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COMMISSION STAFF WORKING DOCUMENT

EU equivalence decisions in financial services policy: an assessment

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List of abbreviations

AIFMD	Alternative investment fund managers Directive
CCP	Central clearing counterparty
CRA	Credit Rating Agency
CFTC	Commodities Futures Trading Commission
CRD/R	Capital Requirements Directive/Regulation
CSD	Central Securities Depository
EBA	European Banking Authority
EIOPA	European Investment and Occupational Pensions Authority
EMIR	European Market Structure Regulation
ESA	European Supervisory Authority
ESMA	European Securities and Markets Authority
FICOD	Financial Conglomerates Directive
IOSCO	International Organization of Securities Commissions
MAR	Market Abuse Directive
MiFID/R	Markets in Financial Instruments Directive/Regulation
SFTR	Securities Financing Transactions Regulation
Solvency 2	Directive on the taking up and the pursuit of the business of insurance and reinsurance
UCITS	Undertakings in Collective Investments in Transferable Securities

1. Introduction

Appropriately regulating and supervising financial activities in a cross-border context has been an important challenge for the European Union since 2009, when the EU financial system was significantly impacted by the global financial crisis. Exposure to risks emanating from foreign jurisdictions was one of the vulnerabilities affecting financial systems in the EU and globally because of the interconnectedness of financial markets worldwide. In 2009, the European Council set out political guidance to improve the regulation and supervision of financial markets in the EU[1]. Also in 2009[2], the G20 launched a financial reform agenda – a set of commitments for the world's major economies to overhaul their financial systems, promote financial stability and improve global resilience to internal and external shocks.

The financial crisis triggered the adoption of more than 40 new pieces of EU legislation to restore financial stability and market confidence. Some 15 acts[3] contain "third-country provisions" that empower the Commission with involvement of other institutions to decide on the equivalence of foreign rules and supervision for EU regulatory purposes. The implementation of these provisions involves in many cases an outcomes-based process. It is the equivalence of regulatory and supervisory results that is being assessed, not a word-for-word sameness of legal texts. In general, these last seven years, the EU has carried out significant work on equivalence, also reflecting the interest in facilitating cross-border regulation and provision of financial services.

Internationally, the EU equivalence framework is regarded as one of the most advanced and most used frameworks to defer to the systems and rules of other jurisdictions, a number of whom also have developed third-country regimes. The EU drove efforts to reach a G20 commitment in this area at the St Petersburg summit of September 2013, and has consistently been pushing for deference mechanisms in the implementation of international standards. In 2015, one of the standard-setting bodies, IOSCO[4], drew up a report on cross-border regulation– with the finding that on a global scale, jurisdictions are engaging bilaterally more than ever before "*via different forms of recognition to solve regulatory overlaps, gaps, and inconsistencies*." A possible equivalence finding by the EU is one of the major incentives for third-country regulators to enhance supervisory co-operation and to seek closer regulatory convergence with the EU.

The purpose of this Staff Working Document is to provide a factual overview of third-country provisions in EU financial services legislation. It examines the current legal framework and interactions with supervisory work within the EU and with international counterparts. It explains the process that culminates in a determination, by the Commission, of the

[1] Presidency Conclusions, European Council, 18/19 June 2009.
[2] Leaders' statement, Pittsburgh summit, 24-25 September 2009.
[3] See http://ec.europa.eu/finance/general-policy/docs/global/equivalence-table_en.pdf
[4] International Organisation of Securities Commissions Task force on Cross-Border Regulation, Final Report, .17 September 2015.

equivalence of third-country rules and supervisory systems. Lastly, it takes stock of the Commission's experience with the equivalence framework.

2. The Purpose of Equivalence

2.1 Objectives and benefits of equivalence

Equivalence decisions are a core element of the Commission's international strategy for financial services. They support the fulfilment of the following general objectives:

- they balance the needs of **financial stability** and **investor protection in the EU on the one hand with the benefits of maintaining an open and globally integrated EU financial markets on the other**;
- they are pivotal to promoting **regulatory convergence around international standards** and they are a major trigger for **establishing or upgrading supervisory co-operation** with the relevant third-country partners.

