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The UK's Potential Withdrawal from the EU and Single Market Access under EU Financial Services Legislation

In-Depth Analysis for the ECON Committe

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The UK's Potential Withdrawal from the EU and Single Market Access under EU Financial Services Legislation

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IN-DEPTH ANALSYSIS

Abstract

In the aftermath of the UK's vote to leave the EU, securing continued access to each other's markets will be one of the key issues to be addressed in the exit negotiations. This paper examines how the current EU financial services legislation ensures or facilitates access to the EU single financial market for EU/EEA Member States and third countries. The analysis focuses on passporting/mutual recognition regimes for EU/EEA Member States and third country equivalence regimes.

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AUTHOR

Prof. dr. Olha O. CHEREDNYCHENKO, Groningen Centre for European Financial Services Law (GCEFSL), University of Groningen

RESPONSIBLE ADMINISTRATOR

Stephanie HONNEFELDER

EDITORIAL ASSISTANT

Alina STOIAN

LINGUISTIC VERSIONS

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To contact Policy Department A or to subscribe to its newsletter please write to:
Policy Department A: Economic and Scientific Policy
European Parliament
B-1047 Brussels
E-mail: Poldep-Economy-Science@ep.europa.eu

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LIST OF ABBREVIATIONS

AIF	Alternative investment fund
AIFM	Alternative investment fund manager
AIFMD	Alternative Investment Fund Managers Directive
BRRD	Bank Recovery and Resolution Directive
CCP	Central counterparty
CFTC	Commodities and Futures Trading Commission (US)
CIWUD	Credit Institutions Winding Up Directive
CRA	Credit Rating Agency Regulation
CRD IV	Capital Requirements Directive IV
CSD	Central securities depository
CSDR	Central Securities Depositaries Regulation
EEA	European Economic Area
ELTIF	European long term investment fund
EMD	Electronic Money Directive
EMIR	European Market Infrastructure Regulation
EPC	European Payments Council
ESA	European Supervisory Authority
ESMA	European Securities and Markets Authority
EU	European Union
EuSEF	European social enterpreneurship fund
EuVECA	European venture vapital fund
FCA	Financial Conduct Authority (UK)
IDD	Insurance Distribution Directive
IMD	Insurance Mediation Directive

MCD	Mortgage Credit Directive
MiFID	Markets in Financial Instruments Directive
MiFID II	Markets in Financial Instruments Directive II
MiFIR	Markets in Financial Instruments Regulation
MMF	Money market fund
MTF	Multilateral trading facility
OTC	Over-the-counter
PRA	Prudential Regulation Authority (UK)
PSD	Payment Services Directive
PSD II	Payment Services Directive II
SEPA	Single Euro Payments Area
SFD	Settlement Finality Directive
SME	Small and medium-sized enterprises
TFEU	Treaty on the Functioning of the EU
UCITS	Undertakings for collective investment in transferable securities
UK	United Kingdom

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EXECUTIVE SUMMARY

In the wake of the UK's vote to leave the EU, **ensuring continued access to each other's markets** will be one of the key issues to be addressed in the upcoming exit negotiations. This issue is particularly significant for the **financial services sector**. Securing access to the single market in financial services and the enjoyment of related benefits for UK-based financial institutions - and vice versa in the UK for EU based financial institutions - upon the UK's withdrawal from the EU would require the adoption of an alternative framework for future co-operation between the UK and the EU. Under the current EU financial services legislation, the extent to which UK firms may have access to the single market in the future will generally depend on whether the UK will join the EEA or become a third country outside the EU/EEA.

In this context, this paper explores how EU financial services legislation ensures or facilitates access to the EU single market in financial services for EU/EEA Member States and third countries. The analysis has focused on the provisions concerning **passporting rights and/or mutual recognition**, on the one hand, and, if applicable, **corresponding third country (equivalence) regimes**, on the other. The **aim** of this legal assessment has been to provide a general overview of the most important rules in major areas of financial services (such as banking, payments, capital markets, insurance and financial market infrastructure) and to compare related regimes for EU/EEA Members with those for third countries in terms of the level of market access.

The **key findings** of the study include the following:

- The passporting and mutual recognition arrangements are generally available under EU financial services legislation across all sectors of financial services. Such regimes offer major advantages to EU/EEA financial institutions in terms of the provision of financial services directly cross-border or via a branch on the basis of a single authorisation from the home Member State. In particular, they significantly reduce the complexity and cost of cross-border business across the EU.
- There is no general single EU passport available which would cover all financial services sectors. Depending on the type of financial institution (e.g. a credit institution or an investment firm) and/or its business (e.g. payment services, investment services or insurance), a specific passport is required in order to gain access to other Member States' markets.
- The impact of the loss of the EU passporting rights and related benefits could potentially be mitigated through recourse to third country (equivalence) regimes. Such regimes generally allow third country financial institutions to have access to the EU single market in financial services or confer related benefits based on mutual recognition, provided that the respective third country regulatory and supervisory framework is considered equivalent to that of the EU.
- While the third country (equivalence) regimes currently in place open up some possibilities for third country financial institutions to provide cross-border services directly or via a branch, such regimes generally do not grant third country based firms the same level of access to the EU single market as the passporting and mutual recognition regimes secure for EU/EEA firms. In particular, the EU financial services legislation currently in place does not reveal a consistent approach to the issue of third country access to the EU single market in financial services and related equivalence regimes. Strikingly, the third country (equivalence) regimes that could allow third country financial institutions to secure access to the single market are almost non-existent in the area of banking. Such regimes also hardly cover non-

bank payment service providers. The EU financial services legislation in the areas of capital markets, insurance and market infrastructure presents a mixed picture. While certain EU measures adopted in these fields establish quite developed third country (equivalence) regimes allowing for non-EU/EEA country market access or mutual recognition, other measures contain only very brief or restricted rules to this effect. In still other cases, the issue of third country market access or mutual recognition is not addressed at all.

- In addition, compared to the passporting and mutual recognition regimes for EU/EEA Member States, third country equivalence regimes involve a high degree of uncertainty. In particular, the European Commission enjoys a high degree of discretion when making an equivalence assessment unilaterally and it may revoke its equivalence decision at any time.

