in the *Official Journal of the European Union*. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall simultaneously notify the European Parliament and the Council.

5. A delegated or implementing act referred to in point 1 of this Article shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 17

1. This regulation shall come into effect [•].

ANNEX I

	Relevant Union Legislation	Description of effect of agreed equivalence recognition in the Union	Additional equivalence criteria
1.	Directive 2003/71/EC [Prospectus Directive – Equivalence of prospectuses – Art. 20(3)][94]	(a) Prospectuses of issuers having their registered office in the relevant third country that have been drawn up in accordance with national law or practices or procedures in that third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated in Union law as third country prospectuses drawn up in accordance with national law, practices or procedures of a third country in respect of which the Commission has adopted an implementing measure, as referred to in Article 20(3) of Directive 2003/71/EC, stating that the relevant third country ensures the equivalence of prospectuses drawn up in that country with Directive 2003/71/EC by reason of its national law or of practices or procedures based on international standards set by international organisations, including the IOSCO disclosure standards (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The third country's legal or supervisory regime, procedures or practices ensure that the third country prospectuses referred to in point (a) are drawn up in an equivalent manner to international standards set up by international securities commission organisations, including the IOSCO disclosure standards.
2.	Directive 2003/71/EC [Prospectus Directive – 3rd country GAAP with IFRS: Art. 35 Regulation 809/2004]	(a) The generally accepted accounting standards of the relevant third country that have been applied to historic financial information prepared by third country issuers (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated in Union law as accounting standards in respect of which the Commission has adopted a delegated act, as referred to in Article 7(1) of Directive 2003/71/EC and in accordance with Commission Regulation (EC) No 1569/2007, determining the equivalence of the generally accepted accounting principles of that third country with IFRS adopted pursuant to Regulation 1606/2002, with the effect that such third country issuers shall be able to present their historical financial information in accordance with the relevant third country's generally accepted accounting standards (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The third country ensures that the accounting standards applicable to the historical financial information prepared by issuers in that third country referred to in point (a) are equivalent to the requirements applicable to financial statements referred to in Article 2 of Commission Regulation (EC) No 1569/2007.

94

	Relevant Union Legislation	Description of effect of agreed equivalence recognition in the Union	Additional equivalence criteria
3.	Directive 2004/109/EC; Regulation (EC) No 1569/2007 [Transparency Directive: 3rd country GAAP with IFRS, Art. 23(4), Sub-para 3]	(a) Generally accepted accounting standards of the relevant third country used by issuers whose registered head office is situated in that third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated in Union law as accounting standards in respect of which the Commission has taken the necessary decisions, as referred to in the third paragraph of Article 23(4) of Directive 2004/109/EC, and adopted implementing measures, as referred to in Article 23(4) of Directive 2004/109/EC in accordance with the equivalence mechanism established by Commission Regulation (EC) No 1569/2007, stating that by reason of the domestic law, regulations, administrative provisions, or of the practices or procedures based on the international standards set by international organisations, the third country where the issuer is situated ensures the equivalence of information requirements provided for in Directive 2004/109/EC, as referred to in Article 23(4)(ii) of Directive 2004/109/EC (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The third country ensures that the accounting standards applicable to the third country entities referred to in point (a) meet the requirements of Article 2 of Commission Regulation (EC) No 1569/2007 in all equivalent respects.
4.	Directive 2004/109/EC [General transparency requirements]	(a) Information requirements of the relevant third country which are applicable to issuers whose registered head office is situated in that third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated in Union law as requirements in respect of which the Commission has adopted implementing measures, as referred to in Article 23(4) of Directive 2004/109/EC, stating that, by reason of the domestic law, regulations, administrative provisions, or of the practices or procedures based on the international standards set by international organisations, the third country where the issuer is situated ensures the equivalence of the information requirements provided for in Directive 2004/109/EC (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The third country information requirements applicable to issuers with their registered head office in that third country as referred to in point (a) applicable to issuers in that third country are equivalent to the international standards set by international organisations which correspond to the information requirements provided by Directive 2004/109/EC.
5.	Directive 2013/34/EU [Country by country	(a) Third-country reporting requirements applicable to the undertakings referred to in Article 42 and 44 of Directive 2013/34/EU (as described in a particular	(i) The legal and/or supervisory regime, practices or procedures of the third country ensure that the third country reporting requirements referred to in

	Relevant Union Legislation	Description of effect of agreed equivalence recognition in the Union	Additional equivalence criteria
	reporting]	recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated in Union law as reporting requirements in respect of which the Commission has adopted an implementing act, as referred to in Article 47 of Directive 2013/34/EU, identifying such requirements, after applying the equivalence criteria identified in accordance with Article 46 of Directive 2013/34/EU, as equivalent to the requirements of Chapter 10 of Directive 2013/34/EU (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	point (a) are equivalent to the requirements of Chapter 10 of Directive 2013/34/EU, applying the equivalence criteria identified in accordance with Article 46 of Directive 2013/34/EU.
6.	Regulation (EC) No 1060/2009 [Credit Rating Agencies: Equivalence: Art. 5(6)]	(a) Credit ratings related to entities established, or financial instruments issued, in the relevant third country that are issued by entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) by entities authorised as, or to operate, a credit rating agency shall be treated in Union law as subject to a legal and supervisory framework of a third country in respect of which the Commission has adopted an equivalence decision, as referred to in Article 5(6) of Regulation (EC) No 1060/2009, stating that the legal and supervisory framework of the relevant third country meets the requirements listed in Article 5(6)(a) to 5(6)(c) of Regulation (EC) No 1060/2009, with the effect that such third country entities may apply for certification pursuant to Article 5(2) of Regulation (EC) No 1060/2009 (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The third country's legal and/or supervisory regime ensures that the third country entities referred to in point (a) are subject to binding rules equivalent to those set out in Articles 6 to 12 and Annex I of Regulation (EC) No 1060/2009, with the exception of Articles 6a, 6b, 8a, 8b, 8c and 11a, point (ba) of point 3 and points 3a and 3b of Section B of Annex I of Regulation (EC) No 1060/2009. (ii) The third country regulatory regime applicable to the third country entities referred to in point (a) prevents interference by the supervisory authorities and other public authorities of that third country with the content of credit ratings and methodologies. (iii) A cooperation agreement is in place or will be put into place between the relevant third country and ESMA specifying at least the matters referred to in Article 5(7)(a) and (b) of Regulation (EC) No 1060/2009.
7.	Directive 2006/43/EC [Statutory Audit: Adequacy of audit framework: Art. 47(3)]	(a) The relevant competent authorities of the third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated in Union law as competent authorities in respect of which the Commission has adopted a delegated act, as referred to in Article 47(3) of Directive 2006/43/EC, declaring that such third-country competent authorities meet requirements that have been declared adequate and such competent authorities are recognised as adequate to cooperate with the competent authorities of Member States for the	(i) The third country's legal and/or supervisory regime applies to the third-country competent authorities referred to in point (a) requirements which are either equivalent to the general adequacy criteria adopted pursuant to Article 47(3) of Directive 2006/43/EC based on the requirements of Article 36 of Directive 2006/43/EC or which ensure equivalent functional results relating to a direct exchange of audit working papers or other documents held by statutory auditors or audit firms.

	Relevant Union Legislation	Description of effect of agreed equivalence recognition in the Union	Additional equivalence criteria
		exchange of audit working papers or other documents held by statutory auditors and audit firms (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	
8.	Directive 2006/43/EC [Statutory Audit: Equivalence of audit framework: Art. 46(2)]	(a) Entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as, or to operate, an auditor or an audit entity shall be treated in Union law as third-country auditors or audit entities subject to systems in that third country in respect of which the Commission has adopted an implementing act, as referred to in Article 46(2), recognising the equivalence of the auditors and audit entities in that third country which are subject to systems of public oversight, quality assurance and investigations and penalties in that third country that are equivalent to those of Articles 29, 30 and 32 of Directive 2006/43/EC (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The third country's legal and/or supervisory regime applies to the third country entities referred to in point (a) systems of public oversight, quality assurance and investigations and penalties equivalent to the requirements of Articles 29, 30 and 32 of Directive 2006/43/EC.
9.	Regulation (EU) No 648/2012 [EMIR: central bank exemption: Art. 1(6)]	(a) Entities established in the relevant third country and operating as a central bank or public body charged with or intervening in the management of the public debt in that third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated in Union law as third country entities with respect to which the Commission has adopted a delegated act pursuant to paragraph 6 of Article 1 of Regulation (EU) No 648/2012, with the effect that the list set out in paragraph 4 of Article 1 of Regulation (EU) No 648/2012 shall be amended accordingly (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	
10.	Regulation (EU) No 648/2012 [EMIR: regulated markets: Art. 2a]	(a) Entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as, or to operate, a regulated market shall be treated in Union law as third-country markets subject to legally binding requirements in respect of which the Commission has adopted an implementing act, as referred to in	(i) The third country's legal and/or supervisory regime applies to the third-country entities referred to in point (a) binding requirements which are equivalent to the requirements laid down in Title III of Directive 2004/39/EC.

	Relevant Union Legislation	Description of effect of agreed equivalence recognition in the Union	Additional equivalence criteria
		Article 2a of Regulation (EU) No 648/2012, determining that such requirements are equivalent to the requirements laid down in Title III of Directive 2004/39/EC and such third country entities are subject to effective supervision and enforcement in that third country on an ongoing basis (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	
11.	Regulation (EU) No 648/2012 [EMIR: transaction requirements: Art. 13]	(a) Requirements of the third country's legal, supervisory and/or enforcement regime corresponding to any of the requirements laid down in Articles 4, 9, 10 and 11 of Regulation (EU) No 648/2012 (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated in Union law as legal, supervisory and enforcement arrangements in respect of which the Commission has adopted an implementing act as referred to in Article 13(2) of Regulation (EU) No 648/2012 declaring that the requirements set out in Article 13(2) have been met, with the effect that counterparties entering into a transaction subject to Regulation (EU) No 648/2012 shall be deemed to have fulfilled the obligations contained in Articles 4, 9, 10 and 11 of Regulation (EU) No 648/2012 where at least one of the counterparties is established in that third country, as referred to in Article 13(3) of Regulation (EU) No 648/2012 (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The third country's legal, supervisory and/or supervisory regime applies requirements which are equivalent to any of those laid down in Articles 4, 9, 10 and 11 of Regulation (EU) No 648/2012. (ii) The third country requirements referred to in point (i) are effectively applied and enforced in an equitable and non-distortive manner so as to ensure equivalent effective supervision and enforcement in that third country.
12.	Regulation (EU) No 648/2012 [EMIR: CCPs: Art. 25(6)]	(a) Entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as, or operating as, a CCP shall be treated in Union law as being subject to legal and supervisory arrangements in respect of which the Commission has adopted an implementing act, as referred to in Article 25(6) of Regulation (EU) No 648/2012, determining that legal and supervisory arrangements in that third country ensure that a CCP authorised in that third country comply with legally binding requirements which are equivalent to those requirements laid down in Title IV of Regulation (EU) No 648/2012, that they are subject to effective supervision and enforcement in	(i) The third country's legal and/or supervisory regime applies to the third country entities referred to in point (a) requirements which are equivalent to the requirements laid down in Title IV of Regulation (EU) No 648/2012. (ii) An appropriate cooperation mechanism is established or will be established between the relevant competent authorities of the third country and ESMA which specifies, at least, the matters referred to in Article 7(a) to 7(d) of Regulation (EU) No 648/2012.

	Relevant Union Legislation	Description of effect of agreed equivalence recognition in the Union	Additional equivalence criteria
		that third country on an ongoing basis, and that the legal framework of that third country provides for an effective equivalent system for the recognition of CCPs authorised under third-country legal regimes, with the effect that such third country entities are able to apply to ESMA for recognition to provide certain clearing services or activities in the Union, as referred to in Article 25(2) and 25(4) of Regulation (EU) No 648/2012 (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	
13.	Regulation (EU) No 648/2012 [EMIR: trade repositories: Art. 75]	(a) Entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as, or operating, a trade repository shall be treated in Union law as being subject to legal and supervisory arrangements in respect of which the Commission has adopted an implementing act, as referred to in Article 75(1) of Regulation (EU) No 648/2012, determining that the legal and supervisory arrangements of the third country meet the conditions at Articles 75(1)(a) to 75(1)(c), with the effect that such third country entities may apply for recognition by the Commission, as referred to in Articles 77(1) and 77(2) of Regulation (EU) 2015/2365 (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The third country's legal or supervisory regime applies to the third country entities referred to in point (a) equivalent requirements as those laid down in Regulation (EU) No 648/2012. (ii) A cooperation agreement is in place or will be put in place between the Union and the relevant third country authorities providing for the access described in Article 75(2) of Regulation (EU) No 648/2012, and specifying, at least the matters listed in Article 75(3)(a) and 75(3)(b) of Regulation (EU) No 648/2012.
14.	Regulation (EU) No 909/2014 [CSDR: Art. 25(9)]	(a) Entities supervised in a third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as, or operating, a central securities depository shall be treated in Union law as being subject to legal and supervisory arrangements in respect of which the Commission has adopted an implementing act, as referred to in Article 25(9) of Regulation (EU) No 909/2014 (notwithstanding the effect of Article 69(3) of Regulation (EU) No 909/2014), determining that the legal and supervisory arrangements of the third country ensure that CSDs authorised in that third country comply with legally binding requirements equivalent to the requirements laid down in Regulation (EU) No 909/2014, that CSDs are subject to effective supervision, oversight and enforcement	(i) The third country's legal and/or supervisory regime applies to the third country entities referred to in point (a) requirements which ensure that the third country entities referred to in point (a) are subject to effective authorisation, supervision and oversight or, if the securities settlement system is operated by a central bank, oversight, ensuring full compliance with the prudential requirements applicable in that third country. (ii) The third country's legal and/or supervisory regime ensures that the third country entities referred to in point (a) comply with requirements which are in effect equivalent to the requirements laid down in Regulation (EU) No 909/2014, taking into account the internationally agreed CPSS-IOSCO standards so far as they do not conflict with Regulation (EU) No 909/2014.

	Relevant Union Legislation	Description of effect of agreed equivalence recognition in the Union	Additional equivalence criteria
		in that third country on an ongoing basis and that the legal framework of that third country provides for an effective equivalent system for the recognition of CSDs authorised under third-country legal regimes, with the effect that (notwithstanding the effect of Article 69(3) of Regulation (EU) No 909/2014) such third country entities able to apply to ESMA for recognition as referred to in Article 25(2) of Regulation (EU) No 909/2014, and be recognised as able to provide the services (including by establishing a branch in a Member State) referred to in Article 25(2) of Regulation (EU) No 909/2014 (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(iii) The third country's legal or supervisory regime provides for an effective equivalent system for the recognition of CSDs authorised under third-country legal regimes. (iv) The third country entities referred to in point (a) are permitted under the legal regime of the third country, if necessary, to take the necessary measures to allow their users to comply with the relevant national law of any Member State in which the third country entity may operate to provide central securities depository services, including the law referred to in the second subparagraph of Article 49(1) of Regulation (EU) No 909/2014. (v) A cooperation agreement is in place or will be put in place with the responsible third-country authorities meeting the requirements, at least, of Article 25(7) and Article 25(10) of Regulation (EU) No 909/2014.
15.	Regulation (EU) 2015/2365 [SFTR: central banks: Art. 2(4)]	(a) Entities established in the relevant third country and operating as a central bank or public body charged with or intervening in the management of public debt in that third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated in Union law as third country entities with respect to which the Commission has adopted a delegated act pursuant to paragraph 4 of Article 2 of Regulation (EU) 2015/2365, with the effect that the list set out in paragraph 2 of Article 2 of Regulation (EU) 2015/2365 shall be amended accordingly (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	
16.	Regulation (EU) 2015/2365 [SFTR: trade repositories: Art. 19]	(a) Entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as, or operating, a trade repository shall be treated in Union law as being subject to legal and supervisory arrangements in respect of which the Commission has adopted an implementing act, as referred to in Article 19(1) of Regulation (EU) 2015/2365, determining that the legal and supervisory arrangements of the third country meet the conditions at Articles 19(1)(a) to (d), with the effect that such third country entities may apply to the Commission for recognition	(i) The third country's legal or supervisory regime applies to the third country entities referred to in point (a) equivalent requirements as those laid down in Regulation (EU) 2015/2365. (ii) The third country's legal or supervisory regime applies to the third country entities referred to in point (a) legally binding and enforceable obligations under the legal regime of the third country to give direct and immediate access to trade repository data to the entities referred to in Article 12(2) of Regulation (EU) 2015/2365. (iii) The relevant recognition decision or mutual recognition agreement specified

	Relevant Union Legislation	Description of effect of agreed equivalence recognition in the Union	Additional equivalence criteria
		as a trade repository, as referred to in Articles 19(3) and 19(4) of Regulation (EU) 2015/2365 (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	the relevant third-country authorities that are entitled to access data on SFTs held in trade repositories established in the Union. (iv) Cooperation arrangements are in place or will be put in place between the Union and the relevant third country authorities specifying, at least the matters listed at Article 19(5)(b)(i) and 19(5)(b)(ii) of Regulation (EU) 2015/2365.
17.	Regulation (EU) 2015/2365 [SFTR: transaction requirements: Art. 21]	(a) The legal, supervisory and/or enforcement arrangements of the relevant third country corresponding to the requirements laid down in Article 4 of Regulation (EU) 2015/2365 (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated in Union law as arrangements in respect of which the Commission has adopted an implementing act, as referred to in Article 21(1) of Regulation (EU) 2015/2365, determining that the legal, supervisory and/or enforcement arrangements of that third country satisfy the requirements set out in Article 21(1)(a) to (b) of Regulation (EU) 2015/2365, with the effect that where counterparties enter into a transaction subject to Regulation (EU) 2015/2365 and at least one of the counterparties is established in the relevant third country and the counterparties have complied with the obligations of that third country in relation to that transaction, the counterparties to the transaction shall be deemed to have fulfilled the requirements laid down in Article 4 of Regulation (EU) 2015/2365, as referred to in Article 21(2) of Regulation (EU) 2015/2365 (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The legal, supervisory and/or enforcement arrangements of the third country referred to in point (a) are equivalent to the requirements laid down in Article 4 of Regulation (EU) 2015/2365. (ii) The legal, supervisory and/or enforcement arrangements of the third country referred to in point (a) ensure that the entities referred to in Article 12(2) of Regulation (EU) 2015/2365 have either direct access to the details on securities financing transactions data pursuant to Article 19(1) of Regulation (EU) 2015/2365 or indirect access to the details on securities financing transactions pursuant to Article 20 of Regulation (EU) 2015/2365.
18.	Regulation (EU) 2016/1011 [Benchmarks: Requirements for benchmark administrators: Art. 30(2)]	(a) Entities authorised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as, or operating, a benchmark administrator in the third country shall be treated in Union law as entities and benchmarks subject to a third country's legal framework and supervisory practice in respect of which the Commission has adopted an implementing decision, as referred to in Article 30(2) of Regulation (EU) 2016/1011, stating that the legal	(i) The third country entities referred to in point (a) are subject to a legal framework and supervisory practice which ensures compliance with the IOSCO principles for financial benchmarks, or where applicable, with the IOSCO principles for PRAs. (ii) A cooperation agreement is in place or will be put in place with the relevant third country competent authorities specifying at least the matters listed in Article 30(4)(a) to 30(4)(c) of Regulation (EU) 2016/1011.

	Relevant Union Legislation	Description of effect of agreed equivalence recognition in the Union	Additional equivalence criteria
		framework and supervisory practice of that third country meets the requirements listed in Article 30(2)(a) and (b) of Regulation (EU) 2016/1011 (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	
19.	Regulation (EU) 2016/1011 [Benchmarks: Requirements for benchmark administrators: Art. 30(3)]	(a) Specific entities authorised as, or to operate, a benchmark administrator or benchmarks or families of benchmarks (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) that are subject to specific binding requirements in the relevant third country shall be treated in Union law as specific administrators or specific benchmarks or families of benchmarks subject to binding requirements in that third country in respect of which the Commission has adopted an implementing decision, as referred to in Article 30(3) of Regulation (EU) 2016/1011, stating that the binding requirements in that third country meet the requirements of Article 30(3)(a) of Regulation (EU) 2016/1011 and that such specific administrators or specific benchmarks or families of benchmarks are subject to supervision and enforcement meeting the requirements of Article 30(3)(b) of Regulation (EU) 2016/1011 (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The specific third country entities, benchmarks or families of benchmarks referred to in point (i) are subject to a legal framework and supervisory practice which ensures compliance with the IOSCO principles for financial benchmarks or, where applicable, with the IOSCO principles for PRAs. (ii) A cooperation agreement is in place or will be put in place with the relevant third country competent authorities specifying at least the matters listed in Article 30(4)(a) to 30(4)(c) of Regulation (EU) 2016/1011.
20.	Regulation (EU) No 236/2012 [Short selling: market makers: Art. 17(2)]	(a) Entities supervised in the relevant third county (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as, or operating, a market, shall be treated in Union law as subject to legally binding requirements in respect of which the Commission has adopted a decision, as referred to in Article 17(2) of Regulation (EU) 236/2012, determining that the legal and supervisory framework of the third country, for the purposes of the exemption set out in Article 17(1) of Regulation (EU) No 236/2012, is equivalent to the requirements under Title III of Directive 2004/39/EC, under Directive 2003/6/EC and under Directive 2004/109/EC (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The third country's legal and/or supervisory regime applies to the entities referred to in point (a) equivalent requirements which ensure that the third country entities referred to in point (a) have clear and transparent rules regarding the admission of securities to trading so that such securities are capable of being traded in a fair, orderly and efficient manner, and are freely negotiable. (ii) The third country's legal and/or supervisory regime applies to the entities referred to in point (a) equivalent requirements which ensure a high level of investor protection by subjecting security issuers to periodic and ongoing information requirements. (iii) The third country's legal regime applies to the entities referred to in point (a) equivalent requirements which ensure market transparency and integrity by preventing market abuse in

	Relevant Union Legislation	Description of effect of agreed equivalence recognition in the Union	Additional equivalence criteria
			the form of insider dealing and market manipulation.
21.	Regulation (EU) No 596/2014 [MAR: Exemption for monetary and public debt management activities: Art. 6(5)]	(a) Public bodies and/or central banks established in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated in Union law as third country public bodies and central banks in respect of which the Commission has adopted a delegated act, as referred to in Article 6(5) of Regulation (EU) No 596/2014, with the effect that the exemption referred to in Article 6(1) of Regulation (EU) 596/2014 is extended to those third country public bodies and/or central banks (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	
22.	Regulation (EU) No 596/2014 [MAR: Climate policy/emissions: Art. 6(6)]	(a) Public bodies established in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated in Union law as third country public bodies in respect of which the Commission has adopted a delegated act, as referred to in Article 6(6) of Regulation (EU) No 596/2014, with the effect that the exemption referred to in Article 6(3) of Regulation (EU) No 596/2014 is extended to such third country public bodies (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The third country has entered into or will enter into an agreement with the Union pursuant to Article 25 of Directive 2003/87/EC.
23.	Regulation (EU) No 600/2014 [MiFIR: Central banks: Art. 1(9)]	(a) Entities established in the relevant third country and operating as a central bank in that third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated in Union law as third country entities with respect to which the Commission has adopted a delegated act to extend the scope of paragraph 6 of Article 1 of Regulation (EU) No 600/2014, as referred to in paragraph 9 of Article 1 of Regulation (EU) No 600/2014, with the effect that the scope of paragraph 6 of Article 1 of Regulation (EU) No 600/2014 shall be extended accordingly to such entities (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	

	Relevant Union Legislation	Description of effect of agreed equivalence recognition in the Union	Additional equivalence criteria
24.	Directive 2014/65/EU, Regulation (EU) No 600/2014 [MiFIR/MiFID: Trading venues trading obligation: financial instruments: Art. 23 MiFIR/25(4)(a) MiFID]	(a) Entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as, or to operate, a regulated market shall be treated in Union law as being subject to a legal and supervisory framework of a third country in respect of which the Commission has adopted an equivalence decision as referred to in the third and fourth subparagraphs of Article 25(4)(a) of Directive 2014/65/EU stating that a regulated market in that third country complies with legally binding requirements which are equivalent to the requirements resulting from Regulation (EU) No 596/2014, from Title III of Directive 2014/65/EU, from Title II of Regulation (EU) No 600/2014 and from Directive 2004/109/EC, and regulated markets in that third country are subject to effective supervision and enforcement (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The third country's legal and/or supervisory regime applies to the third country entities referred to in point (a) equivalent standards which ensure that such entities have clear and transparent rules regarding the admission of securities to trading so that such securities are capable of being traded in a fair, orderly and efficient manner, and are freely negotiable. (ii) The third country's legal and/or supervisory regime applies to the entities referred to in point (a) equivalent requirements which ensure that security issuers are subject to periodic and ongoing information requirements ensuring a high level of investor protection. (iii) The third country's legal and/or supervisory regime applies to the entities referred to in point (a) equivalent requirements which ensure market transparency and integrity by the prevention of market abuse in the form of insider dealing and market manipulation.
25.	Directive 2014/65/EU, Regulation (EU) No 600/2014 [MiFIR: Trading venues trading obligation: financial instruments: Art. 28(4) MiFIR]	(a) Entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as, or to operate, a trading venue shall be treated in Union law as being subject to legally binding requirements in respect of which the Commission has adopted a decision, as referred to in Article 28(4) of Regulation (EU) 600/2014, determining that those requirements are equivalent to the requirements for the trading venues referred to in paragraph 1(a), (b) or (c) of Article 28(4) of Regulation (EU) 600/2014, resulting from Regulation (EU) 600/2014, Directive 2014/65/EU, and Regulation (EU) No 596/2014, and such third country entities are subject to effective supervision and enforcement in the third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The third country's legal and/or supervisory regime provides for an effective equivalent system for the recognition of trading venues authorised under Directive 2014/65/EU to admit to trading or trade derivatives declared subject to a trading obligation in that third country on a non-exclusive basis. (ii) The third country's legal and/or supervisory regime applies to the third country entities referred to in point (a) equivalent standards which ensure that such entities have clear and transparent rules regarding the admission of financial instruments to trading so that such financial instruments are capable of being traded in a fair, orderly and efficient manner, and are freely negotiable. (iii) The third country's legal and/or supervisory regime applies to the entities referred to in point (a) equivalent requirements which ensure that issuers of financial instruments are subject to periodic and ongoing information requirements ensuring a high level of investor protection. (iv) The third country's legal or supervisory regime applies to the entities referred to in point (a) equivalent requirements which ensure market transparency and integrity by the

	Relevant Union Legislation	Description of effect of agreed equivalence recognition in the Union	Additional equivalence criteria
			prevention of market abuse in the form of insider dealing and market manipulation.
26.	Regulation (EU) No 600/2014 [MiFID/MiFIR: derivatives: trade execution and clearing obligations: Art. 33]	(a) Certain requirements of the third country's legal or supervisory regime corresponding to the requirements laid down in Articles 28 and 29 of Regulation (EU) No 600/2014 (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated in Union law as legal, supervisory and enforcement arrangements in respect of which the Commission has adopted an implementing act, as referred to in Article 33(2) of Regulation (EU) No 600/2014, with the effect that counterparties entering into a transaction subject to Regulation (EU) No 600/2014 shall be deemed to have fulfilled the obligations contained in Articles 28 and 29 of Regulation (EU) No 600/2014 where at least one of the counterparties is established in that third country, and the counterparties are in compliance with those legal, supervisory and enforcement arrangements of the relevant third country, as referred to in Article 33(3) of Regulation (EU) No 600/2014 (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The third country's legal and/or supervisory regime requirements referred to in point (a) are equivalent to those laid down in Articles 28 and 29 of Regulation (EU) No 600/2014. (ii) The third country requirements referred to in point (a) are effectively applied and enforced in an equitable and non-distortive manner so as to ensure equivalent effective supervision and enforcement in that third country.
27.	Regulation (EU) No 600/2014 [MiFIR: trading venues for the purposes of clearing access: Art. 38(1)-(3)]	(a) The third country entities referred to in row 25 of this table shall (where that row is included as an agreed equivalence recognition and subject to any specific conditions) be treated in Union law as third country trading venues subject to a legal and supervisory framework in respect of which the Commission has adopted a decision, as referred to in Article 38(3) of Regulation (EU) No 600/2014, that the legal and supervisory framework of the third country is considered to provide for an effective equivalent system for permitting CCPs and trading venues authorised under foreign regimes access to CCPs and trading venues in that third country, with the effect that such third country trading venues are able to make use of the access rights in Articles 35 to 36 of Regulation (EU) No 600/2014, as referred to in Article 38(1) of Regulation (EU) No 600/2014 (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The third country's legal and supervisory framework meets the requirements of Article 38(3) of Regulation (EU) No 600/2014.