Equivalence is not a vehicle for liberalising international trade in financial services, but a key instrument to effectively manage cross-border activity of market players in a sound and secure prudential environment with third-country jurisdictions that adhere to, implement and enforce rigorously the same high standards of prudential rules as the EU.

Whenever the Commission determines by way of an equivalence decision that a foreign regulatory, supervisory and enforcement regime is equivalent to the corresponding EU framework, that recognition, in turn, usually makes it possible for authorities in the EU to rely on supervised entities' compliance with the equivalent foreign framework. Benefits accrue to both the EU and third-country financial markets.

An equivalence determination should achieve some or all of the following:

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

- 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,

- 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.

Equivalence decisions primarily benefit EU market participants, in particular where equivalence concerns the treatment of non-EU exposures or cross-border activities are also subject to third-country rules and supervision (e.g. equivalence under CRR or Solvency 2). 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 have a wider range of services and transaction choices that would be compliant with EU regulatory purposes. Equivalence decisions in a few areas may enhance the possibilities of doing business in the EU (e.g. investment firms under MiFID II), but the equivalence as such serves primarily prudential regulatory purposes and is a tool to reduce overlaps in compliance in the interest of EU markets.

2.2 Alternative regulatory approaches

Equivalence is not the only model that exists worldwide for dealing with cross-border regulatory interactions. Other approaches include:

- **National treatment**[5] – Foreign persons, entities, and products are generally treated in the same manner as domestic ones, and regardless of the foreign regulatory regime they should comply with the same requirements as imposed on domestic operators. As a result, there is no need for the domestic regulator to develop a detailed understanding of foreign regulatory regimes. This is for example the approach of the US.[6]

- **Exemptions** – Some other countries, like Japan or Switzerland, focus on selected regulatory aspects of cross-border activity of foreign firms. Some of these jurisdictions leave considerable discretion to supervisors and are in position to apply broad exemptions.

- **Passporting** – This is a system based on a single authorisation/registration which allows for the provision of services within the area under the supervision of a single ("home") authority. However, passporting may require an international treaty or similar legal instrument, including an agreement on a common set of rules which permits market access. This approach is pursued for example under the Asia Region Funds Passport initiative.

- **International agreements** – These involve mutual commitments of two or more jurisdictions to reduce overlaps and enhance regulatory and supervisory reliance. This approach has been followed in the case of the EU-Switzerland Non-Life Insurance Agreement and the recently concluded EU-US Covered Agreement on Insurance and Re-insurance.

Overall, equivalence is a relatively effective approach, also compared with the practices of many third countries because it balances an outward-looking attitude, open to substituting for third-country rules and supervision, with a continued interest in a robust regulatory outcome. In a context where key elements of the EU regulatory framework are based on global

[5] Term used in the IOSCO Report of 2015. Its meaning in this context should not be confused with the more specific meaning under international trade law.
[6] In some cases US agencies are able to offer "substituted compliance".

standards, equivalence is a particularly appropriate tool to foster mutual reliance and recognise reforms and systems as comparable between jurisdictions.

This is not to say that equivalence may be fit for every purpose: it is of limited use where regulatory and supervisory frameworks of third countries do not exist or are less effective than in the EU, or where the regulatory outcomes of corresponding regimes are markedly different.

3. How EU Equivalence Works

3.1 What do EU financial services acts say about equivalence?

Recognition and reliance possibilities are set out in third-country equivalence provisions **in many EU financial services acts**. Equivalence provisions are **tailored to the needs of each specific act** and they should be read in the light of the objectives pursued by that act, in particular its contribution to the establishment and functioning of the internal market, market integrity, investor protection and ultimately, but no less importantly, financial stability. The legal acts set out the conditions, criteria and extent to which the EU may take into account the regulatory and supervisory framework of a third country when regulating and supervising EU financial markets in situations involving a cross-border element. Typically, equivalence provisions require verification by means of an assessment that a third-country framework demonstrates equivalence with the EU regime in some or all of the following aspects, depending on the actual scope of the equivalence provision under consideration:

- the comparable requirements being assessed are legally binding,
- they are subject to effective supervision for compliance and enforcement by domestic authorities,
- they achieve the same results as the corresponding EU legal provisions and supervision.