INTRODUCTION

The United Kingdom's (UK) vote to leave the European Union (EU) in the referendum on 23 June 2016 raises fundamental questions concerning the future relationship between the UK and the EU. Ensuring **continued access to each other's markets** is of essence for the UK and the EU companies and will thus be one of the key issues to be addressed in the upcoming exit negotiations.

The issue of market access is of particular significance for the **financial services sector**, both in the UK and in the EU as a whole. This sector is of crucial importance for the UK economy, with financial services being one of the UK's key export industries and London being regularly rated the top global financial services centre. The success of the City as Europe's major financial hub, however, is to a significant degree the result of the functioning of the EU single market[1]. Financial markets in the UK and the rest of the EU are deeply intertwined. In particular, the EU single market enables many firms to base their capital market activities and conduct much of their EU-wide business from the UK. The UK's leading role in shaping European financial markets in turn helps to boost growth across the EU. Therefore, the implications of the UK's withdrawal from the EU for cross-border trade in financial services is a major area of concern.

At present, the UK's full access to the EU single market is **conditional upon its EU membership**. Preserving the benefits of the single market in financial services for UK-based financial institutions upon the UK's exit from the EU would require the adoption of an alternative framework for future co-operation between the UK and the EU. From the perspective of EU financial services legislation, the **alternatives fall into two main categories**:

- the UK retains full access to the EU single market in financial services based on the principle of mutual recognition and the 'single passport' if it seeks **membership of the European Economic Area (EEA)** alongside the three EEA States (Iceland, Liechtenstein and Norway);
- the UK becomes a **third country outside the EU/EEA**, in which case its access to the EU singe market will depend on specific arrangements for third countries under EU financial services legislation (in particular, third country equivalence regimes) and/or bilateral free trade agreements.

Against this background, this paper explores **how EU financial services legislation ensures or facilitates access to the EU single market in financial services for EU/EEA Member States and third countries**. The analysis includes already adopted or currently planned EU legislative acts and focuses on the provisions concerning **passporting rights and/or mutual recognition**, on the one hand, and, if applicable, **corresponding third country (equivalence) regimes**, on the other. The aim of this legal assessment is twofold:

- to provide a **general overview** of the **most important rules** allowing or facilitating market access in **major areas of financial services;** and
- to **compare** related regimes for EU/EEA Members with that for third countries in terms of the level of market access.

[1] International Monetary Fund, *Macroeconomic implications of the United Kingdom leaving the European Union*, Country Report, 2016.

It would go beyond the scope of this paper to examine all relevant passporting/mutual recognition regimes and third country (equivalence) regimes in detail or to discuss specific cases in which non-EU financial institutions may gain access to the single market under EU financial services legislation. In particular, the paper will not deal with the so-called '**reverse solicitation' exemptions** that may allow financial institutions to provide cross-border financial services to a client, without the need to obtain (prior) local authorisation in that client's Member State, in case the services are provided on the initiative of the client.

The paper consists of two main parts:

- The first part highlights **general aspects** of single market access for EU/EEA Member States and third countries under EU financial services legislation, in particular the EU passporting/mutual recognition and third country (equivalence) regimes (Chapter 1).
- The second part discusses these regimes with the focus on **five specific areas of financial services** (Chapter 2):
  - banking (including investment banking);
  - payments (with the focus on services provided by non-bank institutions);
  - capital markets (including both primary and secondary capital markets, as well as gatekeepers, in particular credit rating agencies and benchmark administrators);
  - insurance (including re-insurance); and
  - financial market infrastructure.

The sector-specific findings in Chapter 2 are presented in **Tables 1-5** accompanied by explanatory notes.

1. ACCESS TO THE SINGLE MARKET UNDER EU FINANCIAL SERVICES LEGISLATION: GENERAL ASPECTS

1.1. Passporting rights and mutual recognition within the EU/EEA

The **freedom to provide services**[2] and the **freedom of establishment**[3] are the cornerstones on which the EU single market in financial services is based. They provide the basis for market access by virtue of the prohibition they place on discriminatory and restrictive rules. While these two fundamental freedoms have existed since the foundation of the European Economic Communities (EECs) by the Treaty of Rome in 1957, the single market in financial services only became operational with the adoption of the Single European Act in 1987 and then the Maastricht Treaty in 1992. This period saw the introduction of the **passporting rights** for cross-border business and the **principle of mutual recognition** underlying them.

A single EU passport is a mechanism through which financial institutions may exercise their freedom to provide services and freedom of establishment. The passport typically enables a firm that is authorised and incorporated in one EU/EEA Member State to:

a) conduct **cross-border business** across the EU/EEA and

b) set up **branches** to conduct such business,

without the need to obtain a separate authorisation from other Member States.

Each host Member State relies on the home Member States to supervise and enforce the conditions for authorisation or approval. This unique possibility for a single point of entry into the EU single market based on a 'single passport' significantly reduces the complexity and cost of cross-border business across the EU. Besides, Member States can only impose additional regulatory requirements on entities exercising their passporting rights to a limited extent.

Cross-border financial services can be provided from one EU/EEA Member State to other EU/EEA Member States based on an '**outbound'** passport and *vice versa* based on an **'inbound'** passport. For example, an outbound passport issued by a UK competent authority (i.e. the Financial Conduct Authority (FCA) or Prudential Regulation Authority (PRA)) to a UK-based firm enables this firm to do business in one or more EU/EEA Member States. Likewise, an inbound passport issued by an EU/EEA Member State competent authority to a firm from that Member State enables it to do business in the UK or other Member States.

There is **no general single EU passport** available which would cover all kinds of financial services across all sectors. As will be discussed in more detail in Chapter 3, financial institutions need to seek specific permissions from their home Member State's competent authority to provide financial services directly cross-border or via a branch as envisaged in the relevant EU legislative act. Depending on the type of financial institution (e.g. a credit institution or an investment firm) and/or its business (e.g. payment services, investment services or insurance), a specific passport has to be obtained under each respective EU legislative act that applies to it. This also implies that many financial institutions will hold more than one passport. Furthermore, passporting procedures differ depending on which EU legislative act applies and which kind of passport is requested.

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[2] Articles 56-62 of the Treaty on the Functioning of the European Union (TFEU).

[3] Articles 49-55 TFEU.