	Relevant Union Legislation	Description of effect of agreed equivalence recognition in the Union	Additional equivalence criteria
28.	Regulation (EU) No 600/2014 [MiFIR: trading venues for the purposes of clearing access: Art. 38(1)-(3)]	(a) The third country entities referred to in row 12 of this table shall (where that row is included as an agreed equivalence recognition and subject to any specific conditions) be treated in Union law as third country CCPs subject to a legal and supervisory framework in respect of which the Commission has adopted a decision, as referred to in Article 38(3) of Regulation (EU) No 600/2014, determining that the legal and supervisory framework of the third country is considered to provide for an effective equivalent system for permitting CCPs and trading venues authorised under foreign regimes access to CCPs and trading venues in that third country, with the effect that such third country CCPs are able to make use of the access rights in Articles 35 to 36 of Regulation (EU) No 600/2014, as referred to in Article 38(1) of Regulation (EU) No 600/2014 (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The third country's legal and supervisory framework meets the requirements of Article 38(3) of Regulation (EU) No 600/2014.
29.	Regulation (EU) No 600/2014 [MiFIR: trading venues for the purposes of clearing access: Art. 38(1)-(3)]	(a) Entities established in the relevant third country and authorised as, or to operate, a CCP or trading venue (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated in Union law as third country CCPs and trading venues subject to a legal and supervisory framework in respect of which the Commission has adopted a decision under Article 38(3) of Regulation (EU) No 600/2014, with the effect that such third country CCPs and trading venues may request a license and make use of access rights in accordance with Article 37 of Regulation (EU) No 600/2014, as referred to in Article 38 of Regulation (EU) No 600/2014 (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The third country's legal and supervisory framework meets the requirements of Article 38(3) of Regulation (EU) No 600/2014.
30.	Regulation (EU) No 600/2014 [MiFIR: investment firms providing services to EU professional client and eligible counterparties: Art. 47]	(a) Entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) as, or to operate, an investment firm shall be treated in Union law, as third country investment firms subject to legal and supervisory arrangements ensuring that the third country investment firms comply with legally binding prudential	(i) The third country's legal and supervisory arrangements apply to the entities referred to in point (a) legally binding prudential and business conduct requirements meeting the conditions listed at Article 47(1)(a) to (e) of Regulation (EU) No 600/2014. (ii) Cooperation arrangements are in place or will be put in place with the relevant third country specifying at least

	Relevant Union Legislation	Description of effect of agreed equivalence recognition in the Union	Additional equivalence criteria
		and business conduct requirements which have equivalent effect to the requirements set out Regulation (EU) No 600/2014, in Directive 2013/36/EU and in Directive 2014/65/EU and in the implementing measures adopted under Regulation (EU) No 600/201, Directive 2013/36/EU and Directive 2014/65/EU and that the legal framework of that third country provides for an effective equivalent system for the recognition of investment firms authorised under third-country legal regimes which meet the conditions at Article 47(1)(a) to (e) of Regulation (EU) No 600/2014, with the effect that such third country firms may provide investment services or perform investment activities (with or without ancillary services) to eligible counterparties and to professional clients within the meaning of Section I of Annex II of Directive 2014/65/EU by applying for registration by ESMA, as referred to in Article 46 of Regulation (EU) No 600/2014 (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	the matters listed at Article 47(2)(a) to (c) of Regulation (EU) No 600/2014.
31.	Regulation (EU) No 575/2013 [CRR: Credit institutions, investment firms: Art. 107(4)]	(a) Entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as, or operating, a third-country investment firm, third country credit institutions, or third country clearing house or exchanges shall be treated in Union law as entities subject to prudential supervisory and regulatory requirements in that third country with respect to which the Commission has adopted a decision, by way of an implementing act, as referred to in Article 107(3) of Regulation (EU) No 575/2013, determining that those third country entities are subject to supervisory and regulatory arrangements at least equivalent to those applied in the Union, as referred to in Article 107(4) of Regulation (EU) No 575/2013 (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	
32.	Regulation (EU) No 575/2013 [CRR: exposures to government bodies: Art. 114-116]	(a) Entities established and supervised in the relevant third country which correspond to a central government or central bank (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated	

	Relevant Union Legislation	Description of effect of agreed equivalence recognition in the Union	Additional equivalence criteria
		in Union law as entities subject to supervisory and regulatory arrangements with respect to which the Commission has adopted a decision by way of an implementing act, as referred to in Article 114(7) of Regulation (EU) No 575/2013, determining that those third country entities are subject to supervisory and regulatory arrangements at least equivalent to those applied in the Union, as referred to in Article 114(7) of Regulation (EU) No 575/2013 (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	
33.	Regulation (EU) No 575/2013 [CRR: exposures to government bodies: Art. 114-116]	(a) Entities established and supervised in the relevant third country which correspond to a regional government or local authority (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated in Union law as entities subject to supervisory and regulatory arrangements with respect to which the Commission has adopted a decision by way of an implementing act, as referred to in Article 115(4) of Regulation (EU) No 575/2013, determining that those third country entities are subject to supervisory and regulatory arrangements at least equivalent to those applied in the Union (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	
34.	Regulation (EU) No 575/2013 [CRR: exposures to government bodies: Art. 114-116]	(a) Entities established and supervised in the relevant third country which correspond to a public sector entity (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated in Union law as entities subject to supervisory and regulatory arrangements with respect to which the Commission has adopted a decision by way of an implementing act, as referred to in Article 116(5) of Regulation (EU) No 575/2013, determining that those third country entities are subject to supervisory and regulatory arrangements at least equivalent to those applied in the Union (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	
35.	Regulation (EU) No	(a) Entities corresponding to large financial sector entities (or	

	Relevant Union Legislation	Description of effect of agreed equivalence recognition in the Union	Additional equivalence criteria
	575/2013 [CRR: Credit institutions: Art. 142]	subsidiaries[95] of such entities) that are supervised and regulated in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated in Union law as entities subject to supervisory and regulatory arrangements with respect to which the Commission has adopted a decision via an implementing act, as referred to in Article 142(2) of Regulation (EU) No 575/2013, determining that those third country entities were subject to supervisory and regulatory arrangements at least equivalent to those applied in the Union (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	
36.	Regulation (EU) No 575/2013 [CRR: Investment firms: Art. 142]	(a) Entities corresponding to large financial sector entities (or subsidiaries[96] of such entities) that are supervised and regulated in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated in Union law as entities subject to supervisory and regulatory arrangements with respect to which the Commission has adopted a decision via an implementing act, as referred to in Article 142(2) of Regulation (EU) No 575/2013, determining that those third country entities were subject to supervisory and regulatory arrangements at least equivalent to those applied in the Union (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	
37.	Directive 2009/138/EC [Solvency II: third country reinsurance activity: Art. 172]	(a) The solvency regime of the relevant third country that applies to undertakings with head offices in that third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated in Union law as a third country solvency regime in respect of which the Commission has adopted a delegated act, as referred to in Article 172(2) of Directive 2009/138/EC, determining that the solvency regime of the third country	(i) The solvency regime of the third country applies to the reinsurance activities of undertakings with head offices in the third country referred to in point (a) equivalent legally binding requirements to those applicable in the Union under Title I of Directive 2009/138/EC.

[95] The term "subsidiary" in this row means a subsidiary within the meaning of point 16 of Article 4(1) of Regulation (EU) No 575/2013.

[96] The term "subsidiary" in this row means a subsidiary within the meaning of point 16 of Article 4(1) of Regulation (EU) No 575/2013.

	Relevant Union Legislation	Description of effect of agreed equivalence recognition in the Union	Additional equivalence criteria
		that applies to reinsurance activities of undertakings with head offices in that third country is equivalent to that laid down in Title I of Directive 2009/138/EC (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	
38.	Directive 2009/138/EC [Solvency II: EU insurers in third countries: solvency rules: Art. 227]	(a) The supervisory and solvency regime of the relevant third country that is applicable to insurance and reinsurance undertakings with head offices in that third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions), shall be treated in Union law as a third country supervisory regime in respect of which the Commission has adopted a delegated act, as referred to in Article 227(4) of Directive 2009/138/EU, determining that the supervisory regime of that third country is equivalent to that laid down in Title I, Chapter VI, of Directive 2009/138/EU, and with the effect that such third country head offices are treated as being subject to authorisation and a solvency regime at least equivalent to that laid down in Title I, Chapter VI, of Directive 2009/138/EU, as referred to in the second paragraph of Article 227(1) of Directive 2009/138/EU (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The supervisory and solvency regime of the third country applies to the reinsurance or insurance undertakings with head offices in the third country referred to in point (a) equivalent legally binding requirements to those applicable under Title I, Chapter VI of Directive 2009/138/EC and such insurance and reinsurance undertakings are subject to authorisation in that third country.
39.	Directive 2009/138/EC [Solvency II: third country insurers in EU: group supervision: Art. 260]	(a) The prudential regime of the relevant third country which applies to parent undertakings with head offices in that third country of insurance and reinsurance undertakings (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated as a prudential regime, in respect of which the Commission has adopted a delegated act, as referred to in Article 260(3) of Directive 2009/138/EU, determining that the third country prudential regime is equivalent to that laid down in Title III of Directive 2009/138/EU at the level of the group of insurance and reinsurance undertakings referred to in Article 213(2)(a) and (b) of Directive 2009/138/EU (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The prudential regime of the third county applies to the reinsurance or insurance undertakings with head offices in the third country referred to in point (a) equivalent legally binding requirements to those applicable under Title III of Directive 2009/138/EC and such entities are subject to authorisation in that third country.

	Relevant Union Legislation	Description of effect of agreed equivalence recognition in the Union	Additional equivalence criteria
40.	Directive 2011/61/EU [Funds – Non-EU AIFMs managing EU AIFs or marketing AIFs in the Union; EU AIFMs managing Non-EU AIFs]	(a) Entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as an AIFM shall be treated in Union law as non-EU AIFMs able to acquire prior authorisation by the competent authorities of their Member State of reference, as referred to in Article 37(1) of Directive 2011/61/EU (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions). (b) Certain requirements of the relevant third country's legal and supervisory regime applicable to the third country entities referred to in point (a) (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated in Union law as meeting the requirements listed in Article 37(2) of Directive 2011/61/EU, with the effect that the third country entities referred to in point (a) shall not be under any obligation to comply with a provision of Directive 2011/61/EU to the extent that it is incompatible with the third country requirement (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions). (c) Entities established in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as a non-EU AIF shall be treated in Union law as meeting the requirements listed in Article 35(2) of Directive 2011/61/EU, with the effect that AIFMs shall be able to submit a notification to the competent authorities of its home Member State in respect of each non-EU AIF that it intends to market, as referred to in Article 35(3) of Directive 2011/61/EU (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) Cooperation arrangements are in place or will be put in place with the relevant third country supervisory authorities (and contain provisions extending the benefit of such cooperation agreements to competent authorities[97] in the Union) that allow an efficient exchange of information allowing competent authorities to carry out their duties in accordance with Directive 2011/61/EU. (ii) An agreement is in place or will be put in place with the third country which fully complies with the Model Tax Convention on Income and on Capital and ensures an effective exchange of information on tax matters, including any multilateral tax agreements. (iii) The third country's legal and supervisory regime does not materially prevent the effective exercise by the competent authorities of their supervisory functions under Directive 2011/61/EU. (iv) The third country requirements referred to in point (b) are equivalent to corresponding requirements applicable in the Union.
41.	Directive 2011/61/EU [AIFM third country depository]	(a) Entities established in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as, or to operate, a depository shall be	(i) The third country's legal and/or supervisory regime applies to the third country entities referred to in point (a) equivalent prudential regulation and supervision as applied to depositories in

[97] In this row "competent authorities" means competent authorities within the meaning of point (f) of Article 4(1) of Directive 2011/61/EU.

	Relevant Union Legislation	Description of effect of agreed equivalence recognition in the Union	Additional equivalence criteria
		treated in Union law as depositories established in a third country subject to prudential regulation and supervision in respect of which the Commission has adopted an implementing act, as referred to in the final sub-paragraph of Article 21(6) of Directive 2011/61/EU, stating that prudential regulation and supervision of the third country has the same effect as Union law and is effectively enforced (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	the Union.

ANNEX II

Table of additional equivalence recognition provisions

Part I

	Relevant Union Legislation	Description of effect of agreed equivalence recognition in the Union	Additional equivalence criteria
1.	Regulation (EU) No 600/2014, Directive 2014/65/EU [Investment services/business]	(a) Entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised to carry out activities corresponding to investment services and activities (with or without ancillary services) shall be treated in Union law as having the same rights as investment firms authorised by a competent authority pursuant to Articles 5 to 7 of Directive 2014/65/EU, with the effect that such third country entities shall be able to provide the investment services and activities, with or without ancillary services, to retail and/or professional clients within the Union either by establishing a branch[98] in a Member State or by providing such services as referred to in Articles 34 and 35 of Directive 2014/65/EU (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The third country's legal and/or supervisory regime applies to the entities referred to in point (a) requirements which are equivalent to those applicable to investment firms authorised pursuant to Articles 5 and 6 of Directive 2014/65/EU.
2.	Regulation (EU) No 600/2014, Directive 2014/65/EU [Systematic internalisers]	(a) Entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised to operate as, or to operate, a systematic internaliser shall be treated in Union law as having the same rights as systematic internalisers authorised by a competent authority under Directive 2014/65/EU, with the effect that such third country entities shall be able to provide the investment services and activities, with or without ancillary services, to retail and/or professional clients within the Union either by establishing a branch[99] in a Member State or by providing such services as referred to in Articles 34 and 35 of Directive 2014/65/EU (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The third country's legal and/or supervisory regime applies to the entities referred to in point (a) requirements which are equivalent to those applicable to investment firms authorised as systematic internalisers pursuant to Articles 5 and 6 of Directive 2014/65/EU.

98 In this row the term "branch" means a branch within the meaning of point (30) of Article 4(1) of Directive 2014/65/EU.

99 In this row the term "branch" means a branch within the meaning of point (30) of Article 4(1) of Directive 2014/65/EU.

	Relevant Union Legislation	Description of effect of agreed equivalence recognition in the Union	Additional equivalence criteria
3.	Directive 2011/61/EU [AIFM delegation]	(a) Undertakings supervised in the relevant third country(as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised to carry out portfolio management and/or risk management activities shall be treated in Union law as third country undertakings to whom AIFMs may delegate portfolio management or risk management, which are authorised or registered for the purpose of asset management, and subject to supervision and where there is cooperation between competent authorities of the home Member State of the AIFM and the supervisory authority of the third country undertaking, satisfying the requirements at points (c) to (d) of Article 20(1) of Directive 2011/61/EU (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) A cooperation agreement is in place or will be put in place with the third country authorities with responsibility for supervising the third country undertakings referred to in point (a) for the purposes of enabling monitoring and supervising of the third country undertaking (and contains provisions extending the benefit of the cooperation agreement to Union supervisory authorities).
4.	Directive 2011/61/EU [AIFM third country depository]	(a) Entities established in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as, or to operate, a depository shall be treated in Union law as depositories established in a third country subject to prudential regulation and supervision in respect of which the Commission has adopted an implementing act, as referred to in the final sub-paragraph of Article 21(6) of Directive 2011/61/EU, stating that prudential regulation and supervision of the third country has the same effect as Union law and is effectively enforced (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The third country's legal and/or supervisory regime applies to the third country entities referred to in point (a) equivalent prudential regulation and supervision as applied to depositories in the Union.
5.	Regulation (EC) No 1060/2009 [Credit Rating Agencies]	(a) Credit ratings issued by entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as, or to operate, a credit rating agency shall be treated in Union law as credit ratings which may be used by credit institutions, investment firms, insurance undertakings, reinsurance undertakings, institutions for occupational retirement provision, management companies, investment companies, alternative investment fund managers and central counterparties for regulatory purposes, as referred to in Article 4(1) of	(i) The third country's legal and/or supervisory regime ensures that the third country entities referred to in point (a) are subject to binding rules equivalent to those set out in Articles 6 to 12 and Annex I of Regulation (EC) No 1060/2009, with the exception of Articles 6a, 6b, 8a, 8b, 8c and 11a, point (ba) of point 3 and points 3a and 3b of Section B of Annex I of Regulation (EC) No 1060/2009. (ii) The third country's legal and/or regulatory regime applicable to the third country entities referred to in point (a) prevents interference by the supervisory authorities and other public authorities

	Relevant Union Legislation	Description of effect of agreed equivalence recognition in the Union	Additional equivalence criteria
		Regulation (EC) No 1060/2009 (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	of that third country with the content of credit ratings and methodologies. (iii) A cooperation agreement is in place or will be put in place between the relevant third country and ESMA specifying at least the matters referred to in Article 5(7)(a) and (b) of Regulation (EC) No 1060/2009.
6.	Directive 2013/36/EU, Regulation (EU) No 575/2013 [Credit institution activities]	(a) Entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as, or operating as, a credit institution shall be treated in Union law as having the same rights as credit institutions authorised by a Member State pursuant to Article 8 of Directive 2013/36/EU, with the effect that such third country entities shall be able to carry out the activities listed in Annex I of Directive 2013/36/EU within the Union either by establishing a branch[100] in a Member State or by providing such services, as referred to in Article 33 of Directive 2013/36/EU (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions). (b) Entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as, or operating, a financial institution shall be treated in Union law as having the same rights as a financial institution from another Member State, as referred to in Article 34(1) of Directive 2013/36/EU, with the effect that such third country entities shall be able to provide the activities listed in Annex I of Directive 2013/36/EU within the Union either by establishing a branch or by providing services, and shall be treated as if the requirements in Article 34(1)(a) to (b) of Directive 2013/36/EU have been satisfied (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The third country's legal and/or supervisory regime applies to the third country entities referred to in point (a) requirements that are equivalent to those that are required to be applied to credit institutions authorised by Member States pursuant to Article 8 of Directive 2013/36/EU. (ii) The third country's legal and/or supervisory regime applies to the third country entities referred to in point (b) requirements that correspond and are equivalent to those contained in Article 34(1)(a) of Directive 2013/36/EU. (ii) The third country's legal regime applies to the third country entities referred to in point (a) requirements that are equivalent to those applied to credit institutions pursuant to Article 1(3) of Directive 2014/65/EU, where such entities are authorised in that third country to carry out investment services and/or performing investment activities. (vi) Where the third country entities referred to in point (a) or (b) are authorised in the relevant third country to carry out activities corresponding to the investment services and activities listed in points (3) and (6) of Section A of Annex I of Directive 2014/65/EU, the third country's legal or supervisory regime applies requirements which are equivalent to those applicable under Part 6 of Regulation (EU) No 575/2013 taking into account the nature, scale and complexity of the third country entity's activities.
7.	Regulation (EU) 2015/751 [Interchange Fees]	(a) The provisions of Regulation (EU) 2015/751 shall (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) be extended to	(i) The third country's legal regime applies to payment service providers, processing entities, payment card schemes, issuers, acquirers and other technical service providers located in

[100] In this row the term "branch" means a branch within the meaning of Article 4(17) of Regulation (EU) 575/2013.

	Relevant Union Legislation	Description of effect of agreed equivalence recognition in the Union	Additional equivalence criteria
		apply to card-based payments transactions carried out between the Union and the relevant third country, where both the payer's payment service provider[101] and the payee's payment service provider are, respectively, located in either the Union or the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions). (b) Payment service providers, processing entities, payment card schemes, issuers, acquirers and other technical service providers located in the Union shall (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) be subject to the same requirements contained in Regulation (EU) 2015/751 when carrying out card-based payment transactions with payment services providers, payers, payees and/or consumers[102] located in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	that third country, reciprocal and equivalent requirements to those applied by Regulation (EU) 2015/751.
8.	Directive 2008/48/EC, Directive 2014/17/EU. [Mortgage Lending: Consumer Credit; Mortgage Providers]	(a) Entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised to operate as, and carry out the activities of, a creditor or credit intermediary in relation to credit agreements[103] with consumers shall be treated in Union law as complying with the requirements applicable under Directive 2008/48/EC (as they have been implemented into the law of any Member State, including any applicable derogations or exemptions permitted by that directive) by complying with the corresponding third country requirements (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) applicable to creditors or credit intermediaries in that third country in relation to credit	(i) The third country's legal and/or supervisory regime applies to the third country entities referred to in points (a) and (b) requirements that are equivalent to those applied by Directive 2008/48/EC and Directive 2014/17/EU.

101 In this row the term "payment service provider" means a payment service provider within the meaning of Article 2(24) of Regulation (EU) 2015/751.

102 In this row the term "consumer" means a consumer within the meaning of Article 2(3) of Directive 2008/48/EC.

103 In this row the term "credit agreement" means a credit agreement that is not excluded from Directive 2008/48/EC pursuant to Article 2(2) and 2(2a) of Directive 2008/48/EC.

	Relevant Union Legislation	Description of effect of agreed equivalence recognition in the Union	Additional equivalence criteria
		agreements with consumers. (b) Entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised to operate as, and to carry out activities in relation to credit agreements within the scope of Article 3 of Directive 2014/17/EU (including ancillary services[104]) of, a creditor, credit intermediary, tied credit intermediary, or appointed representative shall be treated in Union law as able (subject to the terms of the mutual recognition agreement) to carry out such activities in relation to credit agreements, with consumers in the Union, including by establishing a branch (subject to the terms of a specific mutual recognition agreement), by complying with the corresponding equivalent third country requirements (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions), instead of the requirements applied by Directive 2014/17/EC (as they have been implemented into the law of any Member State, including any applicable derogations or exemptions permitted by that Directive). (c) Entities referred to in point (a) and (b) of row 6 of this table, may be included in the third country entities referred to in points (a) and (b), and subject to the terms of any relevant recognition decision or mutual recognition agreement which contains the equivalence recognition provision at row 6 of this table as an agreed equivalence provision.	
9.	Directive 2014/65/EU, Regulation (EU) No 600/2014 [Regulated Markets]	(a) Entities supervised in the relevant third county (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as, or to operate, a regulated market in that third country shall be treated in Union law as having the same rights as a regulated market complying with Title III of Directive 2014/65/EU and authorised by a competent authority of a Member State, as referred to in Article 44(1) Directive 2014/65/EU, with the effect that (subject to the terms of the recognition decision or mutual recognition agreement) such a third	

[104] In this row the term "ancillary services" means ancillary services within the meaning of Article 4(4) of Directive 2014/17/EU.

	Relevant Union Legislation	Description of effect of agreed equivalence recognition in the Union	Additional equivalence criteria
		country market or market operator shall be able to exercise the same rights that a regulated market would be able to in the Union under Directive 2014/65/EU and Regulation (EU) 600/2014, by complying with the equivalent legal and supervisory requirements of the third country (as described in a particular recognition decision or mutual recognition agreement) instead of requirements applicable to a regulated market authorised pursuant to Directive 2014/65/EU or Regulation (EU) No 600/2014, and any national implementing measures adopted by a Member State pursuant to Directive 2014/65/EU (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	
10.	Directive 2014/65/EU [Data Service Providers]	(a) Entities supervised in a third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as, or to operate, a data services provider (including an ARM, CTP or ARM) shall be treated in Union law as having the same rights as a data reporting services provider authorised by the competent authority of a Member State, as referred to in Article 59(1) of Directive 2014/65/EU, with the effect that such third country entities shall be eligible to be included on the list that the European Securities and Markets Authority is required to establish under Article 59(3) of Directive 2014/65/EU (and any withdrawals of authorisation in that third country shall be published on that list for a period of 5 years), and such third country entities shall be able to exercise the same rights that a data reporting services provider would have under Directive 2014/65/EU, by complying with the equivalent legal and supervisory requirements of the third country instead of requirements applicable to a data reporting services provider authorised pursuant to Directive 2014/65/EU, and any national implementing measures adopted pursuant to Directive 2014/65/EU (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	
11.	Directive 98/26/EC [Payment & Securities Settlement	(a) Formal arrangements established in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and	(i) The third country's legal system provides reciprocal and equivalent protections as provided in Directive 98/26/EC to systems, participants and collateral security.

	Relevant Union Legislation	Description of effect of agreed equivalence recognition in the Union	Additional equivalence criteria
	Services]	would constitute a designated system in that third country (but for being governed by the law of the third country), shall be treated in Union law as if they were systems designated by a Member State under Article 2 of Directive 98/26/EC, with the effect that the protections applicable to systems, participants and collateral security that Member States are required to implement in accordance with Directive 98/26/EC shall be extended (subject to the terms of the mutual recognition agreement) to such third country transfer systems (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	
12.	Directive 2009/65/EC [UCITS Funds]	(a) Undertakings or investment companies established and supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised in a manner corresponding to UCITs (but for being established in a third country) shall be treated in Union law as having the same rights as UCITs managed by management companies authorised pursuant to Article 5 of Directive 2009/65/EC or investment companies authorised pursuant to Article 27 of Directive 2009/65/EC, whether such third country undertakings are managed by the third country entities referred to in point (b) or by a management company established in the Union and authorised by the competent authorities of that management company's home Member State pursuant to Article 6(1) of Directive 2009/65/EC (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions). (b) Entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as, or to operate, a management company shall be treated in Union law as having the same rights as a management company authorised pursuant to Article 6(1) of Directive 2009/65/EC, with the effect that such third country entities shall be able to carry out the activities of a management company, as referred to in Article 6(2) (and in Article 6(3), of Directive 2009/65/EC where a Member State has exercised the relevant derogation in that	(i) The third country's legal and/or supervisory regime applies to the third country undertakings referred to in point (a) requirements that are equivalent to those applied to UCITs authorised pursuant to Article 5(1) of Directive 2009/65/EC or investment companies authorised pursuant to Article 27 of Directive 2009/65/EC. (ii) The third country's legal and/or supervisory regime applies to the third country entities referred to in point (b) requirements that are equivalent to management companies authorised pursuant to Article 6(1) of Directive 2009/65/EC. (iii) The third country's legal and/or supervisory regime applies to the third country entities referred to in point (b) requirements that are equivalent to those referred to in Article 6(4) of Directive 2009/65/EC, where such third country entities are authorised in that third country to carry out the services referred to in Article 6(3)(a) and (b) of Directive 2009/65/EC.

	Relevant Union Legislation	Description of effect of agreed equivalence recognition in the Union	Additional equivalence criteria
		article) of Directive 2009/65/EC either by providing such services or establishing a branch[105] in a Member State, as referred to in Article 16 of Directive 2009/65/EC (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	
13.	Directive 2009/65/EC [UCITs delegation of management]	(a) Where a management company delegates functions to a third-country undertaking pursuant to Article 13 of Directive 2009/65/EC and such a mandate involves investment management, the requirement that cooperation between the supervisory authorities concerned must be ensured shall (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) in Union law be deemed to have been satisfied for the purposes of Article 13(1)(d) of Directive 2009/65/EC (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) A cooperation agreement for the purposes of monitoring the compliance of the management company with the requirements of Directive 2009/65/EC is in place or will be put in place with the relevant third country supervisory authorities (and contains provisions extending the benefit of the cooperation agreement to Union supervisory authorities).
14.	Directive 2009/138/EC [Direct Insurance & Reinsurance]	(a) Entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as, or to operate, an insurance undertaking and/or reinsurance undertaking, shall be treated in Union law as having the same rights as an insurance undertaking and/or reinsurance undertaking authorised by a Member State pursuant to Article 14 of Directive 2009/138/EC, with the effect that such third country entities shall be able to insure the classes of insurance listed at Part A of Annex I and Annex II of Directive 2009/138/EC (including ancillary risks) and/or carry out reinsurance within the Union, either by establishing a branch[106] in a Member State or providing services as an insurance undertaking, as referred to in Article 15(1) of Directive 2009/138/EC (as described in a particular recognition decision or mutual recognition agreement and subject to any specific	(i) The legal and/or supervisory regime of the third country applies to the third country entities referred to in point (a) requirements that are equivalent to those applied to insurance undertakings or reinsurance undertakings authorised under Article 14 of Directive 2009/138/EC.

105 In this row the term "branch" means a branch within the meaning of point (g) of Article 2(1) of Directive 2009/65/EC.

106 In this row the term "branch" means a branch within the meaning of Article 162(3) of Directive 2009/138/EC, with the reference to the home Member State in Article 13(11) being construed as a reference to the third country that has authorised the third country undertaking as an insurance undertaking.

	Relevant Union Legislation	Description of effect of agreed equivalence recognition in the Union	Additional equivalence criteria
		conditions).	
15.	Regulation (EU) No 575/2013 [Life insurance, eligible collateral]	(a) Entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised to provide life insurance shall be treated in Union law as being subject to supervision by a competent authority of a third country which applies supervisory and regulatory arrangements at least equivalent to those applied in the Union, as referred to in Article 212(2)(j) of Regulation (EU) No 575/2013 (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The third country's legal and/or supervisory regime ensures that the third country entities referred to in point (a) are subject to requirements which are equivalent to companies providing life insurance that are subject to Directive 2009/138/EC.
16.	Directive (EU) 2016/97 [Insurance Mediation]	(a) Entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as, or to operate, an insurance intermediary, a reinsurance intermediary and/or an ancillary insurance intermediary shall be treated in Union law as having the same rights as insurance, reinsurance and ancillary insurance undertakings registered with a competent authority pursuant to Article 13(1) of Directive (EU) 2016/97, with the effect that such third country entities shall be able to carry on insurance and/or reinsurance distribution, or insurance distribution on an ancillary basis as described in point (4) of Article 2(1) of Directive (EU) 2016/97 within the Union by establishing a branch[107] in a Member State or by providing such services, as referred to in Articles 4 and 6 of Directive (EU) 2016/97 (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The third country's legal and/or supervisory regime applies to the third country entities referred to in point (a) requirements that are equivalent to those that are applicable to insurance, reinsurance and ancillary insurance intermediaries registered with a competent authority pursuant to Article 3 of Directive (EU) 2016/97.
17.	Directive 2000/31/EC [E-Commerce]	(a) The provisions of Directive 2000/31/EC shall (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) be treated in Union law as extending applicable rights to persons and entities located in the relevant third country including those	(i) The third country's legal system provides reciprocal and equivalent rights and protections to persons and entities located in the Union as are provided in Directive 2000/31/EC.

[107] In this row the term "branch" means a branch within the meaning of point (12) of Article 2(1) of Directive (EU) 2016/97 with the reference to the intermediary's home Member State being construed as the third country that the intermediary is authorised by.