Additionally, sometimes the existence in third-country supervisory systems of provisions to protect professional secrecy and to enforce effective anti-money laundering regimes can be taken into account. In some instances there is also a requirement that the third-country tax system is in line with OECD tax standards. Some equivalence provisions also require a third-country to provide for an effective equivalent system for the recognition of third-country rules or entities authorised under third-country rules *(e.g.* the equivalence of central counterparties[7]) or require the Commission to take into consideration whether EU entities encounter difficulties when seeking establishment in third countries (e.g. Alternative Investment Funds Manager Directive).

In this context, it should be noted that while equivalence provisions set the criteria on the basis of which the underlying assessments should be performed, the same provisions also confer to the Commission discretion whether to grant equivalence or not.

[7] Article 25.6 of EMIR (Regulation (EU) No 648/2012 on over-the-counter derivatives, central counterparties and trade repositories).

Annex 1 provides an overview of existing equivalence provisions and the countries found equivalent on their basis.

It should also be noted that a number of EU acts do not include equivalence provisions or other third-country measures. This is the case for instance for rules on financial products like Undertakings for Collective Investments in Transferable Securities (UCITS). There are no equivalence provisions in the payments area either. In the Bank Recovery and Resolution Directive, there are no equivalence provisions, but there is a provision on 'agreements with third countries' that may be concluded by resolution authorities.

3.2 How is equivalence determined?

Assessments of equivalence are performed by the Commission, sometimes, on the basis of technical advice from European supervisory agencies (EBA, ESMA or EIOPA – see Art 33 (2) of the ESAs regulations[8]), related activities or reports of international organisations or input of other public bodies or stakeholder organisations. The assessments typically involve an intensive dialogue with the competent authorities of the third country whose framework is being assessed. The assessment provides the necessary technical grounds on which the Commission may pursue its decision-making on equivalence. Third countries may express an interest in being assessed which the Commission will duly consider. However, equivalence empowerments do not confer a right on third countries to be assessed or receive a positive determination, when the latter consider that the relevant criteria are fulfilled in their case. The decision is a unilateral and discretionary act of the EU, both for its adoption and any possible amendment or repeal.

Typically, a Commission equivalence decision takes the form of an implementing act which can be adopted only after confirmation by representatives appointed by the Member States in a vote of a regulatory committee. While the European Parliament does not have a formal role in the adoption of equivalence decisions, its observers are invited to all meetings of the Regulatory Committee, which examines the Commission draft decisions on equivalence.

The principle of **proportionality** and a **risk-based approach** guide the Commission in the assessment process. At an early stage in each assessment, the Commission identifies risks to the EU financial system which may be arising as a result of an increased exposure to a specific third-country framework. It then specifically addresses those risks when verifying third countries' compliance with the equivalence criteria. In that way, it applies the criteria in a way which is proportionate to the risks identified. Those risks to the EU financial system are the primary focus of such assessment, but other aspects may need to be taken into consideration in accordance with the relevant EU legislation. When establishing whether equivalence is attained by a third country's framework the Commission may look beyond the specific technical solutions envisaged and focus on the regulatory objectives pursued and the outcomes delivered by that framework. All these elements amount to a step-wise process whose outcome is not necessarily or automatically positive for the jurisdiction assessed.

[8] Regulations (EU) 1093/2010 (EBA), 1094/2010 (EIOPA) and 1095/2010 (ESMA).

A formal determination of equivalence can be made only once the assessment is complete and all the criteria laid down in the provisions authorising the granting of equivalence are considered to be fulfilled. The decision may stipulate whether it is granted in full or in part, and for an indefinite[9] or time-bound duration. Sometimes, equivalence decisions may apply to the entire framework of a third country for specific covered entities, products or services, to some of its competent authorities only or to some entities only (*e.g.* regulated markets). As a unilateral and discretionary EU act, an equivalence decision may be changed or even withdrawn by the EU, as necessary, at any moment. Depending on the circumstances, such decision can take effect after a possible transition period, applicable to the full decision or to its part. Equivalence could be restored at some subsequent time if and when all necessary conditions were met.