Notable examples are the provisions on passporting embodied in the Capital Requirements Directive (CRD IV)[4], as well as the Markets in Financial Instruments Directive (MiFID) and its recast (the Markets in Financial Instruments Directive (MiFID II) and the Markets in Financial Instruments Regulation (MiFIR)). The CRD IV passport gives banks incorporated and authorised in the home Member State the right to conduct **cross-border business** or establish a **branch** in the host Member State(s) without the need to obtain another (prior) local authorisation in the host Member State(s). It covers a broad range of banking services, such as deposit-taking, payment, credit and investment services. MiFID and MiFID II/MiFIR grant similar passporting rights to investment firms with respect to investment services and activities. Both banks and investment firms can obtain the EU passport by a **simple notification** to their home Member State competent supervisory authority which is passed on to the host Member State competent supervisory authority.

A single EU passport may also take a form of a **marketing passport**. For example, having such a passport under the Alternative Investment Fund Managers Directive (AIFMD) allows managers of alternative investment funds (AIFs), such as hedge funds or private equity funds, to market EU AIFs to professional investors across the EU.

Furthermore, the principle of mutual recognition underlying the passports is also reflected in a number of legislative acts that **facilitate access** to the EU single market in financial services. For example, the Bank Recovery and Resolution Directive (BRRD), which creates a framework for the recovery and resolution of EU banks and investment firms, obliges Member States to recognise and give effect to resolution actions taken by the home Member State resolution authority in relation to an EU/EEA bank or investment firm. Similarly, under the Settlement Finality Directive (SFD) Member States must ensure that their insolvency laws do not prejudice the finality of settlement or the enforcement of collateral by settlement systems designated by them or other Member States. This provision has been seen as an important element for realising the SFD's main aim, i.e. to reduce the systemic risk associated with participation in payment and securities settlement systems, in particular the risk linked to the insolvency of a participant in such a system.

As a rule, the **EU passporting and mutual recognition arrangements are only available to EU/EEA companies and products**. This means that if the UK withdraws from the EU without securing an alternative arrangement that would guarantee its continued access to the single market, UK financial institutions would be treated as 'third country' firms and, as such, may not be able to enjoy the EU passporting rights and related benefits in terms of mutual recognition. In the absence of these rights allowing the supply of services or establishment of branches on the basis of a single authorisation, entry requirements for a UK financial institution in relation to a particular activity would have to be determined by the regulatory regime of each individual EU/EEA Member State for which the UK firm seeks market access. Likewise, unless an alternative solution is found, financial institutions from the EU Member States would no longer be able to enjoy EU passporting rights when seeking access to the UK financial services market.

Box 1: Key advantages of EU passporting/mutual recognition regimes

- Freedom to provide cross-border financial services across the EU.
- Freedom to establish branches to provide financial services across the EU.
- Single authorisation ('passport') provided by home Member State competent authority.
- Mutual recognition arrangements facilitating market access.
- Simplicity and cost-efficiency of cross-border business.

[4] For references to all EU legislative acts or proposals discussed throughout the paper, see Annex I.

The loss of the EU passporting rights and related advantages (as presented in Box 1) may have **a major impact on financial institutions in the UK and in the EU** which for many years have based their business models on such rights. For instance, UK banks would no longer be able to easily open and operate branches in other Member States. Instead, they would either need to set up one or more separately authorised and capitalised subsidiaries inside the EU or obtain local authorisation for branches (if possible) in several Member States in order to be able to continue providing financial services to their customers in other EU/EEA Member States. This would result in significant additional complexity and costs. Similarly, continental European financial institutions could lose the benefits of the robust market infrastructure and network effects of London as a global financial centre[5].

At the same, it should be noted that the implications of the UK's withdrawal from the EU and the passporting regimes which come with EU/EEA membership **will vary in their impact across different financial services sectors and activities**[6]. In particular, given that '*the Europe-wide retail markets in financial services do not really exist at present*'[7], the impact on retail banking is likely to be minimal[8]. In addition, some banking activities may not be significantly affected by the loss of the EU passporting rights because they are not genuinely cross-border. These activities include, for example, deposit-taking and online-banking[9]. By contrast, wholesale banking is likely to be significantly affected, considering that a substantial proportion of the UK banking sector's revenues is linked to the EU passporting rights[10]. As of 27 July 2016, 102 UK credit institutions held an outbound passport under the CRD IV and 552 credit institutions from other EU/EEA Member held an inbound passport under the same Directive[11].

1.2. Third country (equivalence) regimes

If the UK leaves the EU without joining the EEA or securing an alternative arrangement that would ensure continued access to the EU single market, it will be considered a third country under EU law. This means that the UK's access to the single market and enjoyment of related benefits will be subject to **third country regimes** under EU financial services legislation to the extent such regimes are in place. Third country regimes commonly provide for a mechanism that allows third country financial institutions to gain access to the single market through a single passport or otherwise facilitates cross-border activity on the basis of mutual recognition. However, the modalities of such regimes vary across different EU legislative acts.

Some third country regimes do not make third country market access or the enjoyment of related benefits conditional upon meeting certain requirements in the legal domain. An example of such a regime can be found in BRRD which provides for a mechanism that allows a joint European resolution college and, in the absence thereof, Member State resolution authorities, to recognise and enforce third country resolution proceedings. The right to refuse the recognition or enforcement of third country resolution proceedings is

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5 European Parliament, *Brexit: The United Kingdom and EU Financial Services*, 9 December 2016, p. 9.

6 On this issue in more detail from the perspective of the UK, see Open Europe, *How the UK's Financial Services Sector Can Continue Thriving after Brexit*. Report 10/2016.

7 European Commission, *Green Paper on Retail Financial Services*, COM(2015) 630 final, p. 2.

8 However, this situation may change in the future, given the growing digitalisation of financial services. This development could potentially lead to more cross-border activity in retail financial markets.

9 B. Reynolds, *A Blueprint for Brexit: The Future of Global Financial Services and Markets in the UK*, pp. 17-18.

10 See e.g. Open Europe, p. 5.

11 Letter from Andrew Bailey, CEO FCA, to Rt Hon Andrew Tyrie, Chairman of the Treasury Committee, 17 August 2016, p. 4.

available in circumstances pertaining to an internal situation of one or more EU Member States, such as a threat to financial stability[12]. Yet most third country regimes imply some degree of **conditionality**, typically requiring an approximation of third country laws with those of the EU. Such regimes are commonly known as 'third country equivalence regimes'.