	Relevant Union Legislation	Description of effect of agreed equivalence recognition in the Union	Additional equivalence criteria
		corresponding to service providers, consumers[108], and recipients of the e-society service (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	
18.	Directive 2009/110/EC [Electronic money services, electronic money institutions]	(a) Entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as, or operating, an electronic money institution shall be treated in Union law as having the same rights as electronic money institutions granted authorisation pursuant to Title II of Directive 2009/110/EEC, with the effect that such third country entities shall be able to pursue the activity of issuing electronic money within the Union, either by establishing a branch[109] or by providing such services (including the services referred to in Article 18 of Directive (EU) 2015/2366), as referred to in Article 28 of Directive (EU) 2015/2366 applying to electronic money institutions *mutatis mutandis* pursuant to Article 3(1) of Directive 2009/110/EC (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions). (b) Point (a) does not prejudice the ability of third country entities referred to in point (a) or (b) of row 6 of this table that are authorised in the relevant third country to carry out activities corresponding to "issuing electronic money" (as referred in Annex I of Directive 2013/36/EU), where any relevant recognition decision or mutual recognition agreement has included the equivalence recognition provision at row 6 of this table.	(i) The third country's legal and/or supervisory regime applies to the third country entities referred to in point (a) requirements that are equivalent to those that are required to be applied to electronic money institutions authorised pursuant to Title II of Directive 2009/110/EC.
19.	Directive (EU) 2015/2366 [Payment Services]	(a) Entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as, or to operate, a payment institution shall be treated in Union law as having the same rights as a payment institution authorised by a Member State pursuant to Article 11 of Directive (EU) 2015/2366, with the effect that such	(i) The third country's legal and/or supervisory regime applies to the third country entities referred to in point (a) requirements which are equivalent to those which are required to be applied to payment institutions authorised pursuant to Article 11 of Directive (EU) 2015/2366.

[108] In this row the term "consumer" means a consumer within the meaning of Article 2(e) of Directive 2000/31/EC.

[109] In this row the term "branch" means a branch within the meaning of Article 4(39) of Directive (EU) 2015/2366.

	Relevant Union Legislation	Description of effect of agreed equivalence recognition in the Union	Additional equivalence criteria
		third country entities shall be able to provide and execute payment services (including the services referred to in Article 18 of Directive (EU) 2015/2366) throughout the Union, either by establishing a branch[110] or providing such services, as referred to in Article 28 of Directive (EU) 2015/2366 (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions). (b) Point (a) does not prejudice the ability of third country entities referred to in point (a) of row 18 of this table that are authorised in the relevant third country to carry out activities corresponding to those carried out by electronic money issuers[111] where any relevant recognition decision or mutual recognition agreement has included the equivalence recognition provision at row 18 of this table. (c) Point (a) does not prejudice the ability of third country entities referred to in point (a) or (b) of row 6 of this table that are authorised in the relevant third country to carry out activities corresponding to "issuing electronic money" (as referred in Annex I of Directive 2013/36/EU), where any recognition decision or mutual recognition agreement has included the equivalence recognition provision at row 6 of this table.	
20.	Directive 2014/59/EU [Recognition of third country resolution proceedings]	(a) Third-country resolution proceedings applied by the authorities of the relevant third country pursuant to the third country's legal and/or supervisory regime (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall (subject to the terms of the specific mutual recognition agreement) be treated in Union law as recognised third-country resolution proceedings, as referred to in Article 94(2) of Directive 2014/59/EU, which national resolution authorities shall assist with implementing and enforcing in accordance with their national law (as described in a particular recognition decision or mutual recognition agreement and subject to	(i) The third country's legal and/or supervisory regime applies equivalent principles to those applied in the Union under Directive 2014/59/EU to the recovery and resolution of third country entities corresponding to those listed in Article 1(a) to (e) of Directive 2014/59/EU.

110 In this row the term "branch" means a branch within the meaning of Article 4(39) of Directive (EU) 2015/2366.

111 In this point the term "electronic money issuers" means an electronic money issuer within the meaning of point 3 of Article 2(1) of Directive 2009/110/EC.

	Relevant Union Legislation	Description of effect of agreed equivalence recognition in the Union	Additional equivalence criteria
		any specific conditions).	
21.	Regulation (EU) 2015/760 [ELTIFs]	(a) Undertakings supervised in the relevant third country and authorised as an ELTIF (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated in Union law as having the same rights as ELTIFs authorised pursuant to Regulation (EU) 2015/760 (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions). (b) Undertakings supervised in the relevant third country and authorised as, or to operate, a manager of an ELTIF (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated in Union law as having the same rights as EU AIFMs authorised to manage ELTIFs pursuant to Regulation (EU) 2015/760 (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	
22.	Regulation (EU) No 345/2013 [EuVECA]	(a) Undertakings supervised in the relevant third country and authorised as a qualifying venture capital fund (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated in Union law as having the same rights as a qualifying venture capital fund authorised pursuant to Regulation (EU) No 345/2013 (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions). (b) Undertakings supervised in the relevant third country and authorised as, or to operate, a manager of a qualifying venture capital fund (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated in Union law as having the same rights as a manager of a qualifying venture capital fund authorised pursuant to Regulation (EU) No 345/2013 (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	

	Relevant Union Legislation	Description of effect of agreed equivalence recognition in the Union	Additional equivalence criteria
23.	Regulation (EU) No 346/2013 [EuSEF]	(a) Undertakings supervised in the relevant third country and authorised as a qualifying social entrepreneurship fund (as described in a particular precognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated in Union law as having the same rights as a qualifying social entrepreneurship fund authorised pursuant to Regulation (EU) No 346/2013 (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions). (b) Undertakings supervised in the relevant third country and authorised as, or to operate, a manager of a qualifying social entrepreneurship fund (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated in Union law as having the same rights as a manager of a qualifying social entrepreneurship fund authorised pursuant to Regulation (EU) No 346/2013 (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	

Part II[112]

	Relevant Union Legislation	Description of effect of agreed equivalence recognition in the Union	Additional equivalence criteria
24.	Directive 2011/61/EU [AIFM own funds requirement guarantee]	(a) Entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as a credit institution or insurance undertaking shall be treated in Union law as subject to prudential rules considered to be equivalent to those laid down in Union law, with the effect that competent authorities may treat guarantees provided by such third country entities as reducing the additional amount of own funds required of an AIFM, as referred to in Article 9(6) of Directive 2011/61/EU (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions). (b) Third country entities referred to in	

[112] NOTE: These are additional new equivalence provisions, separated from the provisions in Part I, Annex II as these are provisions granting discretion to national competent authorities to determine third country equivalence. National competent authorities may wish to retain these discretions however.

	Relevant Union Legislation	Description of effect of agreed equivalence recognition in the Union	Additional equivalence criteria
		point (a) of row 6 and point (a) of row 14 of Part I may be included in the third country entities referred to in point (a) of this row, where relevant, and subject to the terms of any relevant recognition decision or mutual recognition agreement which contains equivalence recognition provision at row 6 and point (a) of row 14 of Part I as an agreed equivalence provision.	
25.	Directive 2009/65/EC [UCITs, various third country categories]	(a) Transferable securities and money market instruments admitted to official listing on a stock exchange in the relevant third country or which are dealt on another regulated market in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated in Union law as being admitted to, or dealt, on a stock exchange or regulated market, that has been approved by a competent authority, as referred to in Article 50(1)(c) of Directive 2009/65/EC (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions). (b) Units of collective investment undertakings established in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated in Union law as collective investment undertakings subject to supervision considered by a competent authority to be equivalent to that laid down in Community law, and that cooperation between authorities is sufficiently ensured, as referred to in Article 50(e)(i) of Directive 2009/65/EC; and as undertakings ensuring a level of protection for unit-holders equivalent to that provided for unit-holders in a UCITs and the requirements of Directive 2009/65/EC, as referred to in Article 50(1)(e)(ii) of Directive 2009/65/EC (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions). (c) Prudential rules of the relevant third country applicable to the registered offices of credit institutions located in that third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated in Union law as prudential rules considered by a competent authority to	(i) The third country's legal and/or supervisory regime applies to the third country undertakings referred to in point (b) requirements ensuring a level of protection for unit-holders equivalent to that provided under Union law for unit-holders in a UCITs and equivalent to the rules on asset segregation, borrowing, lending, and uncovered sales of transferable securities and money market instruments of Directive 2009/65/EC. (ii) The third country's legal and/or supervisory regime applies to the third country entities referred to in point (c) prudential rules that are equivalent to those laid down in Union law. (iii) The third country's legal and/or supervisory regime applies to the third country issuers referred to in point (d) prudential rules that are equivalent to those laid down in Union law.

	Relevant Union Legislation	Description of effect of agreed equivalence recognition in the Union	Additional equivalence criteria
		be equivalent to those laid down in Community law, as referred to in Article 50(1)(f) of Directive 2009/65/EC (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions). (d) Establishments supervised and subject to the prudential regime of the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated in Union law as establishments issuing or guaranteeing the money market instruments referred to in Article 50(1)(h) of Directive 2009/65/EC subject to and complying with prudential rules considered by a competent authority to be at least as stringent as those laid down in Community law, as referred to in Article 50(1)(h)(iii) of Directive 2009/65/EC (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	
26.	Directive 2009/65/EC [UCITs credit institutions/insurance own funds requirement]	(a) Credit institutions and insurance undertakings with registered offices in, and supervised by, the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as a credit institution or insurance undertaking shall be treated in Union law as subject to prudential rules considered by a competent authority as equivalent to those laid down in Community law, as referred to in Article 7(1) of Directive 2009/65/EC, with the effect that management companies may (if authorised by a Member State) not provide up to 50% of the additional amount of own funds referred to in point (i) of Article 7(1)(a) of Directive 2009/65/EC on the basis of such a management company benefiting from a guarantee of the same amount given by a credit institution or an insurance undertaking which has its registered office in the relevant third country and is subject to prudential rules considered as equivalent to those laid down in Community law (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The third country's legal and/or supervisory regime applies to the third country credit institutions and insurance undertakings referred to in point (a) prudential rules which are equivalent to those laid down in Union law.

	Relevant Union Legislation	Description of effect of agreed equivalence recognition in the Union	Additional equivalence criteria
27.	Directive 2009/138/EC [Insurance business carried on by undertakings with third country head offices]	(a) Branches[113] in the Union of entities carrying out the business referred to in the first subparagraph of Article 2(1) of Directive 2009/138/EC with head offices located in, and supervised by, the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated in Union law as having the same rights as branches which have been authorised by a Member State pursuant to Article 162(2) of Directive 2009/138/EC, with the effect that the Union branches of such entities with head offices in a third country shall be able to carry out the business referred to in the first subparagraph of Article 2(1) of Directive 2009/138/EC, as referred to in Article 162 of Directive 2009/138/EC (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The third country's legal and/or supervisory regime ensures that the third country entities referred to in point (a) comply with Union requirements which are equivalent to the requirements under Articles 162(2)(a), and 162(2)(c) to 162(2) (i) of Directive 2009/138/EC.

[113] In this row the term "branch" means a branch within the meaning of Article 162(3) of Directive 2009/138/EC with the reference to authorisation in a Member State being construed as authorisation in the relevant third country.

ANNEX III

	Relevant Union legislation	**Existing recognition provision**
1.	Directive 2003/71/EC	Article 20(3)
2.	Commission Regulation (EC) No 809/2004	Article 35
3.	Directive 2004/109/EC	Article 23(4) sub-paragraph 3
4.	Directive 2004/109/EC	Article 23(4)
5.	Directive 2013/34/EU	Article 46
6.	Regulation (EC) No 1060/2009	Article 5(6)
7.	Directive 2006/43/EC	Article 47(3)
8.	Directive 2006/43/EC	Article 46(2)
9.	Regulation (EU) No 648/2012	Article 1(6)
10.	Regulation (EU) No 648/2012	Article 2a
11.	Regulation (EU) No 648/2012	Article 13(2)
12.	Regulation (EU) No 648/2012	Article 25(2)
13.	Regulation (EU) No 648/2012	Article 75(1)
14.	Regulation (EU) No 909/2014	Article 25(6)
15.	Regulation (EU) No 2015/2365	Article 2(4)
16.	Regulation (EU) No 2015/2365	Article 19(1)
17.	Regulation (EU) No 2015/2365	Article 21(1)
18.	Regulation (EU) No 2016/1011	Article 30(2)
19.	Regulation (EU) No 2016/1011	Article 30(3)
20.	Regulation (EU) No 236/2012	Article 17(2)
21.	Regulation (EU) No 596/2014	Article 6(5)
22.	Regulation (EU) No 596/2014	Article 6(6)
23.	Regulation (EU) No 600/2014	Article 1(9)
24.	Regulation (EU) No 600/2014	Article 28(4)
25.	Regulation (EU) No 600/2014	Article 33(2)
26.	Regulation (EU) No 600/2014	Article 38

	Relevant Union legislation	Existing recognition provision
27.	Regulation (EU) No 600/2014	Article 47(1)
28.	Directive 2014/65/EU	Article 25(4)(a)
29.	Regulation (EU) No 575/2013	Article 107(4)
30.	Regulation (EU) No 575/2013	Article 114(7)
31.	Regulation (EU) No 575/2013	Article 115(4)
32.	Regulation (EU) No 575/2013	Article 116(5)
33.	Regulation (EU) No 575/2013	Article 142(2)
34.	Directive 2009/138/EC	Article 172(2)
35.	Directive 2009/138/EC	Article 227(4) or 227(5)
36.	Directive 2009/138/EC	Article 260(3) or 260(5)

Annex B: Draft UK Implementation of the Equivalence Regulation

20[•] No.[•]

[GREAT REPEAL ACT]

The [Great Repeal] Act 20[•] (Mutual Recognition Regulation) Order 20[•]

Made

Laid before Parliament

Coming into force in accordance with article [•]

The [Treasury] are a government department designated for the purposes of section [•] of the [Great Repeal Act] 20[•] in relation to financial services.

[A draft of these Regulations has been laid before and approved by a resolution of each House of Parliament in accordance with section [•] of the [Great Repeal Act] 20[•]]

The [Treasury], in exercise of the powers conferred on them by sections [•] of the [Great Repeal Act] 20[•], hereby make the following Order:]

PART I

GENERAL

1. **CITATION**

This Order may be cited as the [Great Repeal Act] 20[•] (Mutual Recognition Regulation) Order 20[•].

2. **COMMENCEMENT**

(1) Except as provided by paragraph (2), this Order comes into force on the day on which section [•] of the Act comes into force.

(2) This Order comes into force—

(a) for the purposes of [•], [•], and [•] on [•] 20[•]; and

(b) for the purposes of [•], [•], and [•] on such day as the [Treasury] may specify.

3. **INTERPRETATION**

(1) In this Order—

"Act" means the [Great Repeal Act] 20[•];

"EU legislation" means any directive, regulation or delegated act of the European Union that is in effect prior to the commencement of this Order;

"FCA" means the Financial Conduct Authority;

"PRA" means the Prudential Regulation Authority;

"the Regulation" means Regulation (EU) No [•] of the European Parliament and of the Council on the recognition of the equivalence of third country financial services regimes;

[…]

PART II

APPLICATION OF THE MUTUAL RECOGNITION REGULATION

4. **APPLICATION**

(1) The Regulation shall apply in and form part of the law of the United Kingdom, subject to the amendments and modifications described in Schedule 1 to this Order.

SCHEDULE 1

AMENDMENTS AND MODIFICATIONS TO THE REGULATION

PART I

1. **APPLICATION**

(1) The Regulation shall form part of and be incorporated into the law of the United Kingdom as amended in accordance with this Schedule.

2. **AMENDMENTS**

(1) The recitals and articles of the Regulation are incorporated subject to the following amendments and modifications:

(a) All references in the Regulation to "Community" or "Union" are replaced by the words "United Kingdom".

(b) All references in the Regulation to a "third country" shall mean any country apart from the United Kingdom.

(c) All references in the Regulation to the "European Commission" or "Commission" shall have the meaning given to the words "European Commission" or "Commission" in the Act.

(d) All references in the Regulation to "European Council" or "Council" shall have the meaning given to the words "European Council" or "Council" in the Act.

(e) All references in the Regulation to "EBA" or "European Banking Authority" are replaced by the words "Prudential Regulation Authority".

(f) All references in the Regulation to "EIOPA" or "European Insurance and Occupational Pensions Authority" are replaced by the words "Pensions Regulator".

(g) All references in the Regulation to "ESMA" or "European Securities and Markets Authority" are replaced by the words "Financial Conduct Authority".

(h) The words "in accordance with Article 218(6) of the Treaty of the Functioning of the European Union" are deleted from Article 8(3) of the Regulation.

(i) Article 14(5) of the Regulation is substituted by the following:

"To provide legal certainty to undertakings in the United Kingdom and the relevant third country, orders adopted by the [Secretary of State] pursuant to this Article shall take effect one year from the effective date that is specified in the relevant order."

(j) The powers to pass delegated or implementing legislation referred to in Articles 3(2), 4(4), 5(2), 7(3), 7(4), 10(9), 12(5), 13(9), 14, 15(2), 15(3), 15(4) of the Regulation shall be construed as powers for the Secretary of State to make orders for the purposes of those provisions, to the same extent as is possible under those provisions.

(k) Articles 16(3)-(5) of the Regulation are deleted.

(l) Article 17 of the Regulation is deleted.

(m) All references in the Regulation to other provisions or pieces of Union legislation shall, unless otherwise indicated in this Order, be construed as references to the provision or piece of Union legislation as incorporated into the law of the United

Kingdom [under section [•] of the Great Repeal Act 20[•]] / [under orders made by the [Treasury] in exercise of the powers conferred by section [•] of the Great Repeal Act 20[•] and subject to any amendments or modifications to such provisions or pieces of EU legislation contained in [the Great Repeal Act 20[•]] / [the relevant order made by the [Treasury] in exercise of the powers conferred by section [•] of the Great Repeal Act 20[•]].

(n) All references to amounts denominated in euros shall be construed as references to the equivalent amount in pounds sterling.

(2) The annexes of the Regulation are not subject to the amendments and modifications referred to in articles 2(1)(a), (c) and (d) of this Schedule, and are incorporated under the law in the United Kingdom in the amended forms set out below.[114]

(a) Annex I of the Regulation is incorporated in the following amended form:

	Relevant United Kingdom Legislation	**Description of effect of agreed equivalence recognition in the United Kingdom**	**Additional equivalence criteria**
1.	Financial Services and Markets Act 2000 [Prospectus Directive – Equivalence of prospectuses – Art. 20(3)][115]	(a) Prospectuses of issuers having their registered office in the relevant third country that have been drawn up in accordance with national law or practices or procedures in that third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated under the law of the United Kingdom as third country prospectuses drawn up in accordance with national law, practices or procedures of a third country which may be submitted for approval by the FCA in accordance with the relevant provisions made in the prospectus rules[116] for issuers incorporated in [non-EEA States]/[third countries] for approval of that document as a prospectus pursuant to section 84(6) of the Financial Services and Markets Act 2000 (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The third country's legal or supervisory regime, procedures or practices ensure that the third country prospectuses referred to in point (a) are drawn up in an equivalent manner to international standards set up by international securities commission organisations, including the IOSCO disclosure standards.
2.	Financial Services and Markets Act 2000; Regulation (EC) No 1569/2007 (as implemented by the Act); Regulation 1606/2002 (as	(a) The generally accepted accounting standards of the relevant third country that have been applied to historic financial information prepared by third country issuers (as described in a particular recognition decision or mutual recognition agreement and subject to	(i) The third country ensures that the accounting standards applicable to the historical financial information prepared by issuers in that third country referred to in point (a) are equivalent to the requirements applicable to financial statements referred to in Article 2 of

114 NOTE: The annexes of the Equivalence Regulation have been set out in amended form for ease of reference and due to the complex mapping process that will be required to set out the UK's own implementation of each of the equivalence recognition provisions contained in the Equivalence Regulation.

115 NOTE: bracketed headings in this column are for ease of reference only, and are not intended to be part of the final form of the Order.

116 In this row the term "prospectus rules" means the prospectus rules within the meaning of section 73A(4) of the Financial Services and Markets Act 2000.

	Relevant United Kingdom Legislation	Description of effect of agreed equivalence recognition in the United Kingdom	Additional equivalence criteria
	implemented by the Act)[117] [Prospectuses – 3rd country GAAP with IFRS]	any specific conditions) shall be treated under the law of the United Kingdom as [accounting standards equivalent with IFRS adopted pursuant to Regulation 1606/2002 (as implemented by the Act)] / [accounting standards equivalent with IFRS adopted pursuant to Regulation (EC) No 1126/2008 (as implemented by the Act)] / [accounting standards equivalent with the IFRS specified in any order made by the [Treasury] under the Act for the purposes of this provision][118], with the effect that such third country issuers shall be able to present their historical financial information in accordance with the relevant third country's generally accepted accounting standards for the purposes of the prospectus rules[119] (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	Regulation (EC) No 1569/2007 (as implemented by the Act) / [IFRS adopted pursuant to Regulation (EC) No 1126/2008 (as implemented by the Act)] / [accounting standards equivalent with the IFRS specified in any order made by the [Treasury].
3.	Financial Services and Markets Act 2000; Regulation (EC) No 1569/2007 (as implemented by the Act); Regulation (EC) No 1126/2006 (as implemented by the Act) [Transparency Directive: 3rd country GAAP with IFRS, Art. 23(4), Sub-para 3]	(a) Generally accepted accounting standards of the relevant third country used by issuers whose registered head office is situated in that third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated under the law of the United Kingdom as accounting standards equivalent to [IFRS adopted pursuant to Regulation (EC) No 1126/2006 (as implemented by the Act)] / [the IFRS specified in any order made by the [Treasury] under the Act for the purposes of this provision], with the effect that the third country accounting standards ensure the equivalence of information requirements for the purposes of the transparency rules[120] (as described in a particular recognition decision or mutual	(i) The third country ensures that the accounting standards applicable to the third country entities referred to in point (a) meet the requirements of [Article 2 of Regulation (EC) No 1569/2007 (as implemented by the Act)] / [IFRS adopted pursuant to Regulation (EC) No 1126/2008 (as implemented by the Act)] / [the IFRS specified in any order made by the [Treasury] under the Act for the purposes of this provision] in all equivalent respects.

117 NOTE: It is not possible to confirm exactly how EU regulations (which have direct effect and therefore do not usually have a corresponding piece of implementing national law) will be incorporated into UK law. However, assuming that measures with direct effect, such as EU regulations which have not been implemented under separate national UK legislation, will all be incorporated under the Great Repeal Act, references to the relevant instrument (as incorporated by, and subject to, the secondary legislation made under the Great Repeal Act) may be a suitable approach.

118 NOTE: In some equivalence provisions it is not possible to confirm precisely how criteria for equivalence provisions which are prescribed under regulations or delegated regulations will be implemented into UK law. Various options are therefore set out, including options for relevant requirements to be set by UK secondary legislation.

119 In this row the term "prospectus rules" means the prospectus rules within the meaning of section 73A(4) of the Financial Services and Markets Act 2000.

120 In this row the term "transparency rules" means the transparency rules within the meaning of section 89A(5) of the Financial Services and Markets Act 2000.

	Relevant United Kingdom Legislation	Description of effect of agreed equivalence recognition in the United Kingdom	Additional equivalence criteria
		recognition agreement and subject to any specific conditions).	
4.	Financial Services and Markets Act 2000 [General transparency requirements]	(a) Information requirements of the relevant third country which are applicable to issuers whose registered head office is situated in that third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated under the law of the United Kingdom as requirements that, by reason of the domestic law, regulations, administrative provisions, or of the practices or procedures based on the international standards set by international organisations, the third country where the issuer is situated, ensure the equivalence of the information requirements applicable under, and for the purposes of, the transparency rules[121] (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The third country information requirements applicable to issuers with their registered head office in that third country as referred to in point (a) applicable to issuers in that third country are equivalent to the international standards set by international organisations which correspond to the information requirements provided by the transparency rules.
5.	Reports on Payments to Governments Regulations 2014 [Country by country reporting]	(a) Third-country reporting requirements applicable to undertakings which are subject to the Reports on Payments to Government Regulations 2014 (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated under the law of the United Kingdom as equivalent reporting requirements[122] for the purposes of regulations 12 and 13 of the Reports on Payments to Governments Regulations 2014 (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The legal and/or supervisory regime, practices or procedures of the third country ensure that the third country reporting requirements referred to in point (a) are equivalent to the requirements of the Reports on Payments to Governments Regulations 2014.
6.	Regulation (EC) No 1060/2009 (as implemented by the Act) [Credit Rating Agencies: Equivalence]	(a) Credit ratings related to entities established, or financial instruments issued, in the relevant third country that are issued by entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) by entities authorised as, or to operate, a credit rating agency shall be treated under the law of the United Kingdom as subject to	(i) The third country's legal and/or supervisory regime ensures that the third country entities referred to in point (a) are subject to binding rules equivalent to [those set out in Articles 6 to 12 and Annex I of Regulation (EC) No 1060/2009 (as implemented by the Act), with the exception of Articles 6a, 6b, 8a, 8b, 8c and 11a, point (ba) of point 3 and points 3a and 3b of Section B of Annex I of Regulation (EC) No

121 In this row the term 'transparency rules' means the transparency rules within the meaning of section 89A(5) of the Financial Services and Markets Act 2000.

122 In this row the term "equivalent reporting requirements" means equivalent reporting requirements within the meaning of regulation 2(1) of the Reports on Payment to Governments Regulations 2014.

	Relevant United Kingdom Legislation	Description of effect of agreed equivalence recognition in the United Kingdom	Additional equivalence criteria
		a legal and supervisory framework of a third country in respect of which an equivalence decision has been adopted, as referred to in Regulation (EC) No 1060/2009 (as implemented by the Act), stating that the legal and supervisory framework of the relevant third country meets the relevant requirements of Regulation (EC) No 1060/2009 (as implemented by the Act), with the effect that such third country entities may apply for certification pursuant to Regulation (EC) No 1060/2009 (as implemented by the Act) (and subject to any specific conditions under the particular recognition decision or mutual recognition agreement).	1060/2009 (as implemented by the Act)] / [those specified in any order made by the [Treasury] under the Act for the purposes of this provision]. (ii) The third country's legal and/or regulatory regime applicable to the third country entities referred to in point (a) prevents interference by the supervisory authorities and other public authorities of that third country with the content of credit ratings and methodologies. (iii) A cooperation agreement is in place or will be put in place between the relevant third country and [FCA] specifying at least the matters [referred to in Regulation (EC) No 1060/2009 (as implemented by the Act)] / [specified in any order made by the [Treasury] under the Act for the purposes of this provision].
7.	Companies Act 2006 [Statutory Audit: Adequacy of audit framework: section 1253D]	(a) The relevant competent authorities of specified third countries (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated under the law of the United Kingdom as approved third country competent authorities within the meaning of section 1253D(2) of the Companies Act 2006 (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The relevant third country authorities have entered into or will enter into arrangements with the Secretary of State in accordance with section 1253E of the Companies Act 2006.
8.	Companies Act 2006 [Statutory Audit: Equivalence of audit framework: section 1221(1)]	(a) Entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as, or to operate as, an auditor shall be treated under the law of the United Kingdom as persons which the Secretary of State has declared are to be regarded as holding an approved third country qualification pursuant to section 1221 of the Companies Act 2006 (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	
9.	Regulation (EU) No 648/2012 (as implemented by the Act) [EMIR: central bank exemption: Art. 1(6)]	(a) Entities established in the relevant third country and operating as a central bank or public body charged with or intervening in the management of the public debt in that third country (as described in a particular recognition decision or mutual recognition	

	Relevant United Kingdom Legislation	Description of effect of agreed equivalence recognition in the United Kingdom	Additional equivalence criteria
		agreement and subject to any specific conditions) shall be treated under the law of the United Kingdom as a third country entity [with respect to which a delegated act has been adopted pursuant to paragraph 6 of Article 1 of Regulation (EU) No 648/2012 (as implemented by the Act), with the effect that the list set out in paragraph 4 of Article 1 of Regulation (EU) No 648/2012 (as implemented by the Act) shall be regarded as being amended accordingly] / [to which Regulation (EU) No 648/2012 (as implemented by the Act) does not apply][123] (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	
10.	[Regulation (EU) No 648/2012 (as implemented by the Act)] / [Financial Services and Markets Act 2000; Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001/995] [EMIR: regulated markets]	(a) Entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as, or to operate, a regulated market shall be treated under the law of the United Kingdom as [third-country markets subject to legally binding requirements in respect of which an implementing act, as referred to in Article 2a of Regulation (EU) No 648/2012 (as implemented by the Act), determining that such requirements are equivalent to the requirements laid down in Title III of Directive 2004/39/EC] / [third country markets subject to requirements equivalent to the requirements specified in any order made by the [Treasury] under the Act for the purposes of this provision and such third country entities are subject to effective supervision and enforcement in that third country on an ongoing basis] / [third country markets subject to requirements equivalent to the recognition requirements contained in the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001/995 applicable to bodies seeking a recognition under section 287 of the Financial Services and Markets Act 2000 and regulation 4 of the Financial Services and Markets Act 2000 (Recognition Requirements for	(i) The third country's legal and/or supervisory regime applies to the third-country entities referred to in point (a) binding requirements which are equivalent to [Title III of Directive 2004/39/EC] / [the requirements specified in any order made by the [Treasury] under the Act for the purposes of this provision] / [the recognition requirements laid down in regulation 4 of the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001/995 applicable to bodies in respect of which a recognition order has been made under section 290(1)(a) of the Financial Services and Markets Act 2000].