Some of the equivalence decisions may be subject to specific conditions being satisfied if this is necessary to meet the criteria for an equivalence finding or to address specific risks arising in a third country. For example, a recent equivalence decision in the area of central counterparties for the US Commodities and Future Trading Commission regime includes conditions concerning specific risk management measures on initial margins' calculation and collection and on financial resources that need to be satisfied in the internal rules and procedures of US systemically important derivatives clearing organisations and opt-in derivatives clearing organisations.[10]

In addition, the use of transitional or time-bound equivalence determinations allows the EU and the jurisdiction concerned to gain some experience with mutually reliant systems for a particular aspect of financial services (e.g. statutory audits). If further progress is made, the Commission may decide at a later stage to come to a full and permanent equivalence finding for the jurisdiction concerned. Conversely, if risks increase, the Commission may decide to review the assessment and adopt a new decision possibly with a more stringent approach.

When taking a decision on equivalence, the Commission ultimately exercises its **discretion** as conferred upon it by the relevant empowerment. In exercising that discretion, it takes into account objectives stemming from the empowering legislation and from the Treaty. These objectives may include in particular promoting the internal market for financial services and protecting financial stability or market integrity within the internal market. These objectives are considered in view of the factual and legal circumstances of each case. In this context, factors such as the size of the relevant market, the importance for the functioning of the internal market, the interconnectedness between the markets of the third country and the EU, or the risks of circumvention of EU rules may play a role. The Commission also needs to factor in wider external policy priorities and concernsin particular with respect to the promotion of common values and shared regulatory objectives at international level. All these

[9] Equivalence decisions for an indefinite duration can also be withdrawn if the third-country system no longer meets the conditions for equivalence.

[10] See Art. 1 of Commission Implementing Decision (EU) 2016/377 of 15 March 2016 on the equivalence of the regulatory framework of the United States of America for central counterparties that are authorised and supervised by the Commodity Futures Trading Commission to the requirements of Regulation (EU) No 648/2012 of the European Parliament and of the Council.

factors are indicative of the amount of risk to the financial stability or the need for adequate protection of financial market participants and other persons in the EU.

In certain cases (e.g. for CCPs, CSDs) equivalence decisions alone will not be sufficient to deliver the benefits of a positive equivalence finding to a third-country operator. They will need to be complemented by follow-up actions at supervisory level (recognition, registration etc.). In these cases, EU supervisors, on the basis of a more general finding, are in a position to decide on the specific cases of individual entities.

As a result, there can be considerable differences in how the equivalence mechanisms are construed and embedded in the EU financial services law. Those differences may concern *inter alia* the following elements:

Process

- involvement/role of the ESAs in the equivalence assessment;
- in few cases, involvement of Member State authorities in the equivalence assessment.

Criteria for assessing equivalence

- types of criteria used (equivalent legal framework, effective supervision and enforcement, supervisory co-operation arrangements in place, other specific equivalence conditions etc.);
- reference to international standards;
- requirement for corresponding recognition/equivalence possibilities in a third country;
- principle of proportionality;
- tax and anti-money laundering considerations as part of the assessment.

Follow-up/implementation

- possibility to grant less advanced/transitional equivalence status;
- supervisory action necessary to enable the use of equivalence benefits;
- monitoring/review process envisaged after a decision has been taken;
- possibility to withdraw, as necessary, at any moment the equivalence decisions

4. Taking stock of Commission's experience with equivalence

Currently, assessments of equivalence of foreign rules and supervision for EU regulatory purposes are envisaged in some 15 EU acts. **Empowerments have already been used** for CRD4/CRR, Solvency II, MAR, EMIR, accounting standards, statutory audit and credit rating agencies. The Commission has adopted **212 equivalence** decisions and a total of **32 jurisdictions** have been positively assessed for at least one area. Japan has had most

equivalence findings with 17 positive determinations, followed closely by the US and Canada, each having 16 equivalence decisions. They are followed by Australia (13), Brazil (12) and Singapore (11). For **several areas**, like CRD4/CRR, Solvency 2, statutory audits and credit rating agencies, most of the equivalence determinations planned have been completed. In a few areas, like MiFID II, Benchmarks and CSDR, the relevant empowerments have not been exercised until now.