Third country equivalence regimes generally treat financial institutions from a third country in a similar way to financial institutions from the EU where the legal system of that third country in the relevant area is considered **'equivalent'** to those of the EU. The resulting treatment may involve, for instance, single market access for non-EU financial institutions operating cross-border, less burdensome local regulatory requirements for branches of non-EU firms within the EU and recognition of market infrastructure in third countries for EU financial institutions meeting their EU clearing and reporting requirements. Recognition as 'equivalent' typically conveys broader rights than a separate authorisation from one Member State that in most cases does not confer cross-border rights. Existing third country equivalence regimes could thus potentially allow UK financial institutions to secure access to the EU financial markets and enjoy other benefits based on mutual recognition following the UK's withdrawal from the EU.

An equivalence assessment is typically made unilaterally by the **European Commission,** usually following technical advice provided by one of the relevant **ESAs**[13]. The ESAs also keep **registers** of the third country firms allowed to have access to the single market or enjoy other benefits. The European Commission's decision on equivalence may take the form of an **implementing or delegated act**, depending on what is envisaged in the relevant EU legislative act. The third country regimes may also stipulate whether an equivalence decision can be granted in full or partially, for an indefinite period or with a time limit. In some cases, equivalence decisions may apply to the entire framework of a third country or to some of its authorities only. If certain conditions to which equivalence is subject are not met, a third country can be declared provisionally equivalent. Provisional equivalence can be subject to renewals.

In order for a third country to be determined an 'equivalent' jurisdiction under the relevant EU legislation, it needs to meet certain requirements. While such **requirements vary across different third country equivalence regimes**, one can distinguish **three issues** commonly addressed by such regimes:

- **Equivalence of regulatory and supervisory framework.** First and foremost, the European Commission must deem the third country in question to have regulatory standards, and sometimes, supervisory standards that are equivalent to that of the EU. For example, under MiFIR, the prudential and conduct framework of a third country may be considered to have an equivalent effect where that framework fulfils all the following conditions: firms providing investment services and activities in that third country are subject to authorisation and to effective on-going supervision and enforcement, sufficient capital requirements, appropriate requirements applicable to shareholders and members of their management board, adequate organisational requirements in the area of internal control function and appropriate conduct of business rules, and the third country ensures market transparency and integrity by preventing market abuse in the form of insider dealing and market manipulation[14]. While the assessment to be applied to determine whether the third country's legal system is equivalent to that of the EU varies across different EU legislative acts,

[12] Article 95 BRRD.

[13] For one of a very recent decision concerning CCPs and trading venues, see http://europa.eu/rapid/press-release_IP-16-4385_en.htm.

[14] Article 47 (1) MiFIR.

being 'equivalent' generally does not mean being 'identical'. The equivalence of the third country's regulatory and supervisory framework to that of the EU is generally assessed using an outcome-based approach. For example, the recitals to 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*'[15]. Given that the UK has so far fully implemented the EU financial services legislation, at least in theory, it should be possible for it to be considered an equivalent third country for the purposes of third country regimes.

- **Co-operation agreements between competent authorities.** Once the third country's legal system has been recognised as equivalent, the competent authority of that third country are typically required to enter into a co-operation agreement with one of the European supervisory authorities (ESAs). For example, MiFIR obliges ESMA to conclude such agreements and requires that they at least specify the mechanism for the exchange of information between ESMA and third country competent authority (including access to all information regarding the non-EU firms authorised in third countries that is requested by ESMA); the mechanism for prompt notification to ESMA where a third country competent authority deems that the firm supervised by it infringes the conditions of authorisation or any other relevant laws; and the procedures concerning the coordination of supervisory activities, including, where appropriate, onsite inspections[16].
- **Reciprocity.** Third country equivalence regimes also commonly address the issue of reciprocity. In some cases, such regimes provide for unilateral recognition of the equivalence of a non-EU country regulatory and supervision framework by the EU. In many cases, however, it is a condition for recognition as 'equivalent' that the relevant third country has an effective equivalent mechanism for recognising the equivalence of EU regulation and supervision. Moreover, the implementation of the third country regime may even be contingent on reciprocity. Under MiFIR, for example, when initiating equivalence assessments, the European Commission can prioritise among third countries given, inter alia, '*the existence of an effective equivalent system for the recognition of investment firms authorised under foreign regimes as well as the interest and willingness of the third country to engage in the equivalence assessment process*'[17]. Furthermore, decisions determining third country equivalence should only be adopted if that country provides for an effective equivalent system for the recognition of investment firms authorised under foreign legal regimes[18]. Importantly, reciprocity-based arrangements within the third country regimes under EU financial services legislation could allow access of EU/EEA financial institutions to UK financial markets.

Third country equivalence regimes thus have the **potential to mitigate the effects of the loss of the passporting rights** by UK financial institutions in the wake of the UK's withdrawal from the EU. However, under the current state of EU law, such regimes **do not ensure the same level of market access and certainty of having such access** for non-EU/EEA financial institutions. The following **three major limitations** of third country (equivalence) regimes compared to the EU passporting and mutual recognition regimes are particularly important in this context (see also Box 2):

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15 Recital 41 MiFIR.