[123] NOTE: In some equivalence provisions there are various structuring options relevant for the rights/entitlements that are granted to the relevant third country entity after an equivalence provision is granted. This is often due to the "benefit" of the equivalence provision (once granted) being rooted in an EU regulation for which there may not be a corresponding UK implementing instrument (and so will presumably be grandfathered).

	Relevant United Kingdom Legislation	Description of effect of agreed equivalence recognition in the United Kingdom	Additional equivalence criteria
		Investment Exchanges and Clearing Houses) Regulations 2001/995], with the effect that such third country markets are considered to be equivalent to a regulated market for the purposes of the definition of OTC derivatives pursuant to Article 2a(1) of Regulation (EU) No 648/2012 (as implemented by the Act) (as described in a particular recognition decision or mutual recognition agreement).	
11.	Regulation (EU) No 648/2012 (as implemented by the Act) [EMIR: transaction requirements: Art. 13]	(a) Requirements of the third country's legal, supervisory and/or enforcement regime corresponding to any of the requirements laid down in Articles 4, 9, 10 and 11 of Regulation (EU) No 648/2012 (as implemented by the Act) (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated under the law of the United Kingdom as legal, supervisory and enforcement arrangements in respect of which an implementing act as referred to in Article 13(2) of Regulation (EU) No 648/2012 (as implemented by the Act) declaring that the requirements set out in Article 13(2) have been met, with the effect that, counterparties entering into a transaction subject to Regulation (EU) No 648/2012 (as implemented by the Act) shall be deemed to have fulfilled the obligations [contained in Articles 4, 9, 10 and 11 of Regulation (EU) No 648/2012 (as implemented by the Act) where at least one of the counterparties is established in that third country, as referred to in Article 13(3) of Regulation (EU) No 648/2012] / [specified in any order made by the [Treasury] under the Act for the purposes of this provision] (as implemented by the Act) (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The third country's legal, supervisory and/or supervisory regime applies requirements which are equivalent to [any of those laid down in Articles 4, 9, 10 and 11 of Regulation (EU) No 648/2012 (as implemented by the Act)] / [those specified in any order made by the [Treasury] under the Act for the purposes of this provision]. (ii) The third country requirements referred to in point (i) are effectively applied and enforced in an equitable and non-distortive manner so as to ensure equivalent effective supervision and enforcement in that third country.
12.	[Regulation (EU) No 648/2012 (as implemented by the Act)] [Financial Services and Markets Act 2000; Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses)	(a) Entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as, or operating, a CCP shall be treated under the law of the United Kingdom as being subject to legal and supervisory arrangements in respect of which an implementing act, as referred to in Article 25(6) of Regulation (EU) No 648/2012 (as implemented by the Act), determining that legal and supervisory	(i) The third country's legal and/or supervisory regime applies to the third country entities referred to in point (a) requirements which are equivalent to [the requirements laid down in Title IV of Regulation (EU) No 648/2012 (as implemented by the Act)] / [the requirements specified in any order made by the [Treasury] under the Act for the purposes of this provision]. (ii) An appropriate cooperation mechanism has been established or will be established between the relevant

	Relevant United Kingdom Legislation	Description of effect of agreed equivalence recognition in the United Kingdom	Additional equivalence criteria
	Regulations 2001] [EMIR: CCPs: Art. 25(6)]	arrangements in that third country ensure that a CCP authorised in that third country comply with legally binding requirements which are equivalent to the recognition requirements laid down in Title IV of Regulation (EU) No 648/2012 (as implemented by the Act), that CCPs are subject to effective supervision and enforcement in that third country on an ongoing basis, and that the legal framework of that third country provides for an effective equivalent system for the recognition of CCPs authorised under third-country legal regimes, with the effect that [such third country entities are treated under the law of the United Kingdom as third country central counterparties pursuant to section 285(1)(d) of the Financial Services and Markets Act 2000] / [such third country entities are able to apply to the Bank of England for recognition to provide certain clearing services or activities in the United Kingdom as a recognised central counterparty pursuant to section 288(1) of the Financial Services and Markets Act 2000] / [as having satisfied the recognition requirements applicable to clearing houses pursuant to Parts III and IV of the schedule to the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 and may accordingly apply to the Bank of England for recognition pursuant to section 288(1A) of the Financial Services and Markets Act 2000] (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	competent authorities of the third country and the [FCA] which specifies, at least, the matters referred to in [Article 7(a) to 7(d) of Regulation (EU) No 648/2012 (as implemented by the Act)] / [any order made by the [Treasury] under the Act for the purposes of this provision].
13.	Regulation (EU) No 648/2012 (as implemented by the Act) [EMIR: trade repositories: Art. 75]	(a) Entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as, or operating, a trade repository shall be treated under the law of the United Kingdom as [being subject to legal and supervisory arrangements in respect of which an implementing act, as referred to in Article 75(1) of Regulation (EU) No 648/2012 (as implemented by the Act), determining that the legal and supervisory arrangements of the third country meet the conditions at Articles 75(1)(a) to 75(1)(c) of Regulation (EU) No 648/2012 (as implemented by the Act), with the effect that such third	(i) The third country's legal or supervisory regime applies to the third country entities referred to in point (a) equivalent requirements as those laid down in [Regulation (EU) No 648/2012 (as implemented by the Act)] / [any order made by the [Treasury] under the Act for the purposes of this provision]. (ii) A cooperation agreement is in place or will be in place between the United Kingdom and the relevant third country authorities providing for the access described in [Article 75(2) of Regulation (EU) No 648/2012 (as implemented by the Act)] / [any order made by the [Treasury] under the Act for the purposes of this provision], and specifying, at least the matters listed in

	Relevant United Kingdom Legislation	Description of effect of agreed equivalence recognition in the United Kingdom	Additional equivalence criteria
		country entities may apply for recognition by the [FCA], as referred to in Articles 77(1) and 77(2) of Regulation (EU) 2015/2365 (as implemented by the Act)] / [having the same rights as trade repositories registered with the [FCA] pursuant to Chapter I of Title VI of Regulation (EU) No 648/2012 (as implemented by the Act)] (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	[Article 75(3)(a) and 75(3)(b) of Regulation (EU) No 648/2012 (as implemented by the Act)] / [any order made by the [Treasury] under the Act for the purposes of this provision].
14.	Regulation (EU) No 909/2014 (as implemented by the Act) [CSDR: Art. 25(9)]	(a) Entities supervised in a third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as, or operating, a central securities depository shall be treated under the law of the United Kingdom as [being subject to legal and supervisory arrangements in respect of which an implementing act has been adopted, as referred to in Article 25(9) of Regulation (EU) No 909/2014 (as implemented by the Act) (notwithstanding the effect of Article 69(3) of Regulation (EU) No 909/2014 (as implemented by the Act)), determining that the legal and supervisory arrangements of the third country ensure that CSDs authorised in that third country comply with legally binding requirements equivalent to the requirements laid down in Regulation (EU) No 909/2014 (as implemented by the Act), that CSDs are subject to effective supervision, oversight and enforcement in that third country on an ongoing basis and that the legal framework of that third country provides for an effective equivalent system for the recognition of CSDs authorised under third-country legal regimes, with the effect that (notwithstanding the effect of Article 69(3) of Regulation (EU) No 909/2014) (as implemented by the Act) such third country entities able to apply to the [FCA] for recognition as referred to in Article 25(2) of Regulation (EU) No 909/2014 (as implemented by the Act), and be recognised as able to provide the services (including by establishing a branch in the United Kingdom) referred to in Article 25(2) of Regulation (EU) No 909/2014 (as implemented by the Act)] / [having the same rights as a CSD authorised by the [FCA] pursuant to Article 18(1) (and, if relevant, Article 54) of Regulation (EU)	(i) The third country's legal and/or supervisory regime applies to the third country entities referred to in point (a) requirements which ensure that the third country entities referred to in point (a) are subject to effective authorisation, supervision and oversight or, if the securities settlement system is operated by a central bank, oversight, ensuring full compliance with the prudential requirements applicable in that third country. (ii) The third country's legal and/or supervisory regime ensures that the third country entities referred to in point (a) comply with requirements which are in effect equivalent to the requirements [laid down in Regulation (EU) No 909/2014 (as implemented by the Act)] / [specified in any order made by the [Treasury] under the Act for the purposes of this provision], taking into account the internationally agreed CPSS-IOSCO standards so far as they do not conflict with [Regulation (EU) No 909/2014 (as implemented by the Act)] / [any requirements specified in any order made by the [Treasury] under the Act for the purposes of this provision]. (iii) The third country's legal or supervisory regime provides for an effective equivalent system for the recognition of CSDs authorised under third-country legal regimes. (iv) The third country entities referred to in point (a) are permitted under the legal regime of the third country, if necessary, to take the necessary measures to allow their users to comply with provisions of the law of the United Kingdom to provide central securities depository services, including the law [referred to in the second subparagraph of Article 49(1) of Regulation (EU) No 909/2014 (as implemented by the Act)]

	Relevant United Kingdom Legislation	Description of effect of agreed equivalence recognition in the United Kingdom	Additional equivalence criteria
		No 909/2014 (and able to provide the relevant services[124] in the United Kingdom that it is authorised to in the relevant third country] (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	/ [of the United Kingdom]. (v) A cooperation agreement is in place or will be put in place with the responsible third-country authorities meeting [the requirements, at least, of Article 25(7) and Articles 25(10) of Regulation (EU) No 909/2014 (as implemented by the Act)] / [requirements, at least, specified any order made by the [Treasury] under the Act for the purposes of this provision].
15.	Regulation (EU) 2015/2365 (as implemented by the Act) [SFTR: central banks: Art. 2(4)]	(a) Entities established in the relevant third country and operating as a central bank or public body charged with or intervening in the management of public debt in that third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated under the law of the United Kingdom as [a third country entity with respect to which a delegated act has been adopted pursuant to paragraph 4 of Article 2 of Regulation (EU) 2015/2365 (as implemented by the Act), with the effect that the list set out in paragraph 2 of Article 2 of Regulation (EU) 2015/2365 (as implemented by the Act) shall be treated as if it had been amended accordingly] / [third country entities to which Articles 4 and 14 of Regulation (EU) 2015/2365 (as implemented by the Act) do not apply] (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	
16.	Regulation (EU) 2015/2365 (as implemented by the Act) [SFTR: trade repositories: Art. 19]	(a) Entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as, or operating, a trade repository shall be treated under the law of the United Kingdom as [being subject to legal and supervisory arrangements in respect of which an implementing act has been adopted, as referred to in Article 19(1) of Regulation (EU) 2015/2365 (as implemented by the Act), determining that the legal and supervisory arrangements of the third country meet the conditions at Articles 19(1)(a) to (d) of Regulation (EU) 2015/2365 (as implemented by the Act), with the effect	(i) The third country's legal or supervisory regime applies to the third country entities referred to in point (a) equivalent requirements as those [laid down in Regulation (EU) 2015/2365 (as implemented by the Act)] / [specified in any order made by the [Treasury] under the Act for the purposes of this provision]. (ii) The third country's legal or supervisory regime applies to the third country entities referred to in point (a) legally binding and enforceable obligations under the legal regime of the third country to give direct and immediate access to trade repository data to the relevant authorities referred

[124] In this row the term 'relevant services' means [the core services listed in the Annex of Regulation (EU) No 909/2014 (as implemented by the Act)] / [the services specified in any order made by the Treasury under the Act for the purposes of this provision.

	Relevant United Kingdom Legislation	Description of effect of agreed equivalence recognition in the United Kingdom	Additional equivalence criteria
		that such third country entities may apply to the [FCA] for recognition as a trade repository, as referred to in Articles 19(3) and 19(4) of Regulation (EU) 2015/2365 (as implemented by the Act)] / [having the same rights as a trade repository registered by the [FCA] pursuant to Article 5 of Regulation (EU) 2015/2365 (as implemented by the Act)] (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	to in [Article 12(2) of Regulation (EU) 2015/2365 (as implemented by the Act)] / [any order made by the [Treasury] under the Act for the purposes of this provision]. (iii) The relevant recognition decision or mutual recognition agreement specifies the relevant third-country authorities that are entitled to access data on SFTs held in trade repositories established in the United Kingdom. (iv) Cooperation arrangements are in place or will be put in place between the United Kingdom and the relevant third country authorities specifying, at least the matters [listed at Article 19(5)(b)(i) and 19(5)(b)(ii) of Regulation (EU) 2015/2365 (as implemented by the Act)] / [specified in any order made by the [Treasury] under the Act for the purposes of this provision].
17.	Regulation (EU) 2015/2365 (as implemented by the Act) [SFTR: transaction requirements: Art. 21]	(a) The legal, supervisory and/or enforcement arrangements of the relevant third country corresponding to the requirements laid down in Article 4 of Regulation (EU) 2015/2365 (as implemented by the Act) (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated under the law of the United Kingdom as arrangements in respect of which an implementing act has been adopted, as referred to in Article 21(1) of Regulation (EU) 2015/2365 (as implemented by the Act), determining that the legal, supervisory and/or enforcement arrangements of that third country satisfy the requirements set out in Article 21(1)(a) to (b) of Regulation (EU) 2015/2365 (as implemented by the Act), with the effect that where counterparties enter into a transaction subject to Regulation (EU) 2015/2365 (as implemented by the Act) and at least one of the counterparties is established in the relevant third country and the counterparties have complied with the obligations of that third country in relation to that transaction, the counterparties to the transaction shall be deemed to have fulfilled the requirements [laid down in Article 4 of Regulation (EU) 2015/2365 (as implemented by the Act), as referred to in Article 21(2) of Regulation (EU) 2015/2365 (as implemented by the Act)] / [specified in any order made by the [Treasury] under the Act for the purposes of this provision] (as	(i) The legal, supervisory and/or enforcement arrangements of the third country referred to in point (a) are equivalent to the requirements laid down in [Article 4 of Regulation (EU) 2015/2365 (as implemented by the Act)] / [specified in any order made by the [Treasury] under the Act for the purposes of this provision]. (ii) The legal, supervisory and/or enforcement arrangements of the third country referred to in point (a) ensure that the entities [referred to in Article 12(2) of Regulation (EU) 2015/2365 (as implemented by the Act) have either direct access to the details on securities financing transactions data pursuant to Article 19(1) of Regulation (EU) 2015/2365 (as implemented by the Act) or indirect access to the details on securities financing transactions pursuant to Article 20 of Regulation (EU) 2015/2365 (as implemented by the Act)] / [specified in any order made by the [Treasury] under the Act for the purposes of this provision].

	Relevant United Kingdom Legislation	Description of effect of agreed equivalence recognition in the United Kingdom	Additional equivalence criteria
		described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	
18.	[Regulation (EU) 2016/1011 (as implemented by the Act)] / [Financial Services and Markets Act 2000] [Benchmarks: Requirements for benchmark administrators: Art. 30(2)]	(a) Entities authorised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as, or operating, a benchmark administrator in the third country shall be treated under the law of the United Kingdom as [entities and benchmarks subject to a third country's legal framework and supervisory practice in respect of which an implementing decision has been adopted, as referred to in Article 30(2) of Regulation (EU) 2016/1011 (as implemented by the Act), stating that the legal framework and supervisory practice of that third country meets the requirements listed in Article 30(2)(a) and (b) of Regulation (EU) 2016/1011 (as implemented by the Act)] / [entities with the same rights as persons authorised to carry out the regulated activities contained in article 63O of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001] / [having the same rights as an administrator authorised and registered by the [FCA] pursuant to Title VI of Regulation (EU) 2016/1011 (as implemented by the Act)] (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The third country entities referred to in point (a) are subject to a legal framework and supervisory practice which ensures compliance with the IOSCO principles for financial benchmarks, or where applicable, with the IOSCO principles for PRAs. (ii) A cooperation agreement is in place or will be put in place with the relevant third country competent authorities specifying at least the matters [listed in Article 30(4)(a) to 30(4)(c) of Regulation (EU) 2016/1011 (as implemented by the Act)] / [specified in any order made by the [Treasury] under the Act for the purposes of this provision].
19.	[Regulation (EU) 2016/1011 (as implemented by the Act)] / [Financial Services and Markets Act 2000] [Benchmarks: Requirements for benchmark administrators: Art. 30(3)]	(a) Specific entities authorised as, or to operate, a benchmark administrator or benchmarks or families of benchmarks (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) that are subject to specific binding requirements in the relevant third country shall be treated under the law of the United Kingdom as [specific administrators or specific benchmarks or families of benchmarks subject to binding requirements in that third country in respect of which an implementing decision has been adopted, as referred to in Article 30(3) of Regulation (EU) 2016/1011 (as implemented by the Act), stating that the binding requirements in that third country meet the requirements of Article 30(3)(a) of Regulation (EU) 2016/1011 (as implemented by the Act)	(i) The specific third country entities, benchmarks or families of benchmarks referred to in point (i) are subject to a legal framework and/or supervisory practice which ensures compliance with the IOSCO principles for financial benchmarks or, where applicable, with the IOSCO principles for PRAs. (ii) A cooperation agreement is in place or will be put in place with the relevant third country competent authorities specifying [at least the matters listed in Article 30(4)(a) to 30(4)(c) of Regulation (EU) 2016/1011 (as implemented by the Act)] / [at least the matters specified in any order made by the [Treasury] under the Act for the purposes of this provision].

	Relevant United Kingdom Legislation	Description of effect of agreed equivalence recognition in the United Kingdom	Additional equivalence criteria
		and that such specific administrators or specific benchmarks or families of benchmarks are subject to supervision and enforcement meeting the requirements of Article 30(3)(b) of Regulation (EU) 2016/1011 (as implemented by the Act)] / [entities (or benchmarks or families of benchmarks administered by entities) with the same rights as persons authorised to carry out the regulated activities contained in Article 63O of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions)] / [entities (and benchmarks or families of benchmarks administered by entities) having the same rights as an administrator authorised and registered by the [FCA] pursuant to Title VI of Regulation (EU) 2016/1011 (as implemented by the Act)] (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	
20.	Regulation (EU) No 236/2012 (as implemented by the Act) [Short selling: market makers: Art. 17(2)]	(a) Entities supervised in the relevant third county (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as, or operating, a market, shall be treated under the law of the United Kingdom as [subject to legally binding requirements in respect of which a decision, as referred to in Article 17(2) of Regulation (EU) 236/2012 (as implemented by the Act), determining that the legal and supervisory framework of the third country, for the purposes of the exemption set out in Article 17(1) of Regulation (EU) No 236/2012 (as implemented by the Act), is equivalent to the requirements under Title III of Directive 2004/39/EC, under Directive 2003/6/EC and under Directive 2004/109/EC] / [entities which are not subject to [Articles 5, 6, 7, 12, 13 and 14 of Regulation (EU) No 236/2012 (as implemented by the Act)] / [the requirements specified in any order made by the [Treasury] under the Act for the purposes of this provision]] (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The third country's legal and/or supervisory regime applies to the entities referred to in point (a) equivalent requirements which ensure that the third country entities referred to in point (a) have clear and transparent rules regarding the admission of securities to trading so that such securities are capable of being traded in a fair, orderly and efficient manner, and are freely negotiable. (ii) The third country's legal and/or supervisory regime applies to the entities referred to in point (a) equivalent requirements which ensure a high level of investor protection by subjecting security issuers to periodic and ongoing information requirements. (iii) The third country's legal regime applies to the entities referred to in point (a) equivalent requirements which ensure market transparency and integrity by preventing market abuse in the form of insider dealing and market manipulation.

	Relevant United Kingdom Legislation	Description of effect of agreed equivalence recognition in the United Kingdom	Additional equivalence criteria
21.	Regulation (EU) No 596/2014 (as implemented by the Act) [MAR: Exemption for monetary and public debt management activities: Art. 6(5)]	(a) Public bodies and/or central banks established in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated under the law of the United Kingdom as [third country public bodies and central banks in respect of which a delegated act, as referred to in Article 6(5) of Regulation (EU) No 596/2014 (as implemented by the Act), with the effect that the exemption referred to in Article 6(1) of Regulation (EU) 596/2014 (as implemented by the Act) is extended to those third country public bodies and/or central banks] / [third country public bodies and/or central banks which are not subject to Regulation (EU) No 596/2014 (as implemented by the Act) / [the requirements specified in any order made by the [Treasury] under the Act for the purposes of this provision]] (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	
22.	Regulation (EU) No 596/2014 (as implemented by the Act) [MAR: Climate policy/emissions: Art. 6(6)]	(a) Public bodies established in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated under the law of the United Kingdom as [third country public bodies in respect of which a delegated act has been adopted, as referred to in Article 6(6) of Regulation (EU) No 596/2014 (as implemented by the Act), with the effect that the exemption referred to in Article 6(3) of Regulation (EU) No 596/2014 (as implemented by the Act) is extended to such third country public bodies] / [public bodies which are not subject to Regulation (EU) No 596/2014 (as implemented by the Act) / [the requirements specified in any order made by the [Treasury] under the Act for the purposes of this provision]] (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The third country has entered into or will enter into an agreement with the United Kingdom [pursuant to Article 25 of Directive 2003/87/EC (as implemented by the Act] / [meeting the requirements specified in any order made by the [Treasury] under the Act for the purposes of this provision].
23.	Regulation (EU) No 600/2014 (as implemented by the Act) [MiFIR: Central banks: Art. 1(9)]	(a) Entities established in the relevant third country and operating as a central bank in that third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated under the law of the United Kingdom as [a third country entity with	

	Relevant United Kingdom Legislation	Description of effect of agreed equivalence recognition in the United Kingdom	Additional equivalence criteria
		respect to which a delegated act has been adopted to extend the scope of paragraph 6 of Article 1 of Regulation (EU) No 600/2014 (as implemented by the Act), as referred to in paragraph 9 of Article 1 of Regulation (EU) No 600/2014 (as implemented by the Act), with the effect that the scope of paragraph 6 of Article 1 of Regulation (EU) No 600/2014 (as implemented by the Act) shall be extended accordingly] / [third country entities which are not subject to [the requirements of Articles 8, 10, 18 and 21 of Regulation (EU) No 600/2014 (as implemented by the Act] / [the requirements specified in any order made by the [Treasury] under the Act for the purposes of this provision] (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	
24.	[Directive 2014/65/EU (as implemented by the Act),] Regulation (EU) No 600/2014 (as implemented by the Act) [MiFIR/MiFID: Trading venues trading obligation: financial instruments: Art. 23 MiFIR/25(4)(a) MiFID]	(a) Entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as, or to operate, a regulated market shall be treated under the law of the United Kingdom [as being subject to a legal and supervisory framework of a third country in respect of an equivalence decision that has been adopted as referred to in the third and fourth subparagraphs of Article 25(4)(a) of Directive 2014/65/EU (as implemented by the Act) stating that a regulated market in that third country complies with legally binding requirements which are equivalent to the requirements resulting from Regulation (EU) No 596/2014 (as implemented by the Act), from Title III of Directive 2014/65/EU (as implemented by the Act), from Title II of Regulation (EU) No 600/2014 (as implemented by the Act) and from Directive 2004/109/EC (as implemented by the Act), and regulated markets in that third country are subject to effective supervision and enforcement] / [as being equivalent third-country trading venues for the purposes of Article 23(1) of Regulation (EU) No 600/2014 (as implemented by the Act)] (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The third country's legal and/or supervisory regime applies to the third country entities referred to in point (a) equivalent standards which ensure that such entities have clear and transparent rules regarding the admission of securities to trading so that such securities are capable of being traded in a fair, orderly and efficient manner, and are freely negotiable. (ii) The third country's legal and/or supervisory regime applies to the entities referred to in point (a) equivalent requirements which ensure that security issuers are subject to periodic and ongoing information requirements ensuring a high level of investor protection. (iii) The third country's legal and/or supervisory regime applies to the entities referred to in point (a) equivalent requirements which ensure market transparency and integrity by the prevention of market abuse in the form of insider dealing and market manipulation.

	Relevant United Kingdom Legislation	Description of effect of agreed equivalence recognition in the United Kingdom	Additional equivalence criteria
25.	[Directive 2014/65/EU (as implemented by the Act,] Regulation (EU) No 600/2014 (as implemented by the Act) [MiFIR: Trading venues trading obligation: financial instruments: Art. 28(4) MiFIR]	(a) Entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as, or to operate, a trading venue shall be treated under the law of the United Kingdom as [being subject to legally binding requirements in respect of a decision that has been adopted, as referred to in Article 28(4) of Regulation (EU) 600/2014 (as implemented by the Act), determining that those requirements are equivalent to the requirements for the trading venues referred to in paragraph 1(a), (b) or (c) of Article 28(4) of Regulation (EU) 600/2014 (as implemented by the Act), resulting from Regulation (EU) 600/2014 (as implemented by the Act), Directive 2014/65/EU (as implemented by the Act), and Regulation (EU) No 596/2014 (as implemented by the Act), and such third country entities are subject to effective supervision and enforcement in the third country] / [being equivalent third-country trading venues for the purposes of Article 28(1)(d) of Regulation (EU) 600/2014 (as implemented by the Act)] (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The third country's legal and/or supervisory regime provides for an effective equivalent system for the recognition of trading venues authorised under Directive 2014/65/EU (as implemented by the Act) to admit to trading or trade derivatives declared subject to a trading obligation in that third country on a non-exclusive basis. (ii) The third country's legal and/or supervisory regime applies to the third country entities referred to in point (a) equivalent standards which ensure that such entities have clear and transparent rules regarding the admission of financial instruments to trading so that such financial instruments are capable of being traded in a fair, orderly and efficient manner, and are freely negotiable. (iii) The third country's legal and/or supervisory regime applies to the entities referred to in point (a) equivalent requirements which ensure that issuers of financial instruments are subject to periodic and ongoing information requirements ensuring a high level of investor protection. (iv) The third country's legal or supervisory regime applies to the entities referred to in point (a) equivalent requirements which ensure market transparency and integrity by the prevention of market abuse in the form of insider dealing and market manipulation.
26.	Regulation (EU) No 600/2014 (as implemented by the Act) [MiFID/MiFIR: derivatives: trade execution and clearing obligations: Art. 33]	(a) Certain requirements of the third country's legal or supervisory regime corresponding to the requirements laid down in Articles 28 and 29 of Regulation (EU) No 600/2014 (as implemented by the Act) (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated under the law of the United Kingdom as legal, supervisory and enforcement arrangements in respect of which an implementing act has been adopted, as referred to in Article 33(2) of Regulation (EU) No 600/2014 (as implemented by the Act), with the effect that counterparties entering into a transaction subject to Regulation (EU) No 600/2014 (as implemented by the Act) shall be deemed to have fulfilled the obligations contained in Articles 28 and 29 of Regulation (EU) No 600/2014 (as implemented by the Act) where at	(i) The third country's legal and/or supervisory regime requirements referred to in point (a) are equivalent to those laid down in Articles 28 and 29 of Regulation (EU) No 600/2014 (as implemented by the Act). (ii) The third country requirements referred to in point (a) are effectively applied and enforced in an equitable and non-distortive manner so as to ensure equivalent effective supervision and enforcement in that third country.

	Relevant United Kingdom Legislation	Description of effect of agreed equivalence recognition in the United Kingdom	Additional equivalence criteria
		least one of the counterparties is established in that third country, as referred to in Article 33(3) of Regulation (EU) No 600/2014 (as implemented by the Act), and the counterparties are in compliance with those legal, supervisory and enforcement arrangements of the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	
27.	Regulation (EU) No 600/2014 [MiFIR: trading venues for the purposes of clearing access: Art. 38(1)-(3)]	(a) The third country entities referred to in row 25 of this table shall (where that row is included as an agreed equivalence recognition and subject to any specific conditions) be treated under the law of the United Kingdom as third country trading venues subject to a legal and supervisory framework in respect of which a decision has been adopted, as referred to in Article 38(3) of Regulation (EU) No 600/2014 (as implemented by the Act), stating that the legal and supervisory framework of the third country is considered to provide for an effective equivalent system for permitting CCPs and trading venues authorised under foreign regimes access to CCPs and trading venues in that third country, with the effect that such third country trading venues are able to make use of [the access rights in Articles 35 to 36 of Regulation (EU) No 600/2014 (as implemented by the Act), as referred to in Article 38(1) of Regulation (EU) No 600/2014 (as implemented by the Act)] / [access rights specified in any order made by the [Treasury] under the Act for the purposes of this provision] (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The third country's legal and/or supervisory framework meets the requirements [of Article 38(3) of Regulation (EU) No 600/2014 (as implemented by the Act] / [specified in any order made by the [Treasury] under the Act for the purposes of this provision].
28.	Regulation (EU) No 600/2014 (as implemented by the Act) [MiFIR: trading venues for the purposes of clearing access: Art. 38(1)-(3)]	(a) The third country entities referred to in row 12 of this table shall (where that row is included as an agreed equivalence recognition and subject to any specific conditions) be treated under the law of the United Kingdom as third country CCPs subject to a legal and supervisory framework in respect of which a decision has been adopted, as referred to in Article 38(3) of Regulation (EU) No 600/2014 (as implemented by the Act), determining that the legal and supervisory framework of the third country is considered to provide for an effective	(i) The third country's legal and/or supervisory framework meets [the requirements of Article 38(3) of Regulation (EU) No 600/2014 (as implemented by the Act)] / [requirements specified by any order made by the [Treasury] under the Act for the purposes of this provision].