Overall experience with equivalence as a mechanism to deal with cross-border regulatory issues may be considered as broadly satisfactory. Nevertheless, a few areas may require increased attention in its continued use by the EU.

First, while EU equivalence in the financial services area is based on a rigorous examination of third countries' regulatory frameworks to ensure fair treatment of third countries, significant attention is also paid to the fact that foreign jurisdictions and markets assessed for equivalence purposes have very diverse structures, specificities and track records of supervision and enforcement practices. As a result, the importance to financial stability, integrity of the financial markets or the level playing field can be very different on a case-by-case basis. The Commission addresses this diversity of cases each time through a careful initial identification and consideration of the risks involved. As explained, this involves a **risk-based approach** to assessments and **proportionality** in the application of the equivalence criteria, which should be pursued and applied according to the specific features of each individual case.

Crucially, the jurisdictions under review may involve markedly different risk exposures for EU financial markets, depending among other things, on the interconnectedness of the assessed market with the EU financial markets and thus also the market share of the relevant third country. As a result, the relevance an equivalence decision can have for the establishment and functioning of the internal market, financial stability or market integrity on the EU markets varies significantly. The Commission's focus on risks in this process implies that, as a rule, "high-impact" third countries for which an equivalence decision may be used intensively by market operators and any shortcomings in the analysis underpinning the decision may significantly jeopardise financial stability or market integrity in the EU will feature a higher number of risks which the Commission will need to address in its assessment of the equivalence criteria and in the exercise of its discretion. In some cases (namely, for EMIR CCPs equivalence decisions), the challenge to cater for these different situations has been mitigated to a certain extent by introducing specific thresholds, which would justify more proportionate treatment of some "lower impact" jurisdictions.

Second, the existing equivalence provisions, developed individually for each specific act, are not always coherent as to the need to assess **both the regulatory and the supervisory framework** to the same degree. They also do not currently offer a coherent answer as to what **the role of the ESAs** should be in the equivalence assessments. At the same time, the ESA Regulations provide for specific responsibilities of the ESAs in this field: *The Authority shall assist in preparing equivalence decisions pertaining to supervisory regimes in third countries*

in accordance with the acts referred to in Article 1(2).[11] It may be appropriate to distinguish more clearly between the assistance provided for the initial equivalence assessment of a third country's regulatory and supervisory framework on the one hand, and the necessary continuous follow-up monitoring and implementation work on the other hand. Monitoring and implementation may then be performed by the ESAs, as discussed below.

Third, the more recent approach of integrating into equivalence the **monitoring and enforcement of third countries' on-going compliance** with the equivalence criteria set out in the relevant EU legislation and the equivalence decisions has proven appropriate, especially as the number of equivalence decisions increases. Equivalence decisions taken since late 2014 (*e.g.* under CRD4/CRR[12], EMIR, Solvency II Directive) include an explicit reference to reviews of the regulatory framework that may be undertaken in accordance with a planned schedule or on an *ad hoc* basis. This reference provides a useful clarification that the Commission has the right to adjust, including through the termination of equivalence,[13] to any contrary developments in jurisdictions whose relevant rules and supervision were previously found to be in line with EU equivalence requirements. This approach is crucial to ensure that the equivalence granted by the EU sets sufficiently robust prerequisites for a given third country's supervision system and related enforcement (including enhanced supervisory co-operation with supervisors in the EU enabling e.g. their on-site inspections and effective access to data in the third country) and allows to check that the supervisory practices give indeed full effect to the regulatory framework. Furthermore, monitoring should concern not only legal requirements or supervision, but also relevant market developments. For example, a significant increase in the exposure of EU markets to an equivalent third country in the relevant sector would normally imply a need for a renewed assessment by the Commission. The **ESAs** are well placed, in line with their mandate, to engage in specific monitoring tasks pertaining to their area of activity (regulatory developments in a third country and its supervisory record, co-operation between supervisors in the EU and their foreign counterparts).