16 Article 47 (1) MiFIR.

17 Recital 41 MiFIR.

18 Recital 44 MiFIR.

- **Non-existence of third country (equivalence) regimes in many areas of financial services.** First of all, while third country (equivalence) regimes are available in some areas, many key EU financial services measures currently do not provide for third country equivalents for the EU passporting and mutual recognition regimes. In particular, the CRD IV regime for banking, the Undertakings for the Collective Investment in Transferrable Securities (UCITS) Directive regime for asset management, Payment Services Directive II (PSD II) regime for payment services and Insurance Distribution Directive (IDD) regime for insurance sales are all examples of EU regulatory regimes which grant **passporting rights to EU/EEA financial institutions** but for which **no corresponding third country rights** exist. Thus there is **no single third country (equivalence regime)** within the existing EU regulatory framework for financial services that could ensure access to the single market and the enjoyment of related benefits to non-EU/EEA countries in all areas of financial services. In the absence of a specific equivalence regime in a particular area or an alternative arrangement, upon the UK's withdrawal from the EU UK financial institutions would only be able to gain access to the single market in that area if they obtain local authorisation from the relevant competent authority of the Member State in which they wish to do business, subject to that Member State's requirements.
- **More limited scope of market access in many areas of financial services.** Secondly, in those areas where EU financial services legislation has established third country (equivalence) regimes, these regimes do not necessarily ensure market access for third country firms to the same extent as they do for EU/EEA firms. A notable example in this context is the MiFID II/MiFIR third country equivalence regime. In contrast to the passporting regime for EU/EEA firms, the equivalence regime for third country firms under these EU measures covers the provision of investment services only to professional clients and eligible counterparties (but not to retail clients) and only directly cross-border (without the establishment of a branch)[19]. In addition, MiFID II explicitly states that a Member State may require third country investment firms and credit institutions to establish a branch in that Member State if they intend to provide investment services to retail clients[20].
- **Inherent uncertainty of market access under the current third country (equivalence) regimes.** Thirdly, compared to the passporting and mutual recognition regimes for EU/EEA Member States, existing (equivalence) regimes for third countries involve a high degree of uncertainty when it comes to market access and the enjoyment of related benefits. In particular, this uncertainty largely results from **a high degree of discretion enjoyed by the European Commission** when determining whether a particular non-EU/EEA country can be deemed an equivalent jurisdiction for the purposes of a particular EU measure. Equivalence is not established until the Commission has adopted an implementing legal act (or delegated act) to this effect. Although an equivalence determination is primarily based on a legal assessment, the Commission's decision is essentially political in nature and cannot be taken for granted. Moreover, the process leading to this decision may take some time. For example, it took over three years for the European Commission to recognise the US Commodities and Futures Trading Commission's (CFTC) regulation of US Central Counterparties (CCPs) as equivalent to EU arrangement under MiFIR.

[19] Title VIII MiFIR.

[20] Article 39(1) MiFID II.

Another major factor contributing to uncertainty is the **fragile nature of any equivalence determination**. European Commission may revoke equivalence decisions at any time. The recent decision on the equivalence of the US regulatory framework for CCPs under European Market Infrastructure Regulation (**EMIR**), for instance, makes it clear that a review of the decision can be undertaken at any time and that 'such re-assessment could lead to the repeal of this Decision'[21]. Revocation may generally occur if the Commission no longer considers the third country's legal system to be equivalent to that of the EU following changes in that third country's regulatory and/or supervisory framework. Besides, in certain cases ESAs may withdraw the registration of a third country firm in the register, which will lead to the re-assessment of equivalence by the European Commission. For example, under MiFID II, ESMA may withdraw registration where it has well-founded reasons to believe that the third country firm's conduct prejudices the interests of investors or orderly functioning of financial markets; that firm seriously infringes the third country's laws applicable to it which led the Commission to adopt an equivalence decision; the third country's competent authority has not taken appropriate action after the matter has been referred to it by ESMA; and ESMA has informed that authority about its intention to withdraw the registration at least 30 days before the withdrawal[22]. Therefore, it remains to be seen how the third country equivalence regimes will be applied in relation to the UK, particularly if the UK is no longer obliged to fully implement EU financial services legislation. The more the EU and the UK financial services legislation grow apart in the wake of the UK's withdrawal from the EU, the more uncertain the UK's equivalence status may become[23].

Box 2: Key disadvantages of third country (equivalence) regimes compared to EU passporting / mutual recognition regimes

- Non-existence of third country (equivalence) regimes in many areas of financial services, in particular in the area of banking.
- More limited scope of third country market access in some areas of financial services, such as investment services.
- Inherent uncertainty of market access under third country (equivalence) regimes, in particular as a result of a high degree of discretion enjoyed by the European Commission in applying such regimes.

[21] European Commission, Commission Implementing Decision (EU) 2016/377 of 15 March 2016.

[22] Article 49 (1) MiFIR.

[23] As announced by the UK Prime Minister Theresa May in October 2016, the Government has been working on a new Act of Parliament, known as the 'Great Repeal Bill', which would annul the 1972 European Communities Act that established the supremacy of EU law over UK law.

2. ACCESS TO THE SINGLE MARKET UNDER EU FINANCIAL SERVICES LEGISLATION: SPECIFIC AREAS

Building upon the general overview of the EU passporting/mutual recognition and third country (equivalence) regimes provided in the previous chapter, this chapter will examine such regimes in more detail with the focus on five major financial services sectors (i.e. banking, payments, capital markets, insurance and financial market infrastructure). The **five tables presented in sections 3.1-3.5 below** provide an overview of the most significant **sector-specific EU legislative acts** already adopted or currently planned in the area of financial services from the point of view of ensuring or facilitating access to the single market. Each table is also meant to allow comparison of the possibilities for and reach of market access for the EU/EEA Member States with that for third countries under each relevant EU legislative act. The tables are accompanied by **explanatory notes**.

Box 3: How to read the tables

- The examined **EU legislative acts** (e.g. CRD IV, MiFID or CIWUD) are listed in the first column 'EU Financial Services Legislation'.
- The second column 'Type of financial institution/product' identifies the types of **financial institutions** (e.g. credit institution or investment firms) or the types of **financial products** (e.g. prospectuses or UCITS funds) that are addressed by each legislative instrument in the context of market access.
- The third and fourth columns present the findings of the comparative analysis of the passporting rights and important mutual recognition rules, on the one hand, and, if applicable, the corresponding third country (equivalence) regimes, on the other.
- The third column 'EU passport right/mutual recognition' highlights the scope of the **relevant passporting rights** (e.g. cross-border provision of services, establishment of branches or marketing across EU) and **important mutual recognition rules** (e.g. recognition of resolution action across EU). Where necessary, this column also further specifies the type of service or product covered by the passporting/mutual recognition regime (e.g. banking services or investment services).
- The fourth column 'Corresponding third country (equivalence) regime' answers the question whether each relevant EU measure provides for a **third country (equivalence) regime that corresponds to the passporting rights/mutual recognition regime** identified in the third column. This question is answered by 'Yes' or 'No'. The answer 'Yes' without further remarks implies that the scope of the third country (equivalence) regime is very similar to that of the related passporting/mutual recognition regime and that the third countries thus enjoy similar benefits based on a passport-like arrangement or other provisions. Where this is not the case (because the third country equivalence regime only applies to certain services or other restrictions are in place), the answer 'Yes' in the fourth column is followed by a brief comment. For example, the answer 'Yes (only for wholesale clients and counterparties)' in Table 3 implies that the MiFID II regime is limited to the provision of investment services to wholesale clients and counterparties and thus does not grant a passport-like right to non-EU/EEA investment firms to provide cross-border services to retail investors.
- The third and fourth column also include references to **specific provisions** of the relevant EU legislative act that establishes passporting/mutual recognition regimes or third country (equivalence) regimes.