	Relevant United Kingdom Legislation	Description of effect of agreed equivalence recognition in the United Kingdom	Additional equivalence criteria
		equivalent system for permitting CCPs and trading venues authorised under foreign regimes access to CCPs and trading venues in that third country, with the effect that such third country CCPs are able to make use of the [access rights in Articles 35 to 36 of Regulation (EU) No 600/2014 (as implemented by the Act), as referred to in Article 38(1) of Regulation (EU) No 600/2014 (as implemented by the Act)] / [access rights specified in any order made by the [Treasury] under the Act for the purposes of this provision] (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	
29.	Regulation (EU) No 600/2014 (as implemented by the Act) [MiFIR: trading venues for the purposes of clearing access: Art. 38(1)-(3)]	(a) Entities established in the relevant third country and authorised as, or to operate, a CCP or trading venue (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated under the law of the United Kingdom as third country CCPs and trading venues subject to a legal and supervisory framework in respect of which a decision has been adopted under Article 38(3) of Regulation (EU) No 600/2014 (as implemented by the Act), with the effect that such third country CCPs and trading venues may request a license and make use of [access rights in accordance with Article 37 of Regulation (EU) No 600/2014 (as implemented by the Act), as referred to in Article 38 of Regulation (EU) No 600/2014 (as implemented by the Act)] / [access rights specified in any order made by the [Treasury] under the Act for the purposes of this provision] (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The third country's legal and/or supervisory framework meets [the requirements of Article 38(3) of Regulation (EU) No 600/2014 (as implemented by the Act)] / [the requirements specified in any order made by the [Treasury] under the Act for the purposes of this provision].
30.	Regulation (EU) No 600/2014 (as implemented by the Act)[; Financial Services and Markets Act 2000; Financial Services and Markets Act 2000 (Regulated Activities) Order 2001] [MiFIR: investment firms providing	(a) Entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) as, or to operate, an investment firm shall be treated under the law of the United Kingdom, as [third country investment firms subject to legal and supervisory arrangements ensuring that the third country investment firms comply with legally binding prudential and business conduct requirements which have	(i) The third country's legal and/or supervisory arrangements apply to the entities referred to in point (a) legally binding prudential and business conduct requirements meeting [the conditions listed at Article 47(1)(a)-(e) of Regulation (EU) No 600/2014 (as implemented by the Act)] / [the conditions specified in any order made by the [Treasury] under the Act for the purposes of this provision]. (ii) Cooperation arrangements are in place or will be put in place with the

	Relevant United Kingdom Legislation	Description of effect of agreed equivalence recognition in the United Kingdom	Additional equivalence criteria
	services to EU professional client and eligible counterparties: Art. 47]	equivalent effect to the requirements set out in Regulation (EU) No 600/2014 (as implemented by the Act), in Directive 2013/36/EU (as implemented by the Act) and in Directive 2014/65/EU (as implemented by the Act) and in the implementing measures adopted under Regulation (EU) No 600/2014 (as implemented by the Act), Directive 2013/36/EU (as implemented by the Act) and Directive 2014/65/EU (as implemented by the Act) and that the legal framework of that third country provides for an effective equivalent system for the recognition of investment firms authorised under third-country legal regimes which meet the conditions at Article 47(1)(a) to (e) of Regulation (EU) No 600/2014 (as implemented by the Act), with the effect that such third country firms may provide investment services or perform investment activities (with or without ancillary services) to eligible counterparties and to professional clients within the meaning of Section I of Annex II of Directive 2014/65/EU (as implemented by the Act) by applying for registration by the [FCA], as referred to in Article 46 of Regulation (EU) No 600/2014 (as implemented by the Act)] / [having the same rights to carry out the relevant specified activities[125] in relation to the relevant specified investments[126] which a person having authorisation under Part 4A of the Financial Services and Markets Act 2000 would have in relation to eligible counterparties and to professional clients] (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	relevant third country specifying at least [the matters listed at Article 47(2)(a) to (c) of Regulation (EU) No 600/2014 (as implemented by the Act)] / [the matters specified in any order made by the [Treasury] under the Act for the purposes of this provision].
31.	Regulation (EU) No 575/2013 (as implemented by the Act) [CRR: Credit institutions,	(a) Entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as, or operating, a third-country	

125 In this row the term "relevant specified activities" means the activities which the Financial Services and Markets Act 2000 (Regulated Activities Order) 2001 specifies for the purposes of section 22 of the Financial Services and Markets Act 2000 and which have been designated in the particular recognition decision or mutual recognition agreement as corresponding to the particular authorisations that third country investment firms may hold in the relevant third country.

126 In this row the term "relevant specified investments" means the investments which the Financial Services and Markets Act 2000 (Regulated Activities Order) 2001 specifies for the purposes of section 22 of the Financial Services and Markets Act 2000 and which have been designated in the particular recognition decision or mutual recognition agreement as corresponding to the particular authorisations that third country investment firms may hold in the relevant third country.

	Relevant United Kingdom Legislation	Description of effect of agreed equivalence recognition in the United Kingdom	Additional equivalence criteria
	investment firms: Art. 107(4)]	investment firm, third country credit institutions, or third country clearing houses or exchanges shall be treated under the law of the United Kingdom as [entities subject to prudential supervisory and regulatory requirements in that third country with respect to a decision has been adopted, by way of an implementing act, as referred to in Article 107(3) of Regulation (EU) No 575/2013 (as implemented by the Act), determining that those third country entities are subject to supervisory and regulatory arrangements at least equivalent to those applied in the United Kingdom, as referred to in Article 107(4) of Regulation (EU) No 575/2013 (as implemented by the Act)] / [entities subject to equivalent prudential supervisory and regulatory requirements in that third country for the purposes of the requirements applicable in the United Kingdom specified in any order made by the [Treasury] under the Act for the purposes of this provision] (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	
32.	Regulation (EU) No 575/2013 (as implemented by the Act) [CRR: exposures to government bodies: Art. 114-116]	(a) Entities established and supervised in the relevant third country which correspond to a central government or central bank (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated under the law of the United Kingdom as [entities subject to supervisory and regulatory arrangements with respect to which a decision has been adopted by way of an implementing act, as referred to in Article 114(7) of Regulation (EU) No 575/2013 (as implemented by the Act), determining that those third country entities are subject to supervisory and regulatory arrangements at least equivalent to those applied in the United Kingdom, as referred to in Article 114(7) of Regulation (EU) No 575/2013 (as implemented by the Act)] / [entities subject to equivalent prudential supervisory and regulatory requirements in that third country for the purposes of the requirements applicable in the United Kingdom specified in any order made by the [Treasury] under the Act for the purposes of this provision] (as	

	Relevant United Kingdom Legislation	Description of effect of agreed equivalence recognition in the United Kingdom	Additional equivalence criteria
		described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	
33.	Regulation (EU) No 575/2013 (as implemented by the Act) [CRR: exposures to government bodies: Art. 114-116]	(a) Entities established and supervised in the relevant third country which correspond to a regional government or local authority (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated under the law of the United Kingdom as [entities subject to supervisory and regulatory arrangements with respect to which a decision has been adopted by way of an implementing act, as referred to in Article 115(4) of Regulation (EU) No 575/2013 (as implemented by the Act), determining that those third country entities are subject to supervisory and regulatory arrangements at least equivalent to those applied in the United Kingdom] / [entities subject to prudential supervisory and regulatory requirements in that third country which are at least equivalent to those applied in the United Kingdom for the purposes of the requirements specified in any order made by the [Treasury] under the Act for the purposes of this provision] (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	
34.	Regulation (EU) No 575/2013 (as implemented by the Act) [CRR: exposures to government bodies: Art. 114-116]	(a) Entities established and supervised in the relevant third country which correspond to a public sector entity (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated under the law of the United Kingdom as entities subject to supervisory and regulatory arrangements with respect to which a decision has been adopted by way of an implementing act, as referred to in Article 116(5) of Regulation (EU) No 575/2013 (as implemented by the Act), determining that those third country entities are subject to supervisory and regulatory arrangements at least equivalent to those applied in the United Kingdom] / [entities subject to prudential supervisory and regulatory requirements in that third country which are at least equivalent to those applied in the United Kingdom for the purposes of the requirements specified in any order made by the [Treasury] under the	

	Relevant United Kingdom Legislation	Description of effect of agreed equivalence recognition in the United Kingdom	Additional equivalence criteria
		Act for the purposes of this provision] (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	
35.	Regulation (EU) No 575/2013 (as implemented by the Act) [CRR: Credit institutions: Art. 142]	(a) Entities corresponding to large financial sector entities (or subsidiaries[127] of such entities) that are supervised and regulated in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated under the law of the United Kingdom as entities subject to supervisory and regulatory arrangements with respect to which a decision has been adopted via an implementing act, as referred to in Article 142(2) of Regulation (EU) No 575/2013 (as implemented by the Act), determining that those third country entities were subject to supervisory and regulatory arrangements at least equivalent to those applied in the United Kingdom / [entities subject to prudential supervisory and regulatory requirements in that third country which are at least equivalent to those applied in the United Kingdom for the purposes of the requirements specified in any order made by the [Treasury] under the Act for the purposes of this provision] (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	
36.	Regulation (EU) No 575/2013 (as implemented by the Act) [CRR: Investment firms: Art. 142]	(a) Entities corresponding to large financial sector entities (or subsidiaries[128] of such entities) that are supervised and regulated in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated under the law of the United Kingdom as entities subject to supervisory and regulatory arrangements with respect to which a decision has been adopted via an implementing act, as referred to in Article 142(2) of Regulation (EU) No 575/2013 (as implemented by the Act), determining that those third country entities were subject to supervisory and regulatory arrangements at least	

127 The term "subsidiary" in this row means a subsidiary within the meaning of Article 4(16) of Regulation (EU) No 575/2013 (as implemented by the Act).

128 The term "subsidiary" in point (a) of this row shall have the meaning given to subsidiary in point 16 of Article 4(1) of Regulation (EU) No 575/2013 (as implemented by the Act).

	Relevant United Kingdom Legislation	Description of effect of agreed equivalence recognition in the United Kingdom	Additional equivalence criteria
		equivalent to those applied in the United Kingdom / [entities subject to prudential supervisory and regulatory requirements in that third country which are at least equivalent to those applied in the United Kingdom for the purposes of the requirements specified in any order made by the [Treasury] under the Act for the purposes of this provision] (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	
37.	Directive 2009/138/EC (as implemented by the Act) [Solvency II: third country reinsurance activity: Art. 172]	(a) The solvency regime of the relevant third country that applies to undertakings with head offices in that third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated under the law of the United Kingdom as a third country solvency regime in respect of which a delegated act has been adopted, as referred to in Article 172(2) of Directive 2009/138/EC (as implemented by the Act), determining that the solvency regime of the third country that applies to reinsurance activities of undertakings with head offices in that third country is equivalent to that laid down in Title I of Directive 2009/138/EC (as implemented by the Act).	(i) The solvency regime of the third country applies to the reinsurance activities of undertakings with head offices in the third country referred to in point (a) equivalent legally binding requirements [to those applicable in the United Kingdom under Title I of Directive 2009/138/EC (as implemented by the Act)] / [specified in any order made by the [Treasury] under the Act for the purposes of this provision].
38.	[Directive 2009/138/EC (as implemented by the Act)[; Solvency 2 Regulations 2015] [Solvency II: EU insurers in third countries: solvency rules: Art. 227]	(a) The supervisory and solvency regime of the relevant third country that is applicable to insurance and reinsurance undertakings with head offices in that third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions), shall be treated under the law of the United Kingdom as a third country supervisory regime in respect of which a delegated act has been adopted, as referred to in Article 227(4) of Directive 2009/138/EU (as implemented by the Act), determining that the supervisory regime of that third country is equivalent to that laid down in Title I, Chapter VI, of Directive 2009/138/EU (as implemented by the Act), and with the effect that such third country head offices are treated as being subject to authorisation and a solvency regime at least equivalent to that laid down in Title I, Chapter VI, of Directive 2009/138/EU (as implemented by the Act), as referred to in the second paragraph of Article 227(1) of Directive	(i) The supervisory and solvency regime of the third country applies to the reinsurance or insurance undertakings with head offices in the third country referred to in point (a) equivalent legally binding requirements to [those applicable under Title I, Chapter VI of Directive 2009/138/EC (as implemented by the Act) and such insurance and reinsurance undertakings are subject to authorisation in that third country] / [those specified in any order made by the [Treasury] under the Act for the purposes of this provision].

	Relevant United Kingdom Legislation	Description of effect of agreed equivalence recognition in the United Kingdom	Additional equivalence criteria
		2009/138/EU (as implemented by the Act) [including for the purposes of regulation 19 of the Solvency 2 Regulations 2015].	
39.	Directive 2009/138/EC (as implemented by the Act)[; Solvency 2 Regulations 2015] [Solvency II: third country insurers: group supervision: Art. 260]	(a) The prudential regime of the relevant third country which applies to parent undertakings with head offices in that third country of insurance and reinsurance undertakings (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated as a prudential regime, in respect of which a delegated act has been adopted, as referred to in Article 260(3) of Directive 2009/138/EU (as implemented by the Act), determining that the third country prudential regime is equivalent to that laid down in Title III of Directive 2009/138/EU (as implemented by the Act) at the level of the group of insurance and reinsurance undertakings referred to in Article 213(2)(a) and (b) of Directive 2009/138/EU (as implemented by the Act)[, including for the purposes of regulations 35 and 36 of the Solvency 2 Regulations].	(i) The prudential regime of the third county applies to the reinsurance or insurance undertakings with head offices in the third country referred to in point (a) equivalent legally binding requirements to [those applicable under Title III of Directive 2009/138/EC] / [those specified in any order made by the [Treasury] under the Act for the purposes of this provision] and such entities are subject to authorisation in that third country.
40.	Directive 2011/61/EU (as implemented by the Act); Alternative Investment Fund Managers Regulations 2013 [Funds – Non-UK AIFMs managing UK AIFs or marketing AIFs in the UK; UK AIFMs managing Non-UK AIFs]	(a) Entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as an AIFM shall be treated under the law of the United Kingdom as [able to acquire prior authorisation by the [FCA] as referred to in Article 37(1) of Directive 2011/61/EU (as implemented by the Act) and regulation 5A of the Alternative Investment Fund Managers Regulations 2013] / [having the same rights as a firm authorised under Part 4A of the Financial Services and Markets Act 2000 to carry out the specified activity of managing an AIF pursuant to article 51ZC and the additional activities included in the activity of managing an AIF pursuant to Schedule 7 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001] (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions). (b) Certain requirements of the relevant	(i) Cooperation arrangements are in place or will be put in place between the [FCA] and the supervisory authorities of the third country in which the applicant has its registered office that allow an efficient exchange of information that enables the [FCA] and any other relevant competent authority to carry out their duties in accordance with [Directive 2011/61/EU (as implemented by the Act] / [the Alternative Investment Fund Managers Regulations 2013]. (ii) The third country in which the applicant has its registered office is not listed as a Non-Cooperative Country and Territory by the Financial Action Task Force.[130] (iii) An agreement is in place or will be put in place with the third country which fully complies with the Model Tax Convention on Income and on Capital and ensures an effective exchange of information on tax matters, including any multilateral tax agreements. (iv) The third country's legal and

130 In this row, "Non-Cooperative Country and Territory" and "Financial Action Task Force" have the same meaning as used in regulation 5A of the Alternative Investment Fund Managers Regulations 2013 (SI 2013/1773) when that regulation is in effect.

	Relevant United Kingdom Legislation	Description of effect of agreed equivalence recognition in the United Kingdom	Additional equivalence criteria
		third country's legal and supervisory regime applicable to the third country entities referred to in point (a) (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated under the law of the United Kingdom as [meeting the requirements listed in Article 37(2) of Directive 2011/61/EU (as implemented under the Act), with the effect that the third country entities referred to in point (a) shall not be under any obligation to comply with a provision of Directive 2011/61/EU (as implemented under the Act) to the extent that it is incompatible with the third country requirement] / [meeting the requirements specified in any order made by the [Treasury] under the Act for the purposes of this provision, with the effect that the third country entities referred to in point (a) shall not be under any obligation to comply with those requirements to the extent that is incompatible with the third country requirement] / [provisions falling within regulations 5A(4) and (6) of the Alternative Investment Fund Managers Regulations 2013 when these provisions are in effect] (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions). (c) Entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as an AIF shall be treated under the law of the United Kingdom as [meeting the requirements listed in Article 35(2) of Directive 2011/61/EU, with the effect that AIFMs shall be able to submit a notification to the [FCA] in respect of each non-UK AIF[129] that it intends to market, as referred to in Article 35(3) of Directive 2011/61/EU (as incorporated by the Act)] and regulation 54 of the Alternative Investment Funds Regulations 2013] / [AIFs which AIFMs may make applications for under regulation 54 of the Alternative Investment Fund Managers Regulations 2013 to be marketed in the	supervisory regime does not prevent the effective exercise by the [FCA] of its supervisory functions.

[129] In this row the term 'non-UK AIF' means an AIF which is not authorised or registered in the UK under the Alternative Investment Funds Regulations 2013 or which has its registered office and/or head office in the United Kingdom but is not authorised or registered in the UK under the Alternative Investment Funds Regulations 2013. [NOTE: Reference is subject to confirmation on how the "Non-EU AIF" concept will be transposed into UK law.]

	Relevant United Kingdom Legislation	Description of effect of agreed equivalence recognition in the United Kingdom	Additional equivalence criteria
		United Kingdom] (as further detailed in the particular recognition decision or mutual recognition agreement and subject to any specific conditions).	
41.	Directive 2011/61/EU (as implemented by the Act) [AIFM third country depository]	Entities established in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as, or to operate, a depository shall be treated under the law of the United Kingdom as depositories established in a third country subject to prudential regulation and supervision in respect of which an implementing act has been adopted, as referred to in the final sub-paragraph of Article 21(6) of Directive 2011/61/EU (as implemented by the Act), stating that prudential regulation and supervision of the third country has the same effect as the law of the United Kingdom and is effectively enforced.	(i) The third country's legal and/or supervisory regime applies to the third country entities referred to in point (a) equivalent prudential regulation and supervision as applied to depositories in the United Kingdom.

(b) Annex II of the Regulation is incorporated in the following amended form:

	Relevant United Kingdom Legislation	Description of effect of agreed equivalence recognition in the United Kingdom	Additional equivalence criteria
1.	Financial Services and Markets Act 2000 [Investment services/business]	(a) Entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised to carry out activities corresponding to investment services and activities (with or without ancillary services) shall be treated under the law of the United Kingdom as having the same rights as persons authorised to carry out the relevant regulated activities under Part 4A of the Financial Services and Markets Act 2000, with the effect that such third country entities shall be able to provide such regulated activities within the United Kingdom either by establishing a branch[131] in the United Kingdom or by providing such services as referred to in Articles 34 and 35 of Directive 2014/65/EU (as implemented by the Act) within the United Kingdom (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The third country's legal and/or supervisory regime applies to the entities referred to in point (a) requirements which are equivalent to those applicable to persons authorised to carry out the relevant regulated activities under Part 4A of the Financial Services and Markets Act 2000.

[131] The term 'branch' in this row means a branch within the meaning of point (30) of Article 4(1) of Directive 2014/65/EU (as implemented by the Act).

	Relevant United Kingdom Legislation	Description of effect of agreed equivalence recognition in the United Kingdom	Additional equivalence criteria
2.	Financial Services and Markets Act 2000 [Systematic internalisers]	(a) Entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised to operate as, or to operate, a systematic internaliser shall be treated under the law of the United Kingdom as having the same rights as systematic internalisers authorised under the Financial Services and Markets Act 2000 and regulated by the FCA, with the effect that such third country entities shall have the rights as a systematic internaliser authorised under the Financial Services and Markets Act 2000 (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The third country's legal and/or supervisory regime applies to the entities referred to in point (a) requirements which are equivalent to those applicable to systematic internalisers authorised under the Financial Services and Markets Act 2000.
3.	Financial Services and Markets Act 2000 [AIFM delegation]	(a) Undertakings established in and supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated under the law of the United Kingdom as third country undertakings authorised under the Financial Services and Markets Act 2000 to carry out portfolio management and/or risk management activities under article 51ZC of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 to whom AIFMs may delegate portfolio management or risk management (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) A cooperation agreement is in place with the third country authorities with responsibility for supervising the third country undertakings referred to in point (a) for the purposes of enabling monitoring and supervising of the third country undertaking.
4.	Financial Services and Markets Act 2000 [AIFM third country depository]	(a) Entities established in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and supervised in that third country shall be treated under the law of the United Kingdom as depositories authorised under the Financial Services and Markets Act 2000 as, or to operate, a depository under article 51ZD of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 and established in a third country subject to prudential regulation and supervision that has the same effect as that in the United Kingdom (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The third country's legal and/or supervisory regime applies to the third country entities referred to in point (a) equivalent prudential regulation and supervision as applied to depositories in the United Kingdom authorised under the Financial Services and Markets Act 2000.

	Relevant United Kingdom Legislation	Description of effect of agreed equivalence recognition in the United Kingdom	Additional equivalence criteria
5.	Regulation (EC) No 1060/2009 (as implemented by the Act) [Credit Rating Agencies]	(a) Credit ratings issued by entities supervised in the relevant third county (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as, or to operate, a credit rating agency shall be treated under the law of the United Kingdom as credit ratings which may be used by credit institutions, investment firms, insurance undertakings, reinsurance undertakings, institutions for occupational retirement provision, management companies, investment companies, alternative investment fund managers and central counterparties for regulatory purposes, as referred to in Article 4(1) of Regulation (EC) No 1060/2009 (as implemented by the Act) (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The third country's legal and/or supervisory regime ensures that the third country entities referred to in point (a) are subject to binding rules equivalent to those set out in [Articles 6 to 12 and Annex I of Regulation (EC) No 1060/2009 (as implemented by the Act), with the exception of Articles 6a, 6b, 8a, 8b, 8c and 11a, point (ba) of point 3 and points 3a and 3b of Section B of Annex I of Regulation (EC) No 1060/2009 (as implemented by the Act)] / [any order made by the [Treasury] under the Act for the purposes of this provision]. (ii) The third country's regulatory regime applicable to the third country entities referred to in point (a) prevents interference by the supervisory authorities and other public authorities of that third country with the content of credit ratings and methodologies. (iii) A cooperation agreement is in place between the relevant third country and the FCA specifying at least [the matters referred to in Article 5(7)(a) and (b) of Regulation (EC) No 1060/2009 (as implemented by the Act)] / [requirements as specified for the purposes of this provision in an order made by the Treasury pursuant to the Act]].
6.	Directive 2013/36/EU (as implemented by the Act), Regulation (EU) No 575/2013 (as implemented by the Act) [Credit institution activities]	(a) Entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as, or to operate, a credit institution shall be treated under the law of the United Kingdom as having the same rights as credit institutions authorised by the PRA, with the effect that such third country entities shall be able to carry out the activities listed in Annex I of Directive 2013/36/EU (as implemented by the Act) for which the third country entity is authorised within the United Kingdom either by establishing a branch[132] or by carrying out such activities (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions). (b) Entities supervised in the relevant third country (as described in a	(i) The third country's legal and/or supervisory regime applies to the third country entities as referred to in point (a) requirements that are equivalent to those that are required to be applied to credit institutions authorised by the PRA. (ii) The third country's legal and/or supervisory regime applies to the third country entities as referred to in point (b) requirements that correspond and are equivalent to those requirements contained in [Articles 34(1)(a) to 34(1)(b) of Directive 2013/36/EU (as implemented by the Act)] / [requirements specified in any order made by the [Treasury] under the Act for the purposes of this provision]. (iii) The third country's legal regime applies to the third country entities referred to in point (a) [requirements that are equivalent to those applied to credit institutions pursuant to the

[132] The term "branch" in this row means a branch within the meaning of Article 4(17) of Regulation (EU) 575/2013 (as implemented by the Act).

	Relevant United Kingdom Legislation	Description of effect of agreed equivalence recognition in the United Kingdom	Additional equivalence criteria
		particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as, or to operate, a financial institution shall be treated under the law of the United Kingdom as having the same rights as [an authorised person with permission to carry out the regulated activities specified in an order made by the Treasury for the purposes of this provision], with the effect that such third country entities shall be able to carry out such activities within the United Kingdom either by establishing a branch or by carrying out such activities (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	Financial Services and Markets Act 2000 and Directive 2013/36/EU (as implemented by the Act), Regulation (EU) No 575/2013 (as implemented by the Act)] / [[requirements specified in any order made by the Treasury for the purposes of this provision pursuant to the Act,] where such entities are authorised in that third country to carry out deposit taking activities]. (iv) Where the third country entities referred to in point (a) or (b) are authorised in the relevant third country to carry out activities corresponding to the investment services and activities listed in points (3) and (6) of Section A of Annex I of Directive 2014/65/EU (as implemented by the Act), the third country's legal or supervisory regime applies requirements which are equivalent to those applicable under Part 6 of Regulation (EU) No 575/2013 taking into account the nature, scale and complexity of the third country entity's activities / [[requirements specified in any order made by the Treasury for the purposes of this provision pursuant to the Act,] where such entities are authorised in that third country to carry out deposit taking activities].
7.	Regulation (EU) 2015/751 (as implemented by the Act) [Interchange Fees]	(a) The provisions of Regulation (EU) 2015/751 (as implemented by the Act) shall (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) be extended to apply to card-based payments transactions carried out between the United Kingdom and the relevant third country, where both the payer's payment service provider[133] and the payee's payment service provider are, respectively, located in either the United Kingdom or the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions). (b) Payment service providers, processing entities, payment card schemes, issuers, acquirers and other technical service providers located in the United Kingdom shall (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) be	(i) The third country's legal and/or supervisory regime applies to payment service providers, processing entities, payment card schemes, issuers, acquirers and other technical service providers located in that third country, reciprocal and equivalent requirements to those [applied by Regulation (EU) 2015/751 (as implemented by the Act)] / [specified in any order made by the Treasury pursuant to the Act for the purposes of this provision].

[133] In this row the term "payment service provider" has the meaning given to payment service provider in Article 2(24) of Regulation (EU) 2015/751 (as implemented by the Act).

	Relevant United Kingdom Legislation	Description of effect of agreed equivalence recognition in the United Kingdom	Additional equivalence criteria
		subject to the same requirements contained in Regulation (EU) 2015/751 (as implemented by the Act) when carrying out card-based payment transactions with payment services providers, payers, payees and/or consumers[134] located in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	
8.	Directive 2008/48/EC (as implemented by the Act), Directive 2014/17/EU (as implemented by the Act) [Mortgage Lending: Consumer Credit; Mortgage Providers]	(a) Entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised to operate as, and carry out the activities of, a creditor or credit intermediary in relation to credit agreements[135] with consumers shall be treated under the law of the United Kingdom as complying with [the requirements applicable under Directive 2008/48/EC (as implemented by the Act)] / [requirements specified by the Treasury in any order made pursuant to the Act for the purposes of this provision] by complying with the corresponding third country requirements (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) applicable to creditors or credit intermediaries in that third country in relation to credit agreements with consumers (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions). (b) Entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised to operate as, and carry out activities in relation to credit agreements within the scope of Article 3 of Directive 2014/17/EU (as implemented by the Act) (including ancillary services[136]) of a creditor, credit intermediary, tied credit	(i) The third country's legal and/or supervisory regime applies to the third country entities referred to in points (a) and (b) requirements that are equivalent to those applied by [Directive 2008/48/EC (as implemented by the Act) and Directive 2014/17/EU (as implemented by the Act)] / [any order made by the Treasury pursuant to the Act for the purposes of this provision].

134 The term "consumer" in this row means a consumer within the meaning of Article 2(3) of Directive 2008/48/EC (as implemented by the Act).

135 The term "credit agreement" in this point (a) means a credit agreement that is not excluded from Directive 2008/48/EC (as implemented by the Act) pursuant to Article 2(2) and 2(2a) of Directive 2008/48/EC (as implemented by the Act).

136 The term "ancillary services" in this point (b) means ancillary services within the meaning of Article 4(4) of Directive 2014/17/EU (as implemented by the Act).

	Relevant United Kingdom Legislation	Description of effect of agreed equivalence recognition in the United Kingdom	Additional equivalence criteria
		intermediary, or appointed representative shall be treated under the law of the United Kingdom as able (subject to the terms of the mutual recognition agreement) to carry out such activities in relation to credit agreements, with consumers in the United Kingdom, including by establishing a branch (subject to the terms of a specific mutual recognition agreement), by complying with the corresponding equivalent third country requirements (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions), instead of the requirements [of Directive 2014/17/EC] / [of any order made by the Treasury pursuant to the Act for the purposes of this provision] (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions). (d) Entities referred to in point (a) and (b) of row 6 of this table, may be included in the third country entities referred to in points (a) and (b), and subject to the terms of any relevant recognition decision or mutual recognition agreement which contains the equivalence recognition provision at row 6 of this table as an agreed equivalence provision (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	
9.	Financial Services and Markets Act 2000 [Regulated Markets]	(a) Entities supervised in the relevant third county (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as, or to operate, a regulated market in that third country shall be treated under the law of the United Kingdom as having the same rights as a regulated market authorised as a recognised investment exchange authorised by the FCA in accordance with section 290(1) of the Financial Services and Markets Act 2000, with the effect that (subject to the terms of the recognition decision or mutual recognition agreement) such a third country market or market operator shall be able to exercise the same rights that a regulated market would be able to in the United Kingdom under Directive 2014/65/EU (as implemented by the Act) and Regulation (EU) 600/2014 (as implemented by the Act), by complying with the equivalent legal and supervisory requirements of the	

	Relevant United Kingdom Legislation	Description of effect of agreed equivalence recognition in the United Kingdom	Additional equivalence criteria
		third country instead of requirements applicable to a regulated market pursuant to Directive 2014/65/EU (as implemented by the Act) or Regulation (EU) No 600/2014 (as implemented by the Act) (as described in a particular recognition decision or mutual recognition agreement).	
10.	Financial Services and Markets Act 2000 [Data Service Providers]	(a) Entities supervised in a third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as, or to operate, a data services provider (including an ARM, CTP or ARM) shall be treated under the law of the United Kingdom as having the same rights as a data reporting services provider authorised by the FCA in accordance with the [Financial Services and Markets Act 2000 (Data Reporting Services) Regulations 2016], with the effect that such third country entities shall (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) be able to exercise the same rights that an authorised data reporting services provider would have under the [Financial Services and Markets Act 2000 (Data Reporting Services) Regulations 2016], by complying with the equivalent legal and supervisory requirements of the third country instead of the requirements applicable to a data reporting services provider pursuant to the [Financial Services and Markets Act 2000 (Data Reporting Services) Regulations 2016].	
11.	Financial Markets and Insolvency (Settlement Finality) Regulations 1999 [Payment & Securities Settlement Services]	(a) Formal arrangements established in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) which would constitute a designated system[137] (but for being governed by the law of the third country), shall be treated under the law of the United Kingdom as if they were systems that have been designated under the Financial Markets and Insolvency (Settlement Finality) Regulations 1999, with the effect that the protections applicable to systems, participants and collateral security implemented by the Financial Markets and Insolvency (Settlement Finality)	(i) The third country's legal system provides reciprocal and equivalent protections as provided in [Directive 98/26/EC (as implemented by the Act)] / [the Financial Markets and Insolvency (Settlement Finality) Regulations 1999] to systems, participants and collateral security.