Finally, calls for greater **transparency, predictability and consistency** in the equivalence processes have in the past been voiced by some third countries and financial industry stakeholders.[14] These comments suggest that the EU should do more to help them understand and support our equivalence assessment processes. There is a variety of equivalence provisions in EU financial services regulation. Each provision tends to follow the logic of the legal act it belongs to, presenting challenges to third-country authorities who may wish to seek commonality with EU equivalence procedures under different pieces of EU legislation. An additional challenge for international counterparts is to understand their role in the equivalence assessment.

[11] Art. 33(2) ESA Regulation.

[12] The Capital Requirements Directive (2013/36/EU) and the Capital Requirements Regulation (575/2013).

[13] For example, Recital 6 of the Commission Implementing Decision (EU) 2016/1223 recognising the auditing systems and entities of a number of third countries as equivalent.

[14] *e.g.* in the context of the Call for Evidence exercise of 2016.

Over time, and in a bid to improve visibility and understanding, the Commission has increased availability of information regarding the EU equivalence work on its website. In addition to the customary requests for input and replies to equivalence questionnaires, the Commission services also provide *ad hoc* guidance to third-country authorities. For those third-country jurisdictions involved in regulatory dialogues with the EU[15], these fora provide an opportunity to discuss difficulties and further improve understanding. The Commission services now routinely provide third countries with more extensive and standardised information at the outset of the equivalence assessment. That information includes a description of the process, indicative timelines, and an explanation how third country authorities may contribute to the process. The Commission services also use regional fora such as IOSCO's Asia Pacific Regional Committee to reach out to more remote partners. In parallel, the Commission services provide information to general stakeholders through public conferences, joint statements released after regulatory dialogues and a public web page[16] providing an overview of the Commission's equivalence work.

5. Conclusion

Equivalence determinations are an essential part of the EU regulatory toolkit for financial services. They underpin the international activities of EU financial intermediaries and allow in some cases non-EU intermediaries to operate in the EU. They also facilitate cross-border regulation and supervision. The careful risk calibration behind the approach also fosters competition and efficiency in EU markets through proportionate equivalence assessments focussing on risks and proper enforcement arrangements.

This Staff Working Document sets out the experience gained with the implementation and enforcement of third-country provisions in EU post-crisis financial legislation. It should facilitate understanding of the principles underpinning the equivalence framework, and highlight that continuous work is necessary to enhance the overall framework in the interest of better effectiveness. Ultimately, the reduction of regulatory gaps and overlaps with non-EU jurisdictions is beneficial also to the wider EU economy and is an important catalyst of jobs and growth.

* * *

[15] U.S., Japan, China, Switzerland and South-East Asian countries.

[16] https://ec.europa.eu/info/business-economy-euro/banking-and-finance/international-relations/recognition-non-eu-financial-frameworks-equivalence-decisions_en

Annex 1

An overview of existing third-country regimes

1. **Prospectus**

Prospectuses prepared according to rules of an equivalent third country may be used in public offers in the EU.
Countries covered: none yet.

2. **Transparency**

Non-EU firms subject to EU rules on transparency may be allowed to fulfil those obligations in accordance with third-country equivalent disclosure standards.
Countries covered: none yet.

3. **Accounting standards**

Non-EU firms subject to EU rules on transparency and prospectuses may be allowed to present their consolidated financial statements in accordance with their own equivalent accounting standards.
Countries covered: Canada, China, Japan, South Korea and the US.

4. **Country-by-country reporting for extractive and logging industries**

As regards operations subject to equivalent reporting requirements, EU extractive and logging industries may report all or part of their payments to governments in accordance with the relevant equivalent third-country reporting requirements.
Countries covered: Canada.

5. **Credit Rating Agencies – CRAs**

CRAs authorised, registered and supervised in accordance with equivalent rules of a third country may be certified in the EU and their ratings (related to entities established, or financial instruments issued, in third countries) may be used in the EU, provided in particular the credit ratings issued by the CRA and its credit rating activities are not of systemic importance to the financial stability or integrity of the financial markets of one or more Member States.
Countries covered: Argentina, Australia, Brazil, Canada, Hong-Kong, Japan, Mexico, Singapore, US.

6. **Financial benchmarks**

Benchmark or a combination of benchmarks from a third-country administrator can be used in the Union provided that the administrator is on a specific EU register, which is possible after a positive decision on equivalence of the legal framework and supervisory practice of a third country has been taken by the Commission.