2.1. Banking

Table 1: Access to the EU single market for banking

EU financial services legislation	Type of EU financial institution / Product	EU passport right / mutual recognition	Corresponding third country (equivalence) regime
CRD IV	Credit institutions	Cross-border provision of banking and investment services / Establishment of branches to provide banking and investment services (Art. 17, 33, 39 CRD IV)	No for banking services See Table 3 for investment services (MiFID II/MiFIR)
MCD	Credit intermediaries	Cross-border provision of consumer mortgage credit-related services / Establishment of branches to provide consumer mortgage credit-related services (Art. 32 MCD)	No
CIWUD	Credit institutions	Home state insolvency regime applies in other Member States (Art. 3, 9 CIWUD)	No
BRRD	Credit institutions	Recognition of resolution action in other Member States (Art. 65(2), 66 BRRD)	Yes (Art. 93-97 BRRD)

Source: Author's elaboration.

Notes

- A major piece of legislation governing market access in the area of banking is **CRD IV**. The CRD IV passport covers a broad range of banking services (such as deposit-taking, lending, including consumer credit and mortgage credit and payment services), as well as investment services provided by credit institutions[24]. It is notable that CRD IV does not envisage a corresponding third country (equivalence) regime that would enable non-EU/EEA credit institutions to provide banking services under the single passport. This Directive merely contains an equivalence regime that allows EU/EEA credit institutions to be subject only to third country consolidated supervision (and so to avoid additional EU consolidated supervision) if they have a third-country parent[25]. However, the limited third country equivalence regime for credit institutions providing investment services is available under MiFID II/MiFIR (see Table 3 for more details).
- While passporting rights of credit institutions with respect to mortgage credit are governed by CRD IV, Mortgage Credit Directive (**MCD**) grants such rights only to mortgage credit intermediaries. The latter are allowed to provide services in relation

[24] For a complete list of services and activities covered by the CRD IV passport, see Annex 1 CRD IV and Annex 1, Sections A and B MiFID.

[25] Article 127 CRD IV.

to consumer mortgage credit across the EU based on a single passport. Credit intermediaries are not allowed to provide their services in relation to credit agreements offered by non-credit institutions to consumers in Member States where such non-credit institutions are not allowed to operate[26]. No corresponding third country (equivalence) regime has been established under MCD.

- Important rules aimed at facilitating cross-border activity are also laid down in Credit Institutions Winding-Up Directive (CIWUD) and BRRD. **CIWUD** obliges Member States to recognize and ensure full effect of reorganisation measures and winding-up proceedings adopted by the home state throughout the EU. However, this Directive does not extend this regime to third countries based on equivalence. **BRRD** in turn creates a common framework for the recovery and resolution of EU credit institutions and provides that other Member States must recognise and give effect to resolution actions taken by the home state resolution authority in relation to an EU credit institution. This directive provides for a mechanism that allows a joint European resolution college and, in the absence thereof, Member State resolution authorities, to recognise and enforce third country resolution proceedings. While no requirements as to third country equivalence are established, BRRD contains a list of circumstances under which such recognition and enforcement could be refused[27]. This can be the case, for example, if third country resolution proceedings would have adverse effects on financial stability in the EU Member State.

2.2. Payments

Table 2: Access to the EU single market for payments

EU financial services legislation	Type of EU financial institution / product	EU passport right / mutual recognition	Corresponding third country (equivalence) regime
PSD II	Payment institutions	Cross-border provision of payment services / Establishment of branches to provide payment services (Art. 11(9), 28, 29 PSD II)	No
EMD	Electronic money institutions	Cross-border provision of payment and related services / Establishment of branches to provide payment and related services (Art. 3(1) EMD)	No
SEPA Regulation / SEPA rules	Payment service providers	Single Euro Payments Area (SEPA Regulation)	Yes (Para. 3 SEPA rules)

Source: Author's elaboration.

[26] Article 32(1) MCD.
[27] Article 95 BRRD.

Notes

- Payment services can be provided not only by credit institutions (see section 3.1) but also by entities that do not take deposits and/or issue electronic money. Therefore, the issue of market access in the area of non-banking payment services deserves particular attention.
- In order to remove legal barriers to market entry for non-bank entities, Payment Services Directive (**PSD**) and its successor, Payment Services Directive II (**PSD II**), introduced a new category of payment service providers, knows as 'payment institutions', and conferred passporting rights upon them. PSD II will repeal and replace PSD with effect from 1 January 2018. However, neither PSD nor PSD II establishes a third country (equivalence) regime.
- The issuers of electronic money other than credit institutions, i.e. 'electronic money institutions', are subject to the Electronic Money Directive (**EMD**). In addition to issuing electronic money, such institutions can, inter alia, provide payment services, grant credit in relation to payment services and operate payment systems[28]. EMD does not provide for a third country (equivalence) regime.
- Single Payments Area (**SEPA**) Regulation aims at creating the European single market for retail payments. It applies to transactions denominated in Euro where both the payee's payment service provider and the payer's payment service provider are located in the EU or where the sole payment service provider is located in the EU[29]. Geographically, SEPA includes all EU/EEA Member States plus Switzerland, the Principality of Monaco and San Marino. SEPA rules establish an equivalence regime that allows non-EU/EEA banks and financial institutions to access SEPA provided a number of requirements are met. The decision is taken by the European Payments Council (EPC) after consultation with the European Commission and the third country's financial regulator.

2.3. Capital Markets

Table 3: Access to the EU single capital market

EU financial services legislation	Type of EU financial institution / product	EU passport right / mutual recognition	Corresponding third country (equivalence) regime
Prospectus Directive and Proposal Prospectus Regulation	Prospectuses	Prospectus approved in a Member State can be used across EU (Art. 17, 18 Prospectus Directive; Art. 23-25 Proposal Prospectus Regulation)	Yes, but a third country prospectus needs approval in one of the Member States before it can be used in other Member States (Art. 20 Prospectus Directive; Art. 26-28 Proposal Prospectus Regulation)

[28] Article 6(1) EMD.