[137] The term "designated system" in this row means a designated system within the meaning of paragraph 2(1) of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999.

	Relevant United Kingdom Legislation	Description of effect of agreed equivalence recognition in the United Kingdom	Additional equivalence criteria
		Regulations 1999 in accordance with Directive 98/26/EC (as implemented by the Act) shall be extended (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) to such third country systems.	
12.	Directive 2009/65/EC (as implemented by the Act), Financial Services and Markets Act 2000 [UCITS Funds]	(a) Undertakings or investment companies established and supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised in a manner corresponding to UCITs (but for being established in a third country) shall be treated under the law of the United Kingdom as having the same rights as UCITs managed by a management company authorised under the Financial Services and Markets Act 2000 to carry out the activity of managing UCITs pursuant to article 51ZA of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 or a UCITs open-ended investment company authorised pursuant to the Open-Ended Investment Companies Regulations 2001 (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions). (b) Entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as, or to operate, a management company shall be treated under the law of the United Kingdom as having the same rights as a person authorised by the FCA to carry out the activity of managing UCITs and/or establishing and operating a collective investment scheme pursuant to articles 51ZA and 51ZE of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and able to provide such services or to establish a branch[138] in the United Kingdom (as implemented by the Act).	(i) The third country's legal and/or supervisory regime applies to the third country undertakings referred to in point (a) requirements that are equivalent to those applied to UCITs managed by management companies authorised to manage UCITs pursuant to Article 51ZA of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 or UCITs investment companies authorised pursuant to the Open-Ended Investment Companies Regulations 2001. (ii) The third country's legal and/or supervisory regime applies to the third country entities referred to in point (b) requirements that are equivalent to management companies authorised to manage UCITs pursuant to Article 51ZA of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001. (iii) The third country's legal and/or supervisory regime applies to the third country entities referred to in point (b) requirements that are equivalent to those referred to in Article 6(4) of Directive 2009/65/EC (as implemented under the Act), where such third country entities are authorised in that third country to carry out the services referred to in Article 6(3)(a) and (b) of Directive 2009/65/EC (as implemented by the Act).

[138] The term "branch" in this row means a branch within the meaning of point (g) of Article 2(1) of Directive 2009/65/EC (as implemented by the Act).

	Relevant United Kingdom Legislation	Description of effect of agreed equivalence recognition in the United Kingdom	Additional equivalence criteria
13.	Directive 2009/65/EC (as implemented by the Act) [UCITs delegation of management]	(a) Where a management company delegates functions to a third-country undertaking pursuant to Article 13 of Directive 2009/65/EC (as implemented by the Act) and such a mandate involves investment management, the requirement that cooperation between the supervisory authorities concerned must be ensured shall (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) in the law of the United Kingdom be deemed to have been satisfied for the purposes of Article 13(1)(d) of Directive 2009/65/EC (as implemented by the Act).	(i) A cooperation agreement for the purposes of monitoring the compliance of the management company with the requirements of Directive 2009/65/EC (as implemented by the Act) is in place with the relevant third country supervisory authorities.
14.	Directive 2009/138/EC (as implemented by the Act), Financial Services and Markets Act 2000 [Direct Insurance & Reinsurance]	(a) Entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as, or to operate, an insurance undertaking and/or reinsurance undertaking, shall be treated under the law of the United Kingdom as having the same rights as [a person authorised by the FCA or PRA to carry out the relevant regulated activities under Part 4A of the Financial Services and Markets Act 2000 in relation to contracts of insurance] / [an insurance undertaking authorised pursuant to Article 14 of Directive 2009/138/EC (as implemented by the Act)], with the effect that such third country entities shall be [able to insure the classes of insurance listed at Part A of Annex I and Annex II of Directive 2009/138/EC (as implemented by the Act) (including ancillary risks) and/or carry out reinsurance within the United Kingdom, either by establishing a branch[139] or providing services as an insurance undertaking, as referred to in Article 15(1) of Directive 2009/138/EC (as implemented by the Act)] / [able to carry out the relevant regulated activities in relation to contracts of insurance in the United Kingdom pursuant to Part 4A of the Financial Services and Markets Act 2000] (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The legal and/or supervisory regime of the third country applies to the third country entities referred to in point (a) requirements that are equivalent to [those applied to insurance undertakings or reinsurance undertakings authorised under Article 14 of Directive 2009/138/EC] / [those applied to persons authorised to carry out the relevant regulated activities in relation to contracts of insurance pursuant to Part 4A of the Financial Services and Markets Act 2000].

[139] The term "branch" in this row means a branch within the meaning of Article 162(3) of Directive 2009/138/EC (as implemented by the Act), with Article 13(11) being construed as a reference to the third country that has authorised the third country undertaking as an insurance undertaking.

	Relevant United Kingdom Legislation	Description of effect of agreed equivalence recognition in the United Kingdom	Additional equivalence criteria
15.	Regulation (EU) No 575/2013 (as implemented by the Act) [Life insurance, eligible collateral]	(a) Entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised to provide life insurance shall be treated under the law of the United Kingdom as being subject to supervision by a competent authority of a third country which applies supervisory and regulatory arrangements at least equivalent to those applied in the United Kingdom, as referred to in Article 212(2)(j) of Regulation (EU) No 575/2013 (as implemented by the Act) (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	(i) The third country's legal and/or supervisory regime ensures that the third country entities referred to in point (a) are subject to requirements which are equivalent to companies providing life insurance that are subject to Directive 2009/138/EC (as implemented by the Act).
16.	Directive (EU) 2016/97 (as implemented by the Act), Financial Services and Markets Act 2000 [Insurance Mediation]	(a) Entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as, or to operate, an insurance intermediary, a reinsurance intermediary and/or an ancillary insurance intermediary shall be treated under the law of the United Kingdom as having the same rights as [persons authorised by the FCA or PRA to carry out the relevant regulated activities in relation to contracts of insurance pursuant to Part 4A of the Financial Services and Markets Act 2000]/ [insurance, reinsurance and ancillary insurance undertakings registered pursuant to Article 13(1) of Directive (EU) 2016/97 (as implemented by the Act)], with the effect that such third country entities shall be able to [carry on insurance and/or reinsurance distribution, or insurance distribution on an ancillary basis as described in point (4) of Article 2(1) of Directive (EU) 2016/97 (as implemented by the Act) within the United Kingdom by establishing a branch[140] or by providing such services, as referred to in Articles 4 and 6 of Directive (EU) 2016/97 (as implemented by the Act)] / [carry on the relevant regulated activities in relation to contracts of insurance in the United Kingdom pursuant to Part 4A of the Financial Services and Markets Act 2000] (as described in a particular	(i) The third country's legal and/or supervisory regime applies to the third country entities referred to in point (a) requirements that are equivalent to those that are applicable to [insurance, reinsurance and ancillary insurance intermediaries registered pursuant to Article 3 of Directive (EU) 2016/97 (as implemented by the Act)] / [persons authorised to carry out the relevant regulated activities in relation to insurance contracts pursuant to Part 4A of the Financial Services and Markets Act 2000].

[140] The term "branch" in this row means a branch within the meaning of point (12) of Article 2(1) of Directive (EU) 2016/97 (as implemented by the Act) with the reference to the intermediary's home Member State being construed as the third country that the intermediary is authorised by.

	Relevant United Kingdom Legislation	Description of effect of agreed equivalence recognition in the United Kingdom	Additional equivalence criteria
		recognition decision or mutual recognition agreement and subject to any specific conditions).	
17.	Electronic Commerce (EC Directive) Regulations 2002/2013, Electronic Commerce Directive (Financial Services and Markets) Regulations 2002/1775 [E-Commerce]	(a) The provisions of the Electronic Commerce (EC Directive) Regulations 2002/2013 and Electronic Commerce Directive (Financial Services and Markets) Regulations 2002/1775 shall (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) be treated under the law of the United Kingdom as extending applicable rights to persons and entities located in the relevant third country including those corresponding to service providers, consumers[141], and recipients of the e-society service.	(i) The third country's legal system provides reciprocal and equivalent rights and protections to persons and entities located in the United Kingdom as provided in the Electronic Commerce (EC Directive) Regulations 2002/2013 and Electronic Commerce Directive (Financial Services and Markets) Regulations 2002/1775.
18.	Electronic Money Regulations 2011/99 [Electronic money services, electronic money institutions]	(a) Entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as, or operating, an electronic money institution shall be treated under the law of the United Kingdom as having the same rights as electronic money institutions granted authorisation pursuant to the Electronic Money Regulations 2011/99, with the effect that such third country entities shall be able to pursue the activity of issuing electronic money within the United Kingdom, either by establishing a branch[142] or by providing such services (including the services referred to in Article 18 of Directive (EU) 2015/2366) (as implemented by the Act), as referred to in Article 28 of Directive (EU) 2015/2366 (as implemented by the Act) applying to electronic money institutions *mutatis mutandis* pursuant to Article 3(1) of Directive 2009/110/EC (as implemented by the Act) (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions). (b) Point (a) does not prejudice the ability of the third country entities referred to in point (a) or (b) of row 6 of this table that are authorised in the relevant third country to carry out activities corresponding to "issuing	(i) The third country's legal and/or supervisory regime applies to the third country entities referred to in point (a) requirements that are equivalent to those that are required to be applied to electronic money institutions authorised pursuant to the Electronic Money Regulations 2011/99.

141 In this row the term "consumer" means a consumer within the meaning of Article 2(e) of Directive 2000/31/EC (as implemented by the Act).

142 In this row the term "branch" means a branch within the meaning of Article 4(39) of Directive (EU) 2015/2366 (as implemented by the Act).

	Relevant United Kingdom Legislation	Description of effect of agreed equivalence recognition in the United Kingdom	Additional equivalence criteria
		electronic money" (as referred in Annex I of Directive 2013/36/EU), where any relevant recognition decision or mutual recognition agreement has included the equivalence recognition provision at row 6 of this table.	
19.	Payment Services Regulations 2009/209 [Payment Services]	(a) Entities supervised in the relevant third country (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) and authorised as, or to operate, a payment institution shall be treated under the law of the United Kingdom as having the same rights as a payment institution authorised pursuant to the Payment Services Regulations 2009/209, with the effect that such third country entities shall be able to provide and execute payment services (including the services referred to in Article 18 of Directive (EU) 2015/2366 (as implemented by the Act)) throughout the United Kingdom, either by establishing a branch[143] or providing such services (as implemented by the Act) (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions). (b) Point (a) does not prejudice the ability of the third country entities referred to in point (a) of row 6 of this table that are authorised in the relevant third country to carry out activities corresponding to those carried out by electronic money issuers[144] where any relevant recognition decision or mutual recognition agreement has included the equivalence recognition provision at row **6** of this table. (c) Point (a) does not prejudice the ability of the third country entities referred to in point (a) or (b) of row 18 of this table that are authorised in the relevant third country to carry out activities corresponding to "issuing electronic money" (as referred in Annex I of Directive 2013/36/EU (as implemented under the Act), where any recognition decision or mutual recognition agreement has included the equivalence recognition provision at row	(i) The third country's legal and/or supervisory regime applies to the third country entities referred to in point (a) requirements which are equivalent to those which are required to be applied to payment institutions authorised pursuant to the Payment Services Regulations 2009/209.

143 In this row the term "branch" means a branch within the meaning of Article 4(39) of Directive (EU) 2015/2366 (as implemented by the Act).

144 In this point the term "electronic money issuers" means an electronic money issuer as defined in Article 2(1) of the Electronic Money Regulations 2011/99.

	Relevant United Kingdom Legislation	Description of effect of agreed equivalence recognition in the United Kingdom	Additional equivalence criteria
		18 of this table.	
20.	Banking Act 2009 [Recognition of third country resolution proceedings]	(a) Third-country resolution proceedings applied by the authorities of the relevant third country pursuant to the third country's legal and/or supervisory regime to third-country institutions or third-country parent undertakings[145] (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall (subject to the terms of the specific mutual recognition agreement) be treated under the law of the United Kingdom as third-country resolution proceedings which are to be recognised under section 89H of the Banking Act 2009 and which shall be implemented with legal effect in the United Kingdom in accordance with section 89I of the Banking Act 2009.	(i) The third country's legal and/or supervisory regime applies equivalent principles to those applied in the United Kingdom under Part 1 of the Banking Act 2009 to the recovery and resolution of third-country institutions or a third-country parent undertaking.
21.	Alternative Investment Fund Managers Regulations 2013/1773 [ELTIFs]	(a) Undertakings supervised in the relevant third country and authorised as an ELTIF (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated under the law of the United Kingdom as having the same rights as ELTIFs authorised pursuant to the Alternative Investment Fund Managers Regulations 2013/1773 (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions). (b) Undertakings supervised in the relevant third country and authorised as, or to operate, a manager of an ELTIF (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated under the law of the United Kingdom as having the same rights as EU AIFMs authorised to manage ELTIFs pursuant to the Alternative Investment Fund Managers Regulations 2013/1773 (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	
22.	Regulation (EU) No 345/2013 (as implemented under the Act)	(a) Undertakings supervised in the relevant third country and authorised as a qualifying venture capital fund (as described in a particular recognition decision or mutual recognition	

[145] In this row the terms "third-country institution" and "third-country parent undertaking" have the same meanings given to those terms in Part 1 of the Banking Act 2009.

	Relevant United Kingdom Legislation	Description of effect of agreed equivalence recognition in the United Kingdom	Additional equivalence criteria
	[EuVECA]	agreement and subject to any specific conditions) shall be treated under the law of the United Kingdom as having the same rights as a qualifying venture capital fund authorised pursuant to Regulation (EU) No 345/2013 (as implemented by the Act) (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions). (b) Undertakings supervised in the relevant third country and authorised as, or to operate, a manager of a qualifying venture capital fund (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated under the law of the United Kingdom as having the same rights as a manager of a qualifying venture capital fund authorised pursuant to Regulation (EU) No 345/2013 (as implemented by the Act) (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions).	
23.	Regulation (EU) No 346/2013 (as implemented by the Act) [EuSEF]	(a) Undertakings supervised in the relevant third country and authorised as a qualifying social entrepreneurship fund (as described in a particular precognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated under the law of the United Kingdom as having the same rights as a qualifying social entrepreneurship fund authorised pursuant to Regulation (EU) No 346/2013 (as implemented by the Act) (as described in a particular precognition decision or mutual recognition agreement and subject to any specific conditions). (b) Undertakings supervised in the relevant third country and authorised as, or to operate, a manager of a qualifying social entrepreneurship fund (as described in a particular recognition decision or mutual recognition agreement and subject to any specific conditions) shall be treated under the law of the United Kingdom as having the same rights as a manager of a qualifying social entrepreneurship fund authorised pursuant to Regulation (EU) No 346/2013 (as implemented by the Act) (as described in a particular precognition decision or mutual recognition agreement and subject to any specific conditions).	

(c) Annex III of the Regulation is incorporated in the following amended form: [146]

Relevant United Kingdom legislation	**Existing recognition provision**
Directive 2003/71/EC (as implemented by the Act)	Article 20(3)
Commission Regulation (EC) No 809/2004 (as implemented by the Act)	Article 35
Directive 2004/109/EC (as implemented by the Act)	Article 23(4) sub-paragraph 3
Directive 2004/109/EC (as implemented by the Act)	Article 23(4)
Directive 2013/34/EU (as implemented by the Act)	Article 46
Regulation (EC) No 1060/2009 (as implemented by the Act)	Article 5(6)
Directive 2006/43/EC (as implemented by the Act)	Article 47(3)
Directive 2006/43/EC (as implemented by the Act)	Article 46(2)
Regulation (EU) No 648/2012 (as implemented by the Act)	Article 1(6)
Regulation (EU) No 648/2012 (as implemented by the Act)	Article 2a
Regulation (EU) No 648/2012 (as implemented by the Act)	Article 13(2)
Regulation (EU) No 648/2012 (as implemented by the Act)	Article 25(2)
Regulation (EU) No 648/2012 (as implemented by the Act)	Article 75(1)
Regulation (EU) No 909/2014 (as implemented by the Act)	Article 25(6)
Regulation (EU) 2015/2365 (as implemented by the Act)	Article 2(4)
Regulation (EU) 2015/2365 (as implemented by the Act)	Article 19(1)
Regulation (EU) 2015/2365 (as implemented by the Act)	Article 21(1)
Regulation (EU) 2016/1011 (as implemented by the Act)	Article 30(2)
Regulation (EU) 2016/1011 (as implemented by the Act)	Article 30(3)
Regulation (EU) No 236/2012 (as implemented by the Act)	Article 17(2)
Regulation (EU) No 596/2014 (as implemented by the Act)	Article 6(5)
Regulation (EU) No 596/2014 (as implemented by the Act)	Article 6(6)

[146] NOTE: As per the approach taken in the Equivalence Regulation, Annex III is a list of equivalence provisions (and equivalence decisions made under them) which should become governed by the reformed processes of the Equivalence Regulation (as implemented under UK law), and if a mutual recognition agreement is entered into between the UK and any other third country, it should subsequently become governed under the procedural protections of the Bilateral Agreement under transitional provisions in the relevant mutual recognition agreement.

Relevant United Kingdom legislation	Existing recognition provision
Regulation (EU) No 600/2014 (as implemented by the Act)	Article 1(9)
Regulation (EU) No 600/2014 (as implemented by the Act)	Article 28(4)
Regulation (EU) No 600/2014 (as implemented by the Act)	Article 33(2)
Regulation (EU) No 600/2014 (as implemented by the Act)	Article 38
Regulation (EU) No 600/2014 (as implemented by the Act)	Article 47(1)
Directive 2014/65/EU (as implemented by the Act)	Article 25(4)(a)
Regulation (EU) No 575/2013 (as implemented by the Act)	Article 107(4)
Regulation (EU) No 575/2013 (as implemented by the Act)	Article 114(7)
Regulation (EU) No 575/2013 (as implemented by the Act)	Article 115(4)
Regulation (EU) No 575/2013 (as implemented by the Act)	Article 116(5)
Regulation (EU) No 575/2013 (as implemented by the Act)	Article 142(2)
Directive 2009/138/EC (as implemented by the Act)	Article 172(2)
Directive 2009/138/EC (as implemented by the Act)	Article 227(4) or 227(5)
Directive 2009/138/EC (as implemented by the Act)	Article 260(3) or 260(5)

Annex C: Draft EU-UK Bilateral Agreement

Proposed structure for an EU-UK Bilateral Agreement

Bilateral Agreement between the European Union and its Member States, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part

-----

RECITALS

The European Union and its Member States (the "**Union**"), of the one part, and the United Kingdom of Great Britain and Northern Ireland (the "**United Kingdom**"), of the other part (each of the Union and the United Kingdom being referred to hereafter as a "**Party**", and hereafter referred to together as the "**Parties**"),

resolve to:

FURTHER AND CONTINUE, their close historical, political and economic relationship;

CREATE a broad and comprehensive cross-border market for financial services products and services to be provided in a secure regulatory environment subject to the application of equivalent financial services regulation, supervision and enforcement;

BY formally recognising that equivalent standards of financial services regulation, supervision and enforcement are applied by both Parties, which achieve the key regulatory outcomes of reducing systemic risks and (in a retail context) adequately ensure consumer protection, regardless of the particular manner or approach taken by either Party in achieving those key outcomes; AND

BY agreeing detailed terms and conditions under which each Party will recognise the financial services regime applied by the other Party as equivalent in achieving the key regulatory outcomes, and confirming the national legal effect that is granted as a result of the sector of financial services regulation of a Party that is agreed to be treated as equivalent to the standards of financial services regulation applied by the other Party in that same sector.

---

1. **DEFINITIONS**

[…][147]

(1) 'agreed equivalence recognitions' means the recognitions which have been agreed in Article 3 and as further detailed in Schedule 1, whereby each Party confirms the sector of the financial services regulatory regime of the other party which is agreed to be equivalent and the national legal effect that is intended to result from the relevant equivalence recognition;

(2) 'Commission' means the European Commission;

(3) 'disagreement on compliance' has the meaning specified in Article 8.35;

(4) 'disagreement on suspension' has the meaning specified in Article 8.35;

(5) 'DSU' means the Understanding on Rules and Procedures Governing the Settlement of Disputes, contained in Annex 2 to the WTO Agreement;

147 NOTE: These definitions, as with the other provisions, are partial sketches of the structure of an EU-UK bilateral mutual recognition agreement, and are not intended to be exhaustive or conclusive. Appropriate definitions from GATS may be included by reference.

(6) 'equivalence change' means a request to amend the legal effect of an agreed equivalence recognition or a request to supplement the agreed equivalence recognitions with further provisions or a request to remove a provision from the agreed equivalence recognitions;

(7) 'equivalent' means requirements or standards applicable within the jurisdiction of a Party that are materially similar to the corresponding requirements or standards that are applied in the jurisdiction of the other Party. Whether requirements or standards are equivalent shall be determined, primarily, upon whether the following outcomes are achieved, taking into account that alternative approaches achieving the same outcomes may legitimately be adopted and that legislation and regulation may address matters in different ways and still achieve the same outcome:

(a) there is, in a retail context, adequate protection for consumers, investors, deposit holders, policy holders and/or any other persons who may be owed a fiduciary or other similar duty;

(b) there is no significant risk of increased systemic risk in the market for financial services within the jurisdiction of a Party.

The fact that a specific standard or requirement is applicable in the jurisdiction of a Party shall not affect whether standards of the other Party are equivalent, unless the specific standard or requirement is also applied generally in relevant international standards, guidance, or conventions, or unless the outcomes listed in points (a) - (b) are not satisfied;

(8) 'financial services' means [any service of a financial nature offered by a financial service supplier of a WTO Member. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance). Financial services may include the following activities:

Insurance and insurance-related services

(i) direct insurance (including co-insurance):

(A) life

(B) non-life

(ii) reinsurance and retrocession;

(iii) insurance intermediation, such as brokerage and agency;

(iv) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services;

Banking and other financial services (excluding insurance)

(v) acceptance of deposits and other repayable funds from the public;

(vi) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;

(vii) financial leasing;

(viii) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;

(ix) guarantees and commitments;

(x) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:

(A) money market instruments (including cheques, bills, certificates of deposits);

(B) foreign exchange;

(C) derivative products including, but not limited to, futures and options;

(D) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;

(E) transferable securities;

(F) other negotiable instruments and financial assets, including bullion.

(xi) participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;

(xii) money broking;

(xiii) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;

(xiv) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;

(xv) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;

advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (v) through (xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;]

(9) 'GATS' means the General Agreement on Trade in Services and the GATS Annex on Financial Services;

(10) 'material' and 'materially' shall be interpreted primarily with reference to relevant international standards, guidance, conventions and agreements, any relevant technical guidance issued by international bodies or financial services markets associations;

(11) 'New York Convention' means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards;

(12) 'recognition conditions' has the meaning specified in Article 3.4;

(13) 'recognition principles' has the meaning specified in Article 2.1;

(14) 'Regulatory Committee' has the meaning specified in Article 5.1;

(15) 'relevant private party' means any natural person or legal entity (whether or not incorporated or otherwise established under the jurisdiction of either Party) which is entitled to the benefit of an agreed equivalence recognition as described in Schedule 1;

(16) 'relevant regulatory development' means: (i) a proposed or new legislative development in either Parties' jurisdiction which, if proposed could, or if already effective does, alter the previously agreed legal effect in either Parties' jurisdiction of an agreed equivalence recognition; or (ii) a proposed or new legislative development in either Parties' jurisdiction

which, if proposed could be, or if already effective is, relevant to determining whether the recognition conditions applicable to an agreed equivalence recognition remain satisfied;

(17) 'Tribunal' means the tribunal established under Article 9;

(18) 'UK recognition body' means the [description of representative body] which will represent the United Kingdom in all matters relating to this Agreement;

(19) 'UNCITRAL Arbitration Rules' means the arbitration rules of the United Nations Commission on International Trade Law;

(20) 'UNCITRAL Transparency Rules' means the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration;

(21) 'Vienna Convention on the Law of Treaties' means the Vienna Convention on the Law of Treaties, concluded on 23 May 1969;

(22) 'WTO Agreement' means the Marrakesh Agreement Establishing the World Trade Organisation, concluded on 15 April 1994.

[…]

2. EQUIVALENCE RECOGNITION PRINCIPLES

2.1 The following principles in this Article 2 are designated as 'recognition principles' for the purposes of governing the mutual recognition relationship established between the Parties under this Agreement and in accordance with the principles established in Article VII of the GATS.

2.2 The Parties' recognition of equivalence is intended to foster the expansion of trade in financial services by promoting regulatory convergence with international norms, reducing supervisory and prudential burdens, and increasing the choices of financial services and products available to customers and undertakings located in the Parties' jurisdictions.

Good faith

2.3 The Parties commit to acting in good faith in all matters relating to this Agreement and in making further legislative or regulatory developments within their respective jurisdictions which may have an effect on the agreed equivalence recognitions contained in this Agreement. This may include consulting and cooperating with the other Party in extending agreed equivalence recognitions to further sectors or areas of financial services where equivalence recognitions have not yet been agreed between the Parties.

Transparency, objectivity and impartiality

2.4 The Parties commit to applying the agreed equivalence recognitions that have been included pursuant to the terms of this Agreement in a reasonable, objective and impartial manner.

2.5 Each Party commits to ensuring that its laws, regulations, procedures, supervision, enforcement and judicial rulings which apply generally to the financial services businesses that are designated in Schedule 1 as being entitled to the agreed equivalence recognitions:

(a) are applied in a reasonable, objective and impartial manner;

(b) in the event of a proposed law, regulation or procedure, are published in advance with a reasonable opportunity for interested persons and the other Party to provide comment to the extent possible.

Legal effect and inconsistent acts

2.6 The agreed equivalence recognitions are based on the Parties giving legal effect to the agreed equivalence recognitions (subject to any specific terms and conditions contained in Schedule 1 [and unless otherwise specified, on a reciprocal basis].

2.7 The Parties shall ensure that measures are not adopted in their respective jurisdictions which are inconsistent with the legal effect that the agreed equivalence recognitions are intended to have, as described in Article 3 and Schedule 1, unless the relevant change procedures contained in Article 10 have been complied with.

Non-discrimination

2.8 Each of the Parties shall ensure that its laws, regulations, procedures, supervision, enforcement and judicial rulings do not subject financial services suppliers authorised by and/or established in another Party's jurisdiction to less favourable treatment than like financial services suppliers authorised by and/or established in its own jurisdiction [or like financial services suppliers authorised by and/or established in any other country].

2.9 In particular, the Parties shall ensure that there is no discrimination between natural or legal persons based on the official currency that is used in either Party's jurisdiction, or the currency that has legal tender in either Party's jurisdiction, where that natural or legal person is established.

Equivalence

2.10 The agreed equivalence recognitions are premised on the Parties achieving the same key regulatory outcomes, but not necessarily adopting the same approach or legal wording. Alternative approaches from those taken by one Party in reducing prudential risk or achieving other regulatory outcomes may legitimately be adopted within the framework of continuing equivalence, so long as the Party remains equivalent by achieving the same key regulatory outcomes.

Assessments of equivalence

2.11 Any assessments of the equivalence of the whole, or any aspect of a Party's legal and/or supervisory financial services regime shall only consider material factors based primarily on relevant international standards.

2.12 Assessments of equivalence should only consider material factors based on relevant technical advice, including advice that the Parties may request from any relevant specialist national bodies (and any previously issued guidance from such bodies) and in a manner which is proportionate to the level and nature of access that is agreed under the agreed equivalence recognitions.

Private law remedies

2.13 Unless specifically provided for in this Agreement [in particular under Article 9], nothing in this Agreement shall be construed as conferring rights or imposing obligations on persons other than those created between the Parties pursuant to the terms of this Agreement [(this does not affect any other rights that persons other than the Parties may be entitled to under the domestic legal system of either Party on the grounds that a Party has adopted a measure or otherwise conducted itself in a manner that is inconsistent with this Agreement].