Third-country benchmarks can be also used by supervised entities located in the Union when NCAs grant recognition to administrators on the basis of them applying the IOSCO benchmark principles in a way that is equivalent to the compliance with the relevant provisions of the Benchmarks Regulation. For the endorsement NCAs have to ensure that benchmarks to be endorsed fulfil requirements which are at least as stringent as the requirements of the Benchmarks Regulation.
Countries covered: none.

7. Audit

Equivalence: On the basis of an equivalence Decision, the competent authorities of EU Member States may decide to exempt the respective third-country auditors and audit firms partially or entirely from EU rules on registration and oversight if they are subject to an oversight system that operates under similar rules (this helps avoid duplication of auditor supervision and can facilitate the cross-border listing).
Countries covered: Abu Dhabi, Australia, Brazil, Canada, China, Dubai International Financial Centre, Guernsey, Indonesia, Isle of Man, Japan, Jersey, Mauritius, New Zealand, South Korea, Malaysia, Singapore, South Africa, Switzerland, Thailand, Taiwan, Turkey, US (renewal for further 6 years until 31 July 2022).
Countries in transitional period: Bermuda, Cayman Islands, Egypt, Russia (4).

Adequacy: On the basis of an adequacy decision, EU competent authorities may decide to establish working arrangements with their third-country counterparts to exchange with them audit working papers or other confidential audit related documents (held by the auditors or audit firms that they have approved), as well as inspection or investigation reports relating to the audits in question.
Countries covered: Australia, Brazil, Canada, Dubai International Financial Centre, Guernsey, Indonesia (limited until 31 July 2019), Isle of Man, Japan, Jersey, Malaysia, South Africa (limited until 31 July 2019), South Korea, Switzerland, Taiwan, Thailand and US (renewal for further 6 years until 31 July 2022).

8. EMIR

➢ Central counterparties

A CCP established in an equivalent third country may provide clearing services to clearing members or trading venues established in the Union and can be used to fulfil the EMIR 'clearing obligation'.
Countries covered: Australia, Brazil, Canada, Dubai International Finance Centre (DIFC), Hong-Kong, India, Japan (commodities, financial derivatives), New Zealand, South Korea, Mexico, Singapore, South Africa, Switzerland, UAE, US (CFTC).

➢ Regulated markets

Derivatives traded on foreign markets found to be equivalent to EU regulated markets avoid their instruments being designated as 'OTC derivatives' (considered higher-risk and more expensive).
Countries covered: Japan; Australia; Canada; Singapore, US.

➢ Transaction requirements

Counterparties, one of which is established in an equivalent third country, may avoid potentially duplicative or conflicting requirements when entering into a transaction, as EMIR transaction obligations may be deemed to be fulfilled.
Countries covered: none.

➢ Trade repositories

A trade repository established in an equivalent third country may be recognised in the EU and then provide its services and activities to entities established in the Union for EMIR reporting purposes.
Countries covered: none.

- **Central banks and public bodies**

Third-country central banks bodies may be exempt from certain EMIR requirements.
Countries covered: US, Japan.

9. CSDR

A central securities depository established in an equivalent third country may be recognised in the EU and then provide services within the territory of the Union, including through setting up a branch.
Countries covered: none.

10. SFTR (transparency of securities financing transactions)

- **Central banks and public bodies**

Third-country central banks and public debt management bodies may be exempt from certain requirements on transparency of securities financing transactions.
Countries covered: none.

- **Trade repositories**

A trade repository established in an equivalent third country may be recognised in the EU and then provide its services and activities to entities established in the Union for SFT reporting purposes.
Countries covered: none.

- **Reporting requirements**

Counterparties, one of which is established in an equivalent third country may be deemed to have fulfilled SFTR's requirements if they have complied with the relevant obligations of that third country.
Countries covered: none.

11. Short selling

Third-country markets may use the exemption for market making activities envisaged under EU short selling rules.
Countries covered: none.

12. AIFMD

The passport enabling AIFMs to manage and market funds to professional investors throughout the EU may be extended to funds and managers established in third countries. The passport will offer third countries managers and funds a single gateway to the entire EU market.