[29] Article 1 SEPA Regulation.

EU financial services legislation	Type of EU financial institution / product	EU passport right / mutual recognition	Corresponding third country (equivalence) regime
CRA	Credit rating agencies	Use of credit ratings across EU based on single registration (Art. 4(1) CRA)	Yes, but a third country credit rating may require endorsement by an EU-affiliated credit rating agency (Art. 4(3-6), 5 CRA)
Benchmarks Regulation	Benchmark administrators	Use of benchmarks across EU based on single authorisation / registration (Art. 29 Benchmark Regulation)	Yes (Art. 30-33 Benchmark Regulation)
MiFID II/MiFIR	Investment firms Credit institutions (only subject to third country (equivalence) regime; see also Table 1)	Cross-border provision of investment services (Art. 34 MiFID II)	Yes, only for professional clients and counterparties (Art. 46-49 MiFIR)
		Establishment of branches to provide investment services (Art. 35 MiFID II)	No, optional for Member States (Art. 39(1) MiFID II)
UCITS Directive	UCITS funds	Marketing of UCITS funds across EU (Art. 91-96 UCITS Directive)	No
	UCITS management companies	Cross-border management of UCITS / Establishment of branches to manage UCITS (Art. 16-21)	No
AIMFD	AIFMs	Marketing of EU AIFs to professional investors across EU (Art. 32 AIFMD)	Yes, but via single authorisation in EU Member State (Art. 37, 39, 42 AIFMD)
	AIFMs	Marketing of non-EU AIFs to professional investors across EU (Art. 35, 36 AIFMD)	Yes, but via single authorisation in EU Member State (Art. 37, 40, 42 AIFMD)
	AIFMs	Cross-border management of EU AIFs / Establishment of branches to manage EU AIFs (Art. 33 AIFMD)	Yes, but via single authorisation in EU Member State (Art. 37, 41 AIFMD)

EU financial services legislation	Type of EU financial institution / product	EU passport right / mutual recognition	Corresponding third country (equivalence) regime
ELTIF Regulation	ELTIFs	Marketing of ELTIFs across EU (Art. 3(1) ELTIF Regulation)	No
Proposal MMF Regulation	MMFs	Marketing of MMFs across EU (Art. 3(1) Proposal MMF Regulation)	No
EuVECA Regulation	Managers of venture capital funds	Marketing of venture capital funds as 'EuVECA' across EU (Art. 4 EuVECA Regulation)	No
EuSEF Regulation	Managers of social entrepreneurship funds	Marketing of social entrepreneurship funds as 'EuSEF' across EU (Art. 4 EuSEF Regulation)	No

Source: Author's elaboration.

Notes

- Under the **Prospectus Directive**, a prospectus that is approved in one Member State can be used in other Member States to market the securities without the need for further approvals. A third country equivalence regime is available under this directive, but it stops short of granting direct market access to issuers from equivalent third counties. Under this regime, access to the EU capital markets for such issuers is still conditional, inter alia, on approval of the prospectus by the national regulator of the relevant EU Member State. Only after such approval has been obtained can the prospectus be passported into other EU Member States. Similar provisions can be found in the **proposal for a Prospectus Regulation** that will repeal Prospectus Directive when it comes into force.
- Credit Rating Agency Regulation (**CRA**) requires that EU-incorporated credit rating agencies are registered with ESMA, but once registered, their ratings can be used by regulated entities across the EU. CRA also contains a third country equivalence regime that provides third country credit rating agencies with largely similar rights. However, an endorsement by an EU-affiliated credit rating agency is required to allow for an EU-wide use of a credit rating provided by a third country where such rating is of systemic importance to the financial stability or integrity of the financial markets of one or more Member States. Similarly, **Benchmarks regulation** allows regulated entities across the EU to use benchmarks produced by EU-incorporated administrators of benchmarks that are authorised and registered in their home state. This Regulation also lays down a third country equivalence regime that confers similar rights on third country benchmark administrators.
- A major piece of legislation currently governing the rights and obligations of investment firms and credit institutions providing investment services is **MiFID**. This Directive will be repealed and replaced by **MiFID II / MiFIR** as of 3 January 2018. In

the same way as MiFID, **MiFID II/MiFIR** give investment firms extensive passporting rights. In contrast to MiFID, MiFID II/MiFIR also lay down a third country equivalence regime which is applicable to 'third country firms', a category which includes both investment firms and credit institutions[30]. The scope of this regime, however, is much narrower than that of the passporting regime for EU/EEA Member States in two major respects: (1) it covers only professional clients and eligible counterparties and thus does not allow third country firms to provide investment services to retail clients; (2) it allows third country firms to provide investment services only directly cross-border without the establishment of new branches across the EU.

- In the area of asset management, **UCITS Directive** provides for two types of passport. Under the EU 'marketing passport', UCITS that have been established and duly authorised in one Member States, can market their units across the EU. In addition, the EU single passport allows UCITS management companies to provide investment management and related services directly cross-border or via a branch. However, none of the two passporting regimes for EU/EEA Member States has a corresponding third country (equivalence) regime. Similar passports are available for alternative investment fund managers (AIFMs) under **AIFMD**. This Directive also distinguishes between EU AIFs and non-EU AIFs and lays down extensive third country regimes for their marketing and management by non-EU AIFMs. Under this regime, non-EU AIFMs must be authorised in an EU Member State in order to be able to manage EU AIFs or to market either EU- or non-EU AIFs across the EU. AIFMD lays down detailed requirements for granting such an EU passport and imposes further conditions that must be met before a non-EU AIF duly authorised in the EU Member State can manage or market AIFs. The AIFMD third-country regime is thus not based on a third country equivalence determination by the European Commission but, in essence, provides for non-EU AIFMs access to the single market via one of the EU Member States. In this respect, it differs from most third country (equivalence) regimes established under EU financial services legislation. Finally, a number of specific marketing passports are provided for by the European Long Term Funds Regulation (**ELTIF Regulation**), a **Proposal for a** Money Market Funds Regulation (**MMF Regulation**), European Venture Capital Funds Regulation (**EuVECA Regulation**) and European Social Entrepreneurship Funds Regulation (**EuSEF Regulation**). None of these EU legislative acts establishes a corresponding third country equivalence regime. However, the EuVECA regulation does state that when reviewing the operation of this Regulation, the European Commission shall consider the possibility of allowing venture capital funds established in a third country to use the designation 'EuVECA'.