Contractual continuity

2.14 The Parties agree that neither the United Kingdom's withdrawal from the Union on [*Date of Brexit*] nor any other events or procedures in preparation for or consequent to such withdrawal shall:

(a) in itself constitute an event of default, termination event or frustrating event under any contracts entered into prior to [*Date of Brexit*]; or

(b) in relation to financial services, affect any rights (including market access rights) existing or accrued prior to [*Date of Brexit*]*,* including but not limited to rights under:

(i) contracts entered into prior to [*Date of Brexit*] between or involving parties from the United Kingdom and/or the Union*;*

(ii) existing regulatory authorisations; and

(iii) the laws of the United Kingdom and/or the Union.

2.15 The Parties agree to enact legislation in their respective jurisdictions to give effect to Article 2.14 [prior to [*Date of Brexit*]].

Compliance with Article VII of the GATS

2.16 In compliance with Article VII:3 of the GATS, equivalence recognitions shall not be granted in a manner that would constitute a means of discrimination between any Party to this Agreement and any other WTO Member in the application of such Party's standards or criteria for the authorisation, licensing or certification of services suppliers, or a disguised restriction on trade in services.

2.17 In accordance with Article VII:2 of the GATS, the Parties shall afford adequate opportunity for other interested WTO Members to negotiate their accession to this Agreement or to negotiate agreements comparable to this Agreement.

2.18 In accordance with Article VII:4(b) of the GATS, each Party shall promptly inform the Council for Trade in Services when it adopts new equivalence recognition measures or significantly modifies existing ones under this Agreement.

3. AGREED EQUIVALENCE RECOGNITIONS

3.1 The Parties have agreed that the agreed equivalence recognitions shall consist of the equivalence recognitions, their corresponding legal effect in each Party's respective jurisdictions, and shall be subject to the recognition conditions, as detailed in Schedule 1 of this Agreement.

3.2 The Parties shall ensure that the agreed equivalence recognitions shall be fully implemented with legal effect within their respective legal systems for the benefit of the entities that have been designated as entitled to the relevant agreed equivalence recognitions in Schedule 1.

3.3 The agreed equivalence recognitions are intended to have the legal effect that is described in full detail in Schedule 1 and the Parties shall ensure that each provision shall have that legal effect subject to the terms and conditions (if any) specified in relation to a particular agreed equivalence recognition.

3.4 The 'recognition conditions' applicable to the agreed equivalence recognitions means:

(a) for the Union, the conditions listed in Article 3 of the [Equivalence Regulation], and any other additional conditions that have been specified as applicable to the agreed equivalence recognitions detailed in Schedule 1; and

(b) for the United Kingdom, the conditions listed in Article 3 of the [Equivalence Regulation as incorporated into the law of the United Kingdom pursuant to the Great Repeal Act 20[•] (Mutual Recognition Regulation) Order 20[•]], and any other additional conditions that have been specified as applicable to the agreed equivalence recognitions detailed in Schedule 1.

3.5 For the avoidance of doubt, the parties are required to observe principles of non-discrimination as established by the equivalence recognitions, which includes, but is not limited to the following grants of non-discriminatory market access:

(a) [Each Party must permit the supply of a financial service from the territory of a Party into the territory of the other Party, as well as in the territory of one Party to a service consumer of the other Party;

(b) A Party shall not adopt or maintain, with respect to a financial services supplier of the other Party supplying services through commercial presence, on the basis of a regional subdivision or on the basis of its entire territory, a measure that:

(i) imposes limitations on:

(A) the number of financial services suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test;

(B) the total value of financial service transactions or assets in the form of numerical quota or the requirement of an economic needs test;

(C) the total number of financial service operations or the total quantity of financial services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;

(D) the participation of foreign capital in terms of maximum percentage limit on foreign shareholding in financial institutions or the total value of individual or aggregate foreign investment in financial institutions; or

(E) the total number of natural persons that may be employed in a particular financial services sector or that a financial institution may employ and who are necessary for, and directly related to, the performance of a specific financial service in the form of numerical quotas or the requirement of an economic needs test; or

(ii) restricts or requires specific types of legal entity or joint venture through which a financial institution may perform an economic activity.[148]

3.6 Provided it does not circumvent Article 3.5 above and is consistent with other provisions of this Agreement, either party may:

(a) impose terms, conditions, and procedures for the authorisation of the establishment and expansion of a commercial presence; and/or

(b) require a financial institution to supply certain financial services through separate legal entities if, under the law of the Party, the range of financial services supplied by the financial institution may not be supplied through a single entity.

4. COOPERATION AGREEMENTS

4.1 [The Parties shall take all reasonable steps to ensure the terms of the cooperation agreements contained in Schedule [•] are implemented within their legal and regulatory

[148] NOTE: finalised negotiated text must ensure compliance with non-discriminatory requirements of Art. VII, GATS.

regimes and/or shall otherwise ensure that the commitments made in those cooperation agreements are complied with.][149]

5. **REGULATORY COMMITTEE**

5.1 The Parties have agreed to establish a regulatory committee for the purposes of assisting and monitoring the mutual recognition relationship established under this Agreement (the "**Regulatory Committee**").

5.2 The Regulatory Committee's roles shall consist of:

(a) [reviewing international developments, or developments within the Parties' respective financial services regimes];

(b) [initiating the consultation process specified in Article 6 and issuing recommendations to the Commission and UK recognition body regarding the implementation of the terms of the Agreement, and coordinating developments and reforms in the legal regimes of the Parties];

(c) [at its own initiative, or]where requested by the Commission or the UK recognition body, considering whether the terms of the Agreement are not satisfied or complied with, and issuing recommendations [or initiating the consultation process under Article 6 where the Regulatory Committee deems necessary];

(d) [[at its own initiative, or]where requested by the Commission or the UK recognition body, considering whether proposed changes or reforms ought to be made to the respective legal regimes of either Party in accordance with developments in international standards or developments in the legal regime of either Party and issuing recommendations [where it deems necessary]];

(e) [monitoring developments in the legal systems of either Party, and [where requested] making recommendations to the Commission or the UK recognition body, or initiating the mediation process where the Regulatory Committee believes there is a risk of breach of the terms of the Agreement and in particular the recognition conditions]; and

(f) [participating in the consultation, mediation or dispute resolution processes of this Agreement in accordance with any relevant procedures established under, and the provisions of, this Agreement].[150]

5.3 The Regulatory Committee shall consist of [3] permanent members appointed by the United Kingdom and [3] permanent members appointed by the Union.

5.4 The Regulatory Committee's permanent members shall elect a seventh member to carry out the functions of the chairperson of the Regulatory Committee, at its first meeting by mutual consent of the permanent members, and thereafter in accordance with any relevant internal procedures established by the Regulatory Committee.

5.5 The Regulatory Committee shall conduct itself by majority vote, and in the event of a tied vote, the chairperson shall cast the final binding vote.

5.6 The Regulatory Committee shall adopt its intended procedures initially by mutual consent of the permanent members, and subsequently in accordance with Article 5.5.

---

149 NOTE: A comprehensive range of detailed cooperation agreements will have to be negotiated amongst EU, member state and UK regulators. One key benefit of the enhanced equivalence structure is that extensive regulatory input, discussion and data sharing can be facilitated (if this is politically viable). Both parties will benefit from early visibility and coordination of regulatory developments.

150 NOTE: Indicative possible roles for the Regulatory Committee.

5.7 The Regulatory Committee's chairperson, permanent members and any other ancillary staff shall be chosen on the basis of appropriate experience in financial services law, regulation, practice or other relevant experience.

5.8 The Regulatory Committee shall meet [at least every [•]] / [in accordance with its established procedures, as necessary] to carry out its duties.

5.9 The Regulatory Committee shall be able to request specialist technical, legal or other advice and employ ancillary additional staff if it considers necessary.

5.10 The costs of the Regulatory Committee shall be shared equally by the Parties.

5.11 […][151]

6. CONSULTATION AND COORDINATION[152]

6.1 The UK recognition body shall notify the Commission [and the Regulatory Committee] promptly upon becoming aware of a relevant regulatory development.

6.2 The Union shall notify the UK recognition body [and the Regulatory Committee] promptly upon becoming aware of a relevant regulatory development.

6.3 A Party may submit a written request for consultations with the other Party regarding a relevant regulatory development, any dispute concerning the interpretation or application of the provisions of this Agreement, or for the purposes of the change mechanisms set out in Article 10.

6.4 The requesting Party shall transmit the request for consultation to the responding Party, and shall set out the reasons for the request for consultation, including, if relevant, the identification of the specific measure [or Party's conduct] at issue, the legal basis for the request, any complaint or any proposal relating to a request for consultation pursuant to the change mechanisms under Article 10.

6.5 Subject to Article 6.6, the Parties shall enter into consultations within [30] days of the date of receipt of the request by the responding Party.

6.6 In cases of urgency, including events of significant systemic risk to the financial services sectors of either of the Parties, consultations shall commence within [15] days of the date of receipt of the request by the responding Party.

6.7 The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter through consultations. To this end, each Party shall:

(a) provide sufficient information to enable a full examination of the matter at issue;

(b) protect any confidential or proprietary information exchanged in the course of consultations as requested by the Party providing the information; and

(c) make available the personnel of its government agencies or other regulatory bodies who have expertise in, and the relevant authority to implement solutions which address, the matter that is the subject of the consultations.

6.8 Consultations are confidential and without prejudice to the rights of the Parties in proceedings under Article 8.

---

151 NOTE: Additional details to be added as negotiated between the Parties.

152 NOTE: The consultation provisions are based on CETA, which may provide an indication as to what is negotiable from an EU perspective.

6.9 Consultations shall take place in the territory of the responding Party unless the Parties agree otherwise. Consultations may be held in person or by any other means agreed between the Parties.

Implementation of mutually agreed solutions

6.10 Where the Parties have concluded a mutually agreed solution, each Party shall take the measures necessary to implement the mutually agreed solution within any relevant agreed timeframe.

6.11 [A Party's request for consultation and the mutually agreed solution that arises in relation to a relevant regulatory development or an equivalence change may be the subject of consultations under this Article 6 but may not be the subject of mediation under Article 7 or the dispute settlement procedures under Article 8.][153]

[Role of the Regulatory Committee

6.12 [The Regulatory Committee may, if it decides necessary and in accordance with any internal procedures it prescribes for the purposes of this provision, submit a written request for consultations with the Parties.]

6.13 The Regulatory Committee may prescribe detailed procedures for the purposes of this Article 6[, including provisions regarding its involvement, if relevant, [in initiating and] assisting or otherwise participating in the consultation and coordination process.]

6.14 In accordance with Article VII:4(c) of the GATS, the Regulatory Committee shall promptly inform the Council for Trade in Services when it adopts new recognition measures or significantly modifies existing ones.

7. MEDIATION

7.1 A Party may initiate the mediation process with the other Party regarding [any matter arising under this Agreement] / [any matter falling within Article 8.2].

7.2 The Parties shall conduct themselves in good faith throughout the mediation process and provide sympathetic consideration to the relevant issues that have been raised by the initiating Party.

7.3 A Party may initiate the mediation process by providing a written notice for requesting mediation to the other Party [and the Regulatory Committee] with details of a proposed date, location and other administrative terms for the mediation process. The written notice must:

(a) identify the specific issue triggering the request for mediation;

(b) provide a statement of alleged consequences arising from the specified issue; and

(c) if relevant, propose a desired remedy or agreement that may be considered by the Parties at the conclusion of the mediation process.

7.4 The responding Party may agree to the dates, location and other administrative details for the mediation that have been proposed by the initiating Party or may respond with alternative proposals. The responding Party shall also inform the Regulatory Committee of its response.

---

153 NOTE: The consultation provision (and agreements arising out of it) is intended to be an informal venue for the Parties to reach an agreement on general matters relating to the administration of the recognition relationship prior to initiation of the formal dispute resolution phases (mediation and dispute resolution).

7.5 The Party that wishes to initiate the mediation process shall confirm in writing to the other Party and the Regulatory Committee whether or not it has agreed to any alternative proposals submitted by the responding Party under Article 7.4.

7.6 The Parties shall make all reasonable efforts to agree on the date, location and other administrative details of the mediation. If this is not possible within [5] days of the written request to initiate the mediation process being sent, the Regulatory Committee shall confirm the date, venue and other administrative terms of the mediation, which the Parties shall comply with.

7.7 The mediation process shall continue for an initial period of [30] days from the commencement date agreed by the Parties under Article 7.4 or 7.5 or confirmed by the Regulatory Committee under Article 7.6.

7.8 The Parties may by mutual agreement extend the mediation process [for a maximum duration of [•] days from the initial commencement date agreed by the Parties under Article 7.4 or 7.5 or confirmed by the Regulatory Committee under Article 7.6].

7.9 At the end of the initial period (or any agreed extension pursuant to Article 7.8) of the mediation process, the Parties shall: (i) reach a mutually agreed solution; or (ii) if a mutually agreed solution has not been reached by the date that the mediation process terminates, either Party may choose to initiate the dispute resolution process contained in Article 8.

7.10 The Regulatory Committee may initiate the mediation process and shall throughout the mediation process assist and make recommendations to assist the Parties in reaching a mutually agreed solution.

7.11 A mutually agreed solution may be reached by the Parties describing the relevant terms and any commitments that have been agreed by the Parties in a document that refers to this Article 7.

Implementation of mutually agreed solutions

7.12 Where the Parties have concluded a mutually agreed solution, each Party shall take the measures necessary to implement the mutually agreed solution within any relevant agreed timeframe.

7.13 Failure to implement the mutually agreed solution within any relevant agreed timeframes in accordance with the terms of the mutually agreed solution entitles either Party to initiate the dispute resolution process under Article 8 notwithstanding any other provision of this Agreement that might require the Party to undergo the consultation process under Article 6 or the mediation process under this Article 7 before initiating the dispute resolution process under Article 8.

8. **[DISPUTE RESOLUTION**[154]

8.1 The Parties shall, at all times, endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt to arrive at a mutually satisfactory resolution of any matter that might affect its operation [(including under the consultation process under Article 6 or the mediation process under this Article 7 before initiating the dispute resolution process under this Article 8)].

8.2 Except as otherwise provided in this Agreement, this Article 8 applies to any dispute concerning the interpretation or application of the provisions of this Agreement.

---

[154] NOTE: The dispute resolution provision included here is based on CETA, which may be an indication of what is negotiable from an EU perspective. As with the other provisions of the draft EU-UK recognition agreement these provisions are illustrative and necessarily are entirely subject to the bilateral negotiations between the EU and the UK.

Choice of forum

8.3 [Recourse to the dispute settlement provisions of this Article 8 is without prejudice to recourse to dispute settlement under the WTO Agreement or under any other agreement to which the Parties are party.][155]

8.4 Notwithstanding Article 8.3, if an obligation is materially similar in substance under this Agreement and under the GATS, or under any other agreement to which the Parties are party, a Party may not seek redress for the breach of such an obligation in the two fora. In such case, once a dispute settlement proceeding has been initiated under one agreement, the Party shall not bring a claim seeking redress for the breach of the substantially similar obligation under the other agreement, unless the forum selected fails, for procedural or jurisdictional reasons to make findings on that claim.

8.5 For the purposes of Article 8.4:

(a) dispute settlement proceedings under the GATS are deemed to be initiated by a Party's request for the establishment of a panel under Article 6 of the DSU;

(b) dispute settlement proceedings under this Article 8 are deemed to be initiated by a Party's request for the establishment of an arbitration panel under Article 8.7; and

(c) dispute settlement proceedings under any other agreement are deemed to be initiated by a Party's request for the establishment of a dispute settlement panel or tribunal in accordance with the provisions of that agreement.

8.6 Nothing in this Agreement shall preclude a Party from implementing the suspension of obligations authorised by the WTO Dispute Settlement Body. A Party may not invoke the GATS to preclude the other Party from suspending obligations pursuant to this Article 8.

Request for the establishment of an arbitration panel

8.7 Unless the Parties agree otherwise, if a matter referred to in Articles 6 or 7 has not been resolved within:

(a) [45] days of the date of receipt of the request for mediation; or

(b) [25] days of the date of receipt of the request for consultations for matters referred to in Article 6.6; or

(c) in the case the Parties have engaged in a mediation proceeding in accordance with Article 7, if a mutually agreed solution has not been agreed by the date the mediation process terminates in accordance with Article 7.9,

the requesting Party may refer the matter to arbitration by providing its written request for the establishment of an arbitration panel to the responding Party.

8.8 The requesting Party shall identify in its written request the specific measure at issue and the legal basis for the complaint, including an explanation of how such measure constitutes a breach of the provisions referred to in Article 8.2.

Composition of the arbitration panel

8.9 The arbitration panel shall be composed of [three] arbitrators.

---

[155] NOTE: CETA makes use of the WTO dispute resolution process, which may be a desirable option for the EU-UK recognition agreement. Consequential WTO references have been retained throughout this indicative EU-UK dispute resolution provision on this basis.

8.10 The Parties shall consult with a view to reaching an agreement on the composition of the arbitration panel within [10] working days of the date of receipt by the responding Party of the request for the establishment of an arbitration panel.

8.11 In the event that the Parties are unable to agree on the composition of the arbitration panel within the time frame set out in Article 8.10, either Party may request the chairperson of the Regulatory Committee, or the chair's delegate, to draw by lot the arbitrators from the list established under Article 8.16. One arbitrator shall be drawn from the sub-list of the requesting Party, one from the sub-list of the responding Party and one from the sub-list of chairpersons. If the Parties have agreed on one or more of the arbitrators, any remaining arbitrator shall be selected by the same procedure in the applicable sub-list of arbitrators. If the Parties have agreed on an arbitrator, other than the chairperson, who is not a national of either Party, the chairperson and other arbitrator shall be selected from the sub-list of chairpersons.

8.12 The chairperson of the Regulatory Committee, or the chair's delegate, shall select the arbitrators as soon as possible and normally within [five] working days of the request referred to in Article 8.11 by either Party. The chairperson of the Regulatory Committee, or the chair's delegate, shall give a reasonable opportunity to representatives of each Party to be present when lots are drawn.

8.13 The date of establishment of the arbitration panel shall be the date on which the last of the [three] arbitrators is selected.

8.14 If the list provided for in Article 8.16 is not established or if it does not contain sufficient names at the time a request is made pursuant to Article 8.11, the [three] arbitrators shall be drawn by lot from the arbitrators who have been proposed by one or both of the Parties in accordance with Article 8.16.

8.15 Replacement of arbitrators shall take place only for the reasons and according to the procedure [prescribed by the Regulatory Committee for the purposes of this Article] / [prescribed by Schedule [•] of this Agreement].

List of arbitrators

8.16 The Regulatory Committee shall, at its first meeting after the entry into force of this Agreement, establish a list of at least [15] individuals, chosen on the basis of relevant experience in financial services law and regulation, objectivity, reliability and sound judgment, who are willing and able to serve as arbitrators. The list shall be composed of three sub-lists: one sub-list for each Party and one sub-list of individuals who are not nationals of either Party to act as chairpersons. Each sub-list shall include at least [five] individuals. The Regulatory Committee may review the list at any time and shall ensure that the list conforms with this Article 8.16.

8.17 The arbitrators must have specialised knowledge of international financial services law and regulation. The arbitrators acting as chairpersons must also have experience as counsel or panellist in dispute settlement proceedings on subject matters within the scope of this Agreement. The arbitrators shall be independent, serve in their individual capacities and not take instructions from any organisation or government, or be affiliated with the government of any of the Parties[, and shall comply with any code of conduct prescribed for the purposes of this Article by the Regulatory Committee].

Interim panel report

8.18 The arbitration panel shall present to the Parties an interim report within [150] days of the establishment of the arbitration panel. The report shall contain:

(a) findings of fact; and

(b) determinations as to whether the responding Party has conformed with its obligations under this Agreement.

8.19 Each Party may submit written comments to the arbitration panel on the interim report, subject to any time limits set by the arbitration panel. After considering any such comments, the arbitration panel may:

(a) reconsider its report; or

(b) make any further examination that it considers appropriate.

8.20 The interim report of the arbitration panel shall be confidential.

Final panel report

8.21 Unless the Parties agree otherwise, the arbitration panel shall issue a report in accordance with this Article 8.21 and Articles 8.22 and 8.23. The final panel report shall set out the findings of fact, the applicability of the relevant provisions of this Agreement and the basic rationale behind any findings and conclusions that it makes. The ruling of the arbitration panel in the final panel report shall be binding on the Parties.

8.22 The arbitration panel shall issue to the Parties [and to the Regulatory Committee] a final report within [30] days of the interim report.

8.23 Each Party shall make publicly available the final panel report, subject to any [agreement reached between the Parties as to confidential sections of the final panel report which shall not be made publicly available] / [procedures regarding the confidentiality of panel reports as agreed between the Parties for the purposes of this Article].

Urgent proceedings

8.24 In cases of urgency, including those involving events of substantial systemic risk to the financial services sectors of either of the Parties, the arbitration panel and the Parties shall make every effort to accelerate the proceedings to the greatest extent possible. The arbitration panel shall aim at issuing an interim report to the Parties within [75] days of the establishment of the arbitration panel, and a final report within [15] days of the interim report. Upon request of a Party, the arbitration panel shall make a preliminary ruling within [10] days of the request on whether it deems the case to be urgent.

Compliance with the final panel report

8.25 The responding Party shall take any measure necessary to comply with the final panel report. No later than [20] days after the receipt of the final panel report by the Parties, the responding Party shall inform the other Party [and the Regulatory Committee] of its intentions in respect of compliance.

Reasonable period of time for compliance

8.26 If immediate compliance is not possible, no later than [20] days after the receipt of the final panel report by the Parties, the responding Party shall notify the requesting Party [and the Regulatory Committee] of the period of time it will require for compliance.

8.27 In the event of disagreement between the Parties on the reasonable period of time in which to comply with the final panel report, the requesting Party shall, within [20] days of the receipt of the notification made under Article 8.26 by the responding Party, request in writing the arbitration panel to determine the length of the reasonable period of time. Such request shall be notified simultaneously to the other Party [and to the Regulatory Committee]. The arbitration panel shall issue its ruling to the Parties [and to the Regulatory Committee] within [30] days from the date of the request.

8.28 The reasonable period of time may be extended by mutual agreement of the Parties.

8.29 At any time after the midpoint in the reasonable period of time and at the request of the requesting Party, the responding Party shall make itself available to discuss the steps it is taking to comply with the final panel report.

8.30 The responding Party shall notify the other Party [and the Regulatory Committee] before the end of the reasonable period of time of measures that it has taken to comply with the final panel report.

Temporary remedies in case of non-compliance

8.31 If:

(a) the responding Party fails to notify its intention to comply with the final panel report under Article 8.25 or the time it will require for compliance under Article 8.26;

(b) at the expiry of the reasonable period of time, the responding Party fails to notify any measure taken to comply with the final panel report; or

(c) the arbitration panel on compliance referred to in Article 8.36 establishes that a measure taken to comply is inconsistent with that Party's obligations under the provisions referred to in Article 8.2,

the requesting Party shall be entitled to take measures to suspend [any of the requesting Party's obligations under this Agreement [including the agreed legal effect of any of the agreed equivalence recognitions]] / [benefits in the financial services sector that have an effect corresponding to the measure complained of [including the agreed legal effect of any of the agreed equivalence recognitions]][156]. The [level] / [proportionality] of the suspension shall be assessed from the date of notification of the final panel report to the Parties.

8.32 Before suspending obligations, the requesting Party shall notify the responding Party [and the Regulatory Committee] of its intention to do so, including a description of the level of obligations it intends to suspend.

8.33 [Except as otherwise provided in this Agreement, the suspension of obligations (including the legal effect of an agreed equivalence recognition) may concern any provision referred to in Article 8.2 and shall be limited at a level proportionate to the nullification or breach of this Agreement caused by the violation.][157]

8.34 The requesting Party may implement the suspension [10] working days after the date of receipt of the notification referred to in Article 8.32 by the responding Party, unless a Party has requested arbitration under Articles 8.36 and 8.37.

8.35 A disagreement between the Parties concerning the existence of any measure taken to comply or its consistency with the provisions referred to in Article 8.2 ("**disagreement on compliance**"), or on the equivalence between the level of suspension and the nullification or impairment caused by the violation ("**disagreement on suspension**"), shall be referred to the arbitration panel.

---

156 NOTE: Remedies in the event of non-compliance by a responding Party could, potentially, be 'all-or-nothing' or made more specific to the measure complained of by implementing appropriate proportionality limits to suspensive actions the requesting Party shall be entitled to adopt.

157 NOTE: Remedies in the event of non-compliance by a responding Party could, potentially, be 'all-or-nothing' or made more specific to the measure complained of by implementing appropriate proportionality limits to suspensive actions the requesting Party is entitled to adopt. If the requesting Party is obliged to suspend obligations proportionately, the following provisions set out a review process for assessing the proportionality of suspension action that is taken.

8.36 A Party may reconvene the arbitration panel by providing a written request to the arbitration panel, the other Party [and the Regulatory Committee.] In case of a disagreement on compliance, the arbitration panel shall be reconvened by the requesting Party. In case of a disagreement on suspension, the arbitration panel shall be reconvened by the responding Party. In case of disagreements on both compliance and on suspension, the arbitration panel shall rule on the disagreement on compliance before ruling on the disagreement on suspension.

8.37 The arbitration panel shall notify its ruling to the Parties and to the Regulatory Committee accordingly:

(a) within [90] days of the request to reconvene the arbitration panel, in case of a disagreement on compliance;

(b) within [30] days of the request to reconvene the arbitration panel, in case of a disagreement on suspension;

(c) within [120] days of the first request to reconvene the arbitration panel, in case of a disagreement on both compliance and suspension.

8.38 The requesting Party shall not suspend obligations until the arbitration panel reconvened under Articles 8.36 and 8.37 has delivered its ruling. Any suspension shall be consistent with the arbitration panel's ruling.

8.39 The suspension of obligations shall be temporary and shall be applied only until the measure found to be inconsistent with the provisions referred to in Article 8.2 has been withdrawn or amended so as to bring it into conformity with those provisions, as established under Articles 8.41 and 8.42, or until the Parties have settled the dispute.

8.40 At any time, the requesting Party may request the responding Party to provide an offer for temporary compensation and the responding Party shall present such offer.

Review of measures taken to comply after the suspension of obligations

8.41 When, after the suspension of obligations by the requesting Party, the responding Party takes measures to comply with the final panel report, the responding Party shall notify the other Party and the Regulatory Committee and request an end to the suspension of obligations applied by the requesting Party.

8.42 If the Parties do not reach an agreement on the compatibility of the notified measure with the provisions referred to in Article 8.2 within [60] days of the date of receipt of the notification, the requesting Party shall request in writing the arbitration panel to rule on the matter. Such request shall be notified simultaneously to the other Party and to the Regulatory Committee. The final panel report shall be notified to the Parties and to the Regulatory Committee within [90] days of the date of submission of the request. If the arbitration panel rules that any measure taken to comply is in conformity with the provisions referred to in Article 8.2, the suspension of obligations shall be terminated.

Rules of procedure

8.43 The dispute settlement procedure under this Article 8 shall be governed by the rules of procedure for arbitration [prescribed by the [Regulatory Committee] for the purposes of this Article] unless the Parties agree otherwise.

General rule of interpretation

8.44 The arbitration panel shall interpret the provisions of this Agreement in accordance with customary rules of interpretation of public international law, including those set out in the Vienna Convention on the Law of Treaties. The arbitration panel shall also take into account

relevant interpretations in reports of Panels and the appellate body adopted by the WTO Dispute Settlement Body.

Rulings of the arbitration panel

8.45 The rulings of the arbitration panel cannot add to or diminish the rights and obligations provided for in this Agreement.

Mutually agreed solutions

8.46 The Parties may reach a mutually agreed solution to a dispute under this Article 8 at any time. They shall notify the [Regulatory Committee] and the arbitration panel of any such solution. Upon notification of the mutually agreed solution, the arbitration panel shall terminate its work and the proceedings shall be terminated.]

9. [PRIVATE LAW REMEDIES][158]

9.1 Without prejudice to the other rights and obligations of the Parties under Article 8, a relevant private party of one Party may submit to the Panel constituted under this Article 9 a claim that the other Party has breached its obligations under this Agreement by acting inconsistently with [the recognition principles or Articles 3, 7 or 8] where the relevant private party claims to have suffered loss or damage as a result of the alleged breach.

9.2 Claims under Article 9.1 may be submitted only to the extent that the action or inaction complained of relates to the existing business operations of the relevant private party.

9.3 The Panel shall not decide claims that fall outside the scope of Articles 9.1 and 9.2.

Consultations

9.4 A dispute should as far as possible be settled amicably. Such a settlement may be agreed at any time, including after the claim has been submitted pursuant to Article 9.22. Unless the disputing parties agree to a longer period, consultations shall be held within [60] days of the submission of the request for consultations pursuant to Article 9.7.

9.5 Unless the disputing parties agree otherwise, the place of consultation shall be:

(a) London, if the measures challenged are measures of the United Kingdom; and

(b) Brussels, if the measures challenged are measures of the European Union.

9.6 The disputing parties may hold the consultations through videoconference or other means where appropriate.

9.7 The relevant private party shall submit to the other Party a request for consultations setting out:

(a) the name and address of the relevant private party;

(b) if there is more than one relevant private party, the name and address of each relevant private party;

---

158 NOTE: The extent to which private law remedies are available under this agreement should be considered by the parties. This may prove controversial however. The following provisions set out a private law remedies procedure, available to private parties which are affected by breach of the recognition principles or the mediation and dispute resolution provisions e.g. by unilateral suspension of an agreed equivalence recognition in breach of the Agreement. Private law remedies are included for investor-state disputes in CETA, which has been used in part as a basis for these provisions. However, in contrast to CETA, this provision sets forth a classical arbitration system, rather than the standing tribunal system adopted under CETA.

(c) the provisions of this Agreement alleged to have been breached;

(d) the legal and the factual basis for the claim, including the measures at issue; and

(e) the relief sought and the estimated amount of damages claimed.