Countries covered: none.

13. MIFID/MIFIR

- **Trading venues – trading obligation**

Trading venues from an equivalent third country may be used for the purposes of fulfilling the MiFIR trading obligation for shares and derivatives.
Countries covered: none.

- **Derivatives**

Counterparties entering into a derivatives transaction may be deemed to have fulfilled MiFIR's trade execution and clearing obligation requirements if they have complied with equivalent obligations in a third country.
Countries covered: none.

- **Trading venues and CCPs–access**

Trading venues and CCPs from an equivalent third country may request access to an EU-regulated CCP and a trading venue respectively in line with the rights established under MiFIR. They may also request non-discriminatory access to benchmarks and licences.
Countries covered: none.

- **Investment firms**

Such firms authorised in an equivalent third country may provide services to EU professional clients and eligible counterparties under an EU-wide passporting regime.
Countries covered: none.

- **Regulated markets for the purposes of easier distribution in the EU of certain financial instruments traded there: Art. 25(4)**

Countries covered: none.

- **Central banks**

Third-country central banks may be exempt from certain MiFIR requirements.
Countries covered: none.

14. MAR

- **Central banks and public bodies**

Third-country central banks and other public bodies may be exempt from certain MAR requirements.
Countries covered: Australia, Brazil, Canada, China, Hong-Kong, India, Japan, Korea, Mexico, N. Zealand, Singapore, South Africa, Switzerland, UEA, US.

15. CRR/CRD/FICOD

- **Exposures for the purpose of capital requirements (CRR: Articles 107, 114, 115, 116, 132, 142)**

Certain categories of banks' exposures to entities located in third countries (including central governments) can be subject to a more appropriate, and typically more favourable prudential treatment. These entities include credit institutions, investment firms, exchanges, CIUs, central banks, local authorities and the public sector), and may be subject to the same risk weights as those that apply to exposures to equivalent entities in the EU.

Countries covered (all categories combined): Australia, Brazil, Canada, China, Faroe Islands, Greenland, Guernsey, Hong-Kong, India, Indonesia, Isle of Man, Japan, Jersey, Korea, Mexico, Monaco, New Zealand, Saudi Arabia, Singapore, South Africa, Switzerland, Turkey, the US.

- **Consolidated supervision (CRD: Article 127 + supplementary supervision FICOD article 18)**

Where an institution, the parent undertaking of which is an institution or a financial holding company or mixed financial holding company, the head office of which is in a third country, is not subject to consolidated supervision, the competent authorities shall assess whether the institution is subject to consolidated supervision by a third-country supervisory authority which is equivalent to that governed by the principles set out in CRDIV. The Commission may request the European Banking Committee to give general guidance as to whether the consolidated supervision arrangements of supervisory authorities in third countries are likely to achieve the objectives of consolidated supervision, in relation to institutions the parent undertaking of which has its head office in a third country.
Countries covered: None.

- **Confidentiality regimes (Article 116)**

In view of the participation of third countries' supervisory authorities in EU colleges of supervisors the EBA has assessed confidentiality regimes of third countries with respect to Article 116 (6) CRDIV and recommended to consider them equivalent.
Countries covered (equivalent regimes) - Albania, Australia, Bosnia and Herzegovina, Brazil, Canada, China, FYR Macedonia, Hong Kong, Japan, Mexico, Montenegro, Serbia, Singapore, Switzerland, Turkey, and the US.

16. Solvency II

- **Third-country reinsurers**

Reinsurance contracts concluded with reinsurers from equivalent third countries may be treated in the same manner as contracts concluded with EEA reinsurers (no collateral requirements).
Countries covered: Bermuda, Japan, Switzerland.

- **EEA subsidiaries in third countries**

EEA groups may use the local rules of an equivalent third country relating to capital (own funds) and capital requirements, rather than the Solvency II rules.
Countries covered: Australia, Bermuda, Brazil, Canada, Japan, Mexico, Switzerland, US.

- **Third-country group supervision**

If a (re)insurer headquartered within in an equivalent third country has participations or subsidiaries located within the EEA, the EEA supervisory authorities will rely on the group supervision exercised by the third country.
Countries covered: Bermuda, Switzerland.