The request for consultations shall contain evidence establishing that, if applicable, the relevant private party owns or controls any undertakings on whose behalf the request is submitted.

9.8 The requirements of the request for consultations set out in Article 9.7 shall be met with sufficient specificity to allow the respondent to effectively engage in consultations and to prepare its defence.

9.9 A request for consultations must be submitted within:

(a) [one] year after the date on which the relevant private party first acquired or should have first acquired, knowledge of the alleged breach and knowledge that the relevant private party has incurred loss or damage thereby; or

(b) [one] year after a relevant private party ceases to pursue claims or proceedings before a tribunal or court under the law of a Party, or when such proceedings have otherwise ended and, in any event, no later than [10] years after the date on which the relevant private party first acquired or should have first acquired knowledge of the alleged breach and knowledge that the relevant private party has incurred loss or damage thereby.

9.10 A request for consultations concerning an alleged breach by the European Union shall be sent to the European Union.

9.11 A request for consultations concerning an alleged breach by the United Kingdom shall be sent to the UK recognition body.

9.12 In the event that the relevant private party has not submitted a claim pursuant to Article 9.22 within [one] year of submitting the request for consultations, the relevant private party is deemed to have withdrawn its request for consultations and, if applicable, its notice requesting a determination of the respondent, and shall not submit a claim under this Article 9 with respect to the same measures. This period may be extended by agreement of the disputing parties.

Mediation

9.13 The disputing parties may at any time agree to have recourse to mediation.

9.14 Recourse to mediation is without prejudice to the legal position or rights of either disputing party under this Article 9 and is governed by the rules agreed to by the disputing parties.

9.15 The mediator is appointed by agreement of the disputing parties. The disputing parties may also request that the [Regulatory Committee] appoint the mediator.

9.16 The disputing parties shall endeavour to reach a resolution of the dispute within [60] days from the appointment of the mediator.

9.17 If the disputing parties agree to have recourse to mediation, Articles 9.9 and 9.12 shall not apply from the date on which the disputing parties agreed to have recourse to mediation to the date on which either disputing party decides to terminate the mediation. A decision by a disputing party to terminate the mediation shall be transmitted by way of a letter to the mediator and the other disputing party.

Procedural and other requirements for the submission of a claim to the Tribunal

9.18 A relevant private party may only submit a claim pursuant to Article 9.22 if the relevant private party:

(a) delivers to the respondent, with the submission of a claim, its consent to the settlement of the dispute by the Tribunal in accordance with the procedures set out in this Article 9;

(b) allows at least [180] days to elapse from the submission of the request for consultations and, if applicable, at least [90] days to elapse from the submission of the notice requesting a determination of the respondent;

(c) has fulfilled the requirements related to the request for consultations;

(d) does not identify a measure in its claim that was not identified in its request for consultations;

(e) withdraws or discontinues any existing proceeding before a tribunal or court under domestic or international law with respect to a measure alleged to constitute a breach referred to in its claim; and

(f) waives its right to initiate any claim or proceeding before a tribunal or court under domestic or international law with respect to a measure alleged to constitute a breach referred to in its claim.

9.19 If the claim submitted pursuant to Article 9.22 is for loss or damage to an undertaking that the relevant private party owns or controls directly or indirectly, the requirements in Articles 9.18(e) and 9.18(f) apply both to the relevant private party and the relevant undertaking.

9.20 Upon request of the respondent, the Tribunal shall decline jurisdiction if the relevant private party or, as applicable, the relevant undertaking owned or controlled directly or indirectly by a relevant private party fails to fulfil any of the requirements of Articles 9.18 and 9.19.

9.21 The waiver provided pursuant to Articles 9.18(f) or 9.19 as applicable shall cease to apply:

(a) if the Tribunal rejects the claim on the basis of a failure to meet the requirements of Articles 9.18 or 9.19 on any other procedural or jurisdictional grounds;

(b) if the Tribunal dismisses the claim pursuant to Article 9.46 or Article 9.48; or

(c) if the relevant private party withdraws its claim, in conformity with the applicable rules under Article 9.23, within 12 months of the constitution of the division of the Tribunal.

Submission of a claim to the Tribunal

9.22 If a dispute has not been resolved through consultations, a claim may be submitted under this Article 9 by:

(a) a relevant private party of a Party on its own behalf; or

(b) a relevant private party of a Party, on behalf of an undertaking which it owns or controls directly or indirectly.

9.23 Subject to the provisions of this Article 9 or as otherwise agreed by the disputing parties, the arbitration shall be conducted under the UNCITRAL Arbitration Rules.

9.24 The rules applicable under Article 9.23 are those that are in effect on the date that the claim or claims are submitted to the Tribunal under this Article 9, subject to the specific rules set out in this Article 9.

9.25 The place of arbitration shall be determined in accordance with the same principles as the place of consultation under Article 9.5.

9.26 A claim is submitted for dispute settlement under this Article 9 when the notice under Article 3 of the UNCITRAL Arbitration Rules is received by the respondent.

9.27 Each Party shall notify the other Party of the place of delivery of notices and other documents by the relevant private parties pursuant to this Article 9. Each Party shall ensure this information is made publicly available.

Proceedings under another international agreement

9.28 Where a claim is brought pursuant to this Article 9 and another international agreement and:

(a) there is a potential for overlapping compensation; or

(b) the other international claim could have a significant impact on the resolution of the claim brought pursuant to this Article 9,

the Tribunal shall, as soon as possible after hearing the disputing parties, stay its proceedings or otherwise ensure that proceedings brought pursuant to another international agreement are taken into account in its decision, order or award.

Consent to the settlement of the dispute by the Tribunal

9.29 The respondent consents to the settlement of the dispute by the Tribunal in accordance with the procedures set out in this Article 9.

9.30 The consent under Article 9.29 and the submission of a claim to the Tribunal under this Article 9 shall satisfy the requirements of Article II of the New York Convention for an agreement in writing.

Third party funding

9.31 Where there is third party funding, the disputing party benefiting from it shall disclose to the other disputing party and to the Tribunal the name and address of the third party funder.

9.32 The disclosure shall be made at the time of the submission of a claim, or, if the financing agreement is concluded or the donation or grant is made after the submission of a claim, without delay as soon as the agreement is concluded or the donation or grant is made.

Constitution of the Tribunal

9.33 The dispute shall be decided by a Sole Arbitrator, unless either of the disputing parties requests dispute resolution by a three-person Tribunal.

9.34 The Sole Arbitrator, if any, shall be appointed by agreement of the disputing parties. In the case of a three-person Tribunal, each disputing party shall nominate one arbitrator and the so nominated two arbitrators shall then jointly nominate the third and presiding arbitrator, who shall not be a national of either Party to this Agreement. In the event the disputing parties are unable to agree within [45 days] of submission of a claim in accordance with Section 9.28 on the Sole Arbitrator, or in the case of a three-person Tribunal the party-nominated arbitrators fail to jointly nominate the presiding arbitrator or if either disputing party fails to nominate its party-nominated arbitrator, each disputing party may request the Chairperson of the Regulatory Committee, or the chair's delegate, [to make the relevant appointment] / [to draw by lot the arbitrators from the list established under Article 8.16. In the case of the Sole Arbitrator and the chairperson of a three-person Tribunal, the arbitrator shall be drawn from the sub-list of chairpersons. If the disputing parties were unable to reach agreement on the two (non-presiding) arbitrators of a three-person Tribunal, one arbitrator shall be drawn from

the sub-list of the responding Party and one arbitrator shall be drawn from the sub-list of the other Party to this Agreement. In the event the disputing parties have agreed on the chairperson as well as on one of the other two arbitrators, the remaining arbitrator shall be drawn from the sub-list of chairpersons. Articles 8.12 to 8.14 apply, *mutatis mutandis*, to this section.

Ethics

9.35 The Members of the Tribunal shall be independent. They shall not be affiliated with any government. They shall not take instructions from any organisation, or government with regard to matters related to the dispute. They shall not participate in the consideration of any disputes that would create a direct or indirect conflict of interest. They shall comply with the International Bar Association Guidelines on Conflicts of Interest in International Arbitration. In addition, upon appointment, they shall refrain from acting as counsel or as party-appointed expert or witness in any pending or new dispute under this or any other international agreement.

9.36 If a disputing party considers that a Member of the Tribunal has a conflict of interest, it may invite the President of the International Court of Justice to issue a decision on the challenge to the appointment of such Member. Any notice of challenge shall be sent to the President of the International Court of Justice within [15] days of the date on which the composition of the division of the Tribunal has been communicated to the disputing party, or within [15] days of the date on which the relevant facts came to its knowledge, if they could not have reasonably been known at the time of composition of the division. The notice of challenge shall state the grounds for the challenge.

9.37 If, within [15] days from the date of the notice of challenge, the challenged Member of the Tribunal has elected not to resign from the division, the President of the International Court of Justice may, after receiving submissions from the disputing parties and after providing the Member of the Tribunal an opportunity to submit any observations, issue a decision on the challenge. The President of the International Court of Justice shall endeavour to issue the decision and to notify the disputing parties and the other Members [of the division][of the Tribunal] within [45] days of receipt of the notice of challenge. A vacancy resulting from the disqualification or resignation of a Member of the Tribunal shall be filled promptly.

9.38 Upon a reasoned recommendation from the President of the Tribunal, or on their joint initiative, the Parties, by decision of the Regulatory Committee, may remove a Member from the Tribunal where his or her behaviour is inconsistent with the obligations set out in Article 9.35 and incompatible with his or her continued membership of the Tribunal.

Applicable law and interpretation

9.39 When rendering its decision, the Tribunal established under this Article 9 shall apply this Agreement as interpreted in accordance with the Vienna Convention on the Law of Treaties, and other rules and principles of international law applicable between the Parties.

9.40 The Tribunal shall not have jurisdiction to determine the legality of a measure, alleged to constitute a breach of this Agreement, under the domestic law of a Party. For greater certainty, in determining the consistency of a measure with this Agreement, the Tribunal may consider, as appropriate, the domestic law of a Party as a matter of fact. In doing so, the Tribunal shall follow the prevailing interpretation given to the domestic law by the courts or authorities of that Party and any meaning given to domestic law by the Tribunal shall not be binding upon the courts or the authorities of that Party.

9.41 An interpretation of this Agreement adopted by the Regulatory Committee shall be binding on the Tribunal established under this Article 9. The Regulatory Committee may decide that an interpretation shall have binding effect from a specific date.

Claims manifestly without legal merit

9.42 The respondent may, no later than [30] days after the constitution of the division of the Tribunal, and in any event before its first session, file an objection that a claim is manifestly without legal merit.

9.43 An objection shall not be submitted under Article 9.42 if the respondent has filed an objection pursuant to Article 9.48.

9.44 The respondent shall specify as precisely as possible the basis for the objection.

9.45 On receipt of an objection pursuant to Article 9.42, the Tribunal shall suspend the proceedings on the merits and establish a schedule for considering such an objection consistent with its schedule for considering any other preliminary question.

9.46 The Tribunal, after giving the disputing parties an opportunity to present their observations, shall at its first session or promptly thereafter, issue a decision or award stating the grounds therefor. In doing so, the Tribunal shall assume the alleged facts to be true.

9.47 Articles 9.42, 9.45 and 9.46 shall be without prejudice to the Tribunal's authority to address other objections as a preliminary question or to the right of the respondent to object, in the course of the proceeding, that a claim lacks legal merit.

Claims unfounded as a matter of law

9.48 Without prejudice to the Tribunal's authority to address other objections as a preliminary question or to a respondent's right to raise any such objections at an appropriate time, the Tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim, or any part thereof, submitted pursuant to Article 9.22 is not a claim for which an award in favour of the claimant may be made under this Article 9, even if the facts alleged were assumed to be true.

9.49 An objection under Article 9.48 shall be submitted to the Tribunal no later than the date the Tribunal fixes for the respondent to submit its counter-memorial.

9.50 If an objection has been submitted pursuant to Article 9.42 the Tribunal may, taking into account the circumstances of that objection, decline to address an objection submitted pursuant to Article 9.48.

9.51 On receipt of an objection under Article 9.48, and, if appropriate, after rendering a decision pursuant to Article 9.50, the Tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or award on the objection stating the grounds therefor.

Interim measures of protection

9.52 The Tribunal may order an interim measure of protection to preserve the rights of a disputing party or to ensure that the Tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the Tribunal's jurisdiction. The Tribunal shall not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in Article 9.22. For the purposes of this Article, an order includes a recommendation.

Discontinuance

9.53 If, following the submission of a claim under this Article 9, the relevant private party fails to take any steps in the proceeding during [180] consecutive days or such period as the disputing parties may agree, the relevant private party is deemed to have withdrawn its claim

and to have discontinued the proceeding. The Tribunal shall, at the request of the respondent, and after notice to the disputing parties, in an order take note of the discontinuance. After the order has been rendered the authority of the Tribunal shall lapse.

Transparency of proceedings

9.54 The UNCITRAL Transparency Rules, as modified by this Agreement, shall apply in connection with proceedings under this Article 9.

9.55 The request for consultations, the agreement to mediate, the notice of intent to challenge a Member of the Tribunal, the decision on challenge to a Member of the Tribunal and the request for consolidation shall be included in the list of documents to be made available to the public under Article 3(1) of the UNCITRAL Transparency Rules.

9.56 Exhibits shall be included in the list of documents to be made available to the public under Article 3(2) of the UNCITRAL Transparency Rules.

9.57 Notwithstanding Article 2 of the UNCITRAL Transparency Rules, prior to the constitution of the Tribunal, the United Kingdom or the European Union as the case may be shall make publicly available in a timely manner relevant documents pursuant to Article 9.55, subject to the redaction of confidential or protected information. Such documents may be made publicly available by communication to the repository.

9.58 Hearings shall be open to the public. The Tribunal shall determine, in consultation with the disputing parties, the appropriate logistical arrangements to facilitate public access to such hearings. If the Tribunal determines that there is a need to protect confidential or protected information, it shall make the appropriate arrangements to hold in private that part of the hearing requiring such protection.

9.59 Nothing in this Article 9 requires a respondent to withhold from the public information required to be disclosed by its laws. The respondent should apply those laws in a manner sensitive to protecting from disclosure information that has been designated as confidential or protected information.

Information sharing

9.60 A disputing party may disclose to other persons in connection with the proceedings, including witnesses and experts, such unredacted documents as it considers necessary in the course of proceedings under this Article 9. However, the disputing party shall ensure that those persons protect the confidential or protected information contained in those documents.

9.61 This Agreement does not prevent a respondent from disclosing to officials of, as applicable, the European Union, Member States of the European Union and sub-national governments, such unredacted documents as it considers necessary in the course of proceedings under this Article 9. However, the respondent shall ensure that those officials protect the confidential or protected information contained in those documents.

Non-disputing Party

9.62 The respondent shall, within [30] days after receipt or promptly after any dispute concerning confidential or protected information has been resolved, deliver to the non-disputing Party:

(a) a request for consultations, a notice requesting a determination of the respondent, a notice of determination of the respondent, a claim submitted pursuant to Article 9.22, a request for consolidation, and any other documents that are appended to such documents;

(b) on request:

(i) pleadings, memorials, briefs, requests and other submissions made to the Tribunal by a disputing party;

(ii) written submissions made to the Tribunal pursuant to Article 4 of the UNCITRAL Transparency Rules;

(iii) minutes or transcripts of hearings of the Tribunal, if available; and

(iv) orders, awards and decisions of the Tribunal; and

(c) on request and at the cost of the non-disputing Party, all or part of the evidence that has been tendered to the Tribunal, unless the requested evidence is publicly available.

9.63 The Tribunal shall accept or, after consultation with the disputing parties, may invite, oral or written submissions from the non-disputing Party regarding the interpretation of this Agreement. The non-disputing Party may attend a hearing held under this Article 9.

9.64 The Tribunal shall not draw any inference from the absence of a submission pursuant to Article 9.63.

9.65 The Tribunal shall ensure that the disputing parties are given a reasonable opportunity to present their observations on a submission by the non-disputing Party to this Agreement.

Final award

9.66 If the Tribunal makes a final award against the respondent, the Tribunal may only award [monetary damages and any applicable interest];

9.67 Subject to Articles 9.66 and 9.70, if a claim is made under 9.22(b):

(a) an award of monetary damages and any applicable interest shall provide that the sum be paid to the undertaking which a relevant private party owns or controls directly or indirectly;

(b) an award of costs in favour of the relevant private party shall provide that it is to be made to the relevant private party; and

(c) the award [may] / [shall] provide that it is made without prejudice to a right that a person, other than a person which has provided a waiver pursuant to Article 9.18, may have in monetary damages or property awarded under a Party's law.

9.68 Monetary damages shall not be greater than the loss suffered by the relevant private party or, as applicable, the undertaking which a relevant private party owns or controls directly or indirectly, reduced by any prior damages or compensation already provided. For the calculation of monetary damages, the Tribunal shall also reduce the damages to take into account any repeal or modification of the measure.

9.69 The Tribunal shall not award punitive damages.

9.70 The Tribunal shall order that the costs of the proceedings be borne by the unsuccessful disputing party. In exceptional circumstances, the Tribunal may apportion costs between the disputing parties if it determines that apportionment is appropriate in the circumstances of the claim. Other reasonable costs, including costs of legal representation and assistance, shall be borne by the unsuccessful disputing party, unless the Tribunal determines that such apportionment is unreasonable in the circumstances of the claim. If only parts of the claims

have been successful the costs shall be adjusted, proportionately, to the number or extent of the successful parts of the claims.

9.71 The Regulatory Committee shall consider supplemental rules aimed at reducing the financial burden on claimants who are natural persons or small and medium-sized enterprises. Such supplemental rules may, in particular, take into account the financial resources of such claimants and the amount of compensation sought.

9.72 The Tribunal[, the Regulatory Committee] and the disputing parties shall make every effort to ensure the dispute settlement process is carried out in a timely manner. The Tribunal shall issue its final award within [12] months of the date the claim is submitted pursuant to Article 9.22. If the Tribunal requires additional time to issue its final award, it shall provide the disputing parties the reasons for the delay.

Indemnification or other compensation

9.73 A respondent shall not assert, and the Tribunal shall not accept a defence, counterclaim, right of setoff, or similar assertion, that a relevant private party or, as applicable, a locally established enterprise, has received or will receive indemnification or other compensation pursuant to an insurance or guarantee contract in respect of all or part of the compensation sought in a dispute initiated pursuant to this Article 9.

Enforcement of awards

9.74 An award issued pursuant to this Article 9 shall be binding between the disputing parties and in respect of that particular case.

9.75 Subject to Article 9.76, a disputing party shall recognise and comply with an award without delay.

9.76 A disputing party shall not seek enforcement of a final award until:

(a) [90] days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside or annul the award; or

(b) enforcement of the award has been stayed and a court has dismissed or allowed an application to revise, set aside or annul the award and there is no further appeal.

9.77 Execution of the award shall be governed by the laws concerning the execution of judgment or awards in force where the execution is sought.

9.78 A final award issued pursuant to this Article 9 is an arbitral award that is deemed to relate to claims arising out of a commercial relationship or transaction for the purposes of Article I of the New York Convention.

Role of the Parties

9.79 A Party shall not bring an international claim, in respect of a claim submitted pursuant to Article 9.22, unless the other Party has failed to abide by and comply with the award rendered in that dispute.

9.80 Article 9.79 shall not exclude the possibility of dispute settlement under Article 8 in respect of a measure of general application even if that measure is alleged to have breached this Agreement in respect of which a claim has been submitted pursuant to Article 9.22 and is without prejudice to Article 9.62.

9.81 Article 9.79 does not preclude informal exchanges for the sole purpose of facilitating a settlement of the dispute.

Consolidation

9.82 In the interest of facilitating the comprehensive resolution of related disputes and ensuring the consistency of awards, and upon request of either disputing party, the Tribunal may consolidate the proceedings with any other proceedings initiated pursuant to Article 9.22 in relation to a claim or claims under this Agreement. The Tribunal shall not consolidate such proceedings, unless (i) it determines that there are issues of fact or law common to the two proceedings so that a consolidated proceeding would be more efficient than separate proceedings, and (ii) no party would be prejudiced as a result of such consolidation through undue delay or otherwise. In the case of conflicting rulings on this question by the Tribunals constituted in the proceedings subject to a request for consolidation, the ruling of the Tribunal in the first-filed of the proceedings subject to a request for consolidation shall control.

9.83 In the case of a consolidated proceeding, the arbitrator(s) in the consolidated proceeding shall be [the arbitrator(s) appointed for the first-filed of the consolidated proceedings] [appointed by the Regulatory Committee on the request of any of the disputing parties].

9.84 A relevant private party may withdraw a claim under this Article 9 that is subject to consolidation and such claim shall not be resubmitted pursuant to Article 9.22. If it does so no later than [15] days after receipt of the notice of consolidation, its earlier submission of the claim shall not prevent the relevant private party's recourse to dispute settlement other than under this Article 9.

9.85 At the request of a relevant private party, the Tribunal may take such measures as it sees fit in order to preserve the confidential or protected information of that relevant private party in relation to other relevant private parties. Those measures may include the submission of redacted versions of documents containing confidential or protected information to the other relevant private parties or arrangements to hold parts of the hearing in private.

10. CHANGE MECHANISMS

Amended and repealed legislation

10.1 Where the underlying national legislation relating to the agreed legal effect of an agreed equivalence recognition as detailed in Schedule [•] is, or is proposed to be, amended or repealed and replaced, either Party may submit a written request initiating the consultation process under Article 6 to implement necessary changes to any affected parts of Schedule [•] to reflect the amended or repealed and replaced underlying national legislation. Such amendments will be promptly notified to the GATS Council on Trade in Services in accordance with Article VII:4(c) of the GATS.

10.2 The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the consultation request through the consultation process under Article 6.

10.3 The change process described in Articles 10.1 to this Article 10.3 is intended to be used where the relevant underlying national legislation of either Party is amended or repealed and replaced and the proposed changes to any affected parts of Schedule [•] do not materially affect the original intended legal effect of an agreed equivalence recognition in the relevant jurisdiction.

Amending, supplementing and removing equivalence recognitions

10.4 Where a Party wishes to initiate discussions relating to an equivalence change, it may submit a written request initiating the consultation process under Article 6 for the purposes of negotiating an equivalence change with the responding Party.

10.5 […][159]

11. SUSPENSIONS

11.1 The Parties may not suspend or alter the agreed legal effect of any agreed equivalence recognition as detailed and contained in Schedule [•] unless the suspension or alteration of the national legal effect of any agreed equivalence recognition is:

(a) pursuant to the mutual agreement of the Parties;

(b) in accordance with the change mechanisms specified in Article 10;

(c) in accordance with a mutually agreed solution that has been reached between the Parties in accordance with the consultation process specified in Article 6;

(d) in accordance with a mutually agreed solution that has been reached between the Parties in accordance with the mediation process specified in Article 7; or

(e) in accordance with the dispute resolution process specified in Article 8.

11.2 For legal certainty and stability, the Parties shall ensure that any national measures taken to suspend or alter the agreed legal effect of any agreed equivalence recognition as detailed and contained in Schedule 1 shall only take effect at the earliest [one year] after publication of the relevant national legal instrument [(subject to mutual agreement of the Parties or if required to comply with any panel ruling or report that is issued to the Parties pursuant to Article 8)].

12. AMENDMENTS TO THIS AGREEMENT

12.1 Amendments to this Agreement or any of its Schedules may only be made with the mutual written consent of the Parties.

[159] NOTE: If a stronger commitment from either Party to consider supplementing agreed equivalence recognitions is desired, additional provisions may be included here. The extent to which this is possible of course depends on the nature of the UK-EU relationship and bilateral negotiations relating to the framework for establishing new agreed equivalence recognitions.

Schedule 1

Agreed Equivalence recognitions

Agreed equivalence recognition relating to: [•]	
Relevant Union Legislation	Relevant United Kingdom Legislation
[•]	[•]
Description of legal effect in the Union	Description of legal effect in the United Kingdom
[•]	[•]
Conditions applicable to Union legal effect of agreed equivalence recognition	Conditions applicable to United Kingdom legal effect of agreed equivalence recognition
[•]	[•]
Description of category of United Kingdom undertakings entitled to the agreed equivalence recognition	Description of category of Union undertakings entitled to the agreed equivalence recognition
[•]	[•]
Agreed equivalence recognition relating to: [•]	
Relevant Union Legislation	Relevant United Kingdom Legislation
Directive [•]	[•]
Description of legal effect in the Union	Description of legal effect in the United Kingdom
[•]	[•]
Conditions applicable to Union legal effect of agreed equivalence recognition	Conditions applicable to United Kingdom legal effect of agreed equivalence recognition
[•]	[•]
Description of category of United Kingdom undertakings entitled to the agreed equivalence recognition	Description of category of Union undertakings entitled to the agreed equivalence recognition
[•]	[•]

Nuclear Options: Powering the Future
R. Cashmore, D. Mowat and S. Taylor

Working Welfare: Contributory Benefits, the Moral Economy and the New Politics
Frank Field

The Financial Sector and the UK Economy: The Danger of Over-Regulation
J. McFall, K. Matthews, P. Minford, D. Green, J. Dannhauser, J. Hodgson, S. Cochrane and D. Smith

Latin for Language Lovers: Ancient Languages, the New Curriculum and GCSE
D. Butterfield, S. Anderson, K. Radice and D. Sullivan

Primary Problems for the New Curriculum: Tougher Maths, Better Teachers
David Burghes

History in the Making: The New Curriculum: Right or Wrong?
D. Abulafia, J. Clark and R. Tombs

University Diversity: Freedom, Excellence and Funding for a Global Future
Martin Rees

Realistic Recovery: Why Keynesian Solutions Will Not Work
Vito Tanzi

Freedom, Responsibility and the State: Curbing Over-Mighty Government
J. Rees-Mogg, M. Vickers, Z. Goldsmith, J. Morris, J. McCartney, J. Stevenson, C. Whittaker, F. Bruce, S. Reevell and D. Mowatt

Subscribe to Politeia's Publications!

For £35 a year (£30 standing order) you will receive an electronic copy of each of our publications, plus hard copies of two new publications on request, and, if you wish, free hard copies of your choice from our back catalogue. You will also receive advance notice and invitations to Politeia's conferences and flagship events, with guest speakers from the UK and overseas.

More information can be found on our website: www.politeia.co.uk. Or, write to the Secretary, Politeia, 14a Eccleston Street, London, SW1W 9LT or at secretary@politeia.co.uk

A Selection of Recent and Related Publications

Triggering Article 50, Courts, Government and Parliament
D. Abulafia, J. Clark, P. Crisp, D. Howarth, S. Lawlor and R Tombs

Prosperity not Austerity: Brexit Benefits – Britain's New Economy
John Redwood

A Blueprint for Brexit: The Future of Global Financial Services and Markets in the UK
Barnabas Reynolds

How to Leave the EU: Legal and Trade Priorities for the New Britain
Martin Howe QC

The EU: An idea whose time has passed
Roger Bootle

Ruling the Ruler: Parliament, the People and Britain's Political Identity
Sheila Lawlor

Joining the World: Britain Outside the EU
Nigel Lawson

Banking on Recovery: Towards an accountable, stable banking sector
Lord McFall, S. Kamall, G. Lyons, F. Capie and others

Dumbing Down the Law: The SRA's Proposals for Legal Training
Anthony Bradney

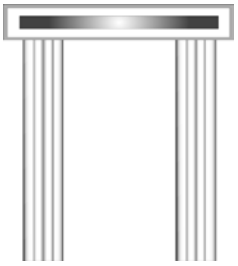
The British Bill of Rights: Protecting Freedom under the Law
Jonathan Fisher

What's the Point of the Human Rights Act: The Common Law, the Convention and the English Constitution
Dinah Rose QC

The UK Government Spending Ratio: Back to the 1930s?
David Smith

Magistrates Work! Restoring Local Justice
Stanley Brodie QC, John Howson, Simon Reevell

Working Systems: Towards Safer NHS Nursing
Tony Hockley and Sean Boyle



As the negotiations for Britain's withdrawal from the EU begin, global financial services participants in the UK and the EU share many common concerns. They want to avoid structural disruption and regulatory risk across the sector. For EU businesses, continued access to London's liquidity and global links is vital. They wish to preserve broad and stable access to the unrivalled depth of the City of London's financial markets, the breath of services, counterparties, clients and infrastructure. UK based institutions, meanwhile, are concerned to maintain today's levels of market access to EU based clients.

In his previous publication, "*A Blueprint for Brexit: The Future of Global Financial Services and Markets in the UK*", Barnabas Reynolds presented two options for the future of the financial services sector post-Brexit: an "Enhanced Equivalence" model, and a "Financial Centre" model. In this new book, Reynolds demonstrates what the Enhanced Equivalence model looks like in practice. This detailed analysis not only explores how the Enhanced Equivalence model can provide a mutually beneficial result for financial services and markets, but also provides draft legislation and agreements – including a draft EU Regulation, UK implementing measures and an EU-UK bilateral agreement – showing what would be required to enhance the current equivalence arrangements appropriately.

The proposals set out in this publication would provide a stable basis for UK-EU financial sector trade to mutual advantage. It would preserve each jurisdiction's autonomy and allow both the EU and the UK to respond more dynamically to developments as they occur. It would avoid unnecessary operational restructuring and business costs and enhance systemic risk protection, which is a factor critical for the wider economy.

Properly implemented, the legal framework outlined here would enable the UK and the EU to continue their current levels of cooperation, develop a pan-European regulatory framework and collaborate as they have done successfully for years, to mutual gain. It would for both parties be a 'win-win' deal.

POLITEIA