[30] Article 4(1) and (57) MiFID. See also Article 1(2) MiFIR which states that this Regulation applies to investment firms authorised under MiFID II and credit institutions authorised under CRD IV when providing investment services and/or performing investment activities.

2.4. Insurance

Table 4: Access to the EU single insurance market

EU financial services legislation	Type of EU financial institution / product	EU passport right / mutual recognition	Corresponding third country (equivalence) regime
Solvency II	Insurance undertakings	Cross-border provision of insurance services / Establishment of branches to provide insurance services (Art. 15(1); 145-149 Solvency II)	No
	(Re)insurance undertakings	Cross-border provision of (re)insurance services / Establishment of branches to provide re(insurance) services (Art. 15(1) Solvency II)	Yes (Art. 172 Solvency II)
IDD	(Re)insurance and ancillary insurance intermediaries	Cross-border provision of (re)insurance distribution services / Establishment of branches to provide (re)insurance distribution services (Art. 4-9 IDD)	No

Source: Author's elaboration.

Notes

- **Solvency II** grants passporting rights to EU/EEA insurance and re-insurance undertakings. However, the corresponding third country equivalence regime is more limited in scope and covers only reinsurance undertakings. This implies that third country insurance undertakings do not have passport-like rights to provide insurance services directly cross-border or via a branch. Solvency II only contains a third country equivalence regime for insurance and reinsurance undertakings for the purposes of group solvency and group supervision requirements[31]. Equivalence allows EU supervisors to rely upon third country consolidated solvency supervision but does not allow third country insurance and reinsurance undertakings to gain access to the EU insurance market.
- A central role in the distribution of insurance and reinsurance products is played by insurance and reinsurance distributors, in particular insurance and reinsurance intermediaries. The Insurance Mediation Directive (**IMD**) currently in force grants

[31] Article 227 Solvency II Directive.

extensive passporting rights to insurance and reinsurance intermediaries. Similar rights are also granted to insurance and reinsurance intermediaries, as well as ancillary insurance intermediaries, by the Insurance Distribution Directive (**IDD**) that will repeal and replace IMD as of 23 February 2018. Neither IMD nor IDD provides for a third country equivalence regime.

2.5. Financial Market Infrastructure

Table 5: Access to the EU financial market infrastructure

EU financial services legislation	Type of EU financial institution / product	EU passport right / mutual recognition	Corresponding third country (equivalence) regime
MiFID2/MiFIR	Investment firms	Access to regulated markets via a branch or remote membership (Art. 36 MiFID II)	No
	Investment firms	Access to CCPs, clearing and settlement facilities and right to designate settlement system (Art. 37 MiFID II)	No
	Trading venues	Provision of arrangements in the Member State territory to enable remote users, members or participants to trade on that venue (Art. 53(6), 34(6), 34(7) MiFID II)	No
	Trading venues	Permitted trading venues for transactions in shares and derivatives subject to trading mandate (Art. 23(1), 28(1)(a)(b)(c) MiFIR)	Yes (Art. 23(1), 28(1)(d), (4) MiFIR)
	Trading venues, CCPs	Non-discriminatory access to trading venues, CCPs, benchmarks (Art. 35-37 MiFIR)	Yes (Art. 28(4), 38 MiFIR)

EU financial services legislation	Type of EU financial institution / product	EU passport right / mutual recognition	Corresponding third country (equivalence) regime
	Data service providers	Provision of data reporting services across EU based on single authorisation (Art. 60 MiFID II)	No
EMIR	CCPs	Provision of clearing services across the EU based on single authorisation (Art. 14(2) EMIR)	Yes (Art. 25 EMIR)
	Trade repositories	Performance of trade repository activities across EU based on single registration (Art. 55(3) EMIR)	Yes (Art. 75 EMIR)
	CCPs, trading venues	Rights of non-discriminatory access to each other (Art. 7, 8 EMIR)	No, but see MiFID2/MiFIR, Art. 38 MiFIR
CSDR	Central securities depositories	Cross-border provision of CSD services / Establishment of branches to provide CSD services (Art. 23, 24 CSDR)	Yes (Art. 25 CSDR)
SFD	Settlement systems	Protection from insolvency law in other Member States	No

Source: Author's elaboration.

Notes

- Market infrastructure is critical for the smooth functioning of the EU single market in financial services. EU financial services legislation categorises trading venues for financial instruments as regulated markets, multilateral trading facilities and, when MiFID II/MiFIR enter into force, organised trading facilities (OTFs). These trading venues bring together third party interests on a platform which leads to transactions in financial instruments. **MiFID II/MiFIR** establishes a number of important regulatory regimes that grant or facilitate access to the EU financial markets infrastructure for investment firms, trading venues and CCPs. In addition, MiFID II enables data service providers authorised in their home state to provide their services across the EU. However, most of these regimes for EU/EEA Member States do not have corresponding third country (equivalence) regimes. Such regimes are only available in certain cases, in particular with respect to the permitted trading

venues for transactions in shares and derivatives subject to the trading obligation and with respect to non-discriminatory access to trading venues, CCPs and benchmarks.

- The EU regulation on OTC Derivatives and central counterparties, known as 'European Market Infrastructure Regulation' (**EMIR**), provides for EU CCPs to be able to obtain a single authorisation in their home state which allows them to provide clearing services across the EU. Similarly, EMIR enables EU trade repositories to perform their activities across the EU following registration with ESMA. For both CCPs and trade repositories there is a corresponding third country equivalence regime. In addition, EMIR also gives EU trading venues and CCPs non-discriminatory rights of access to each other but falls short of establishing a third country equivalence regime. However, the latter is available under MiFIR (see above).
- The Central Securities Depositories Regulation (**CSDR**) allows central securities depositories that have been duly authorised in their home Member State to provide their core and ancillary services across the EU directly cross-border or via a branch. The core services include initial recording of securities in a book-entry system ('notary service'), providing and maintaining securities accounts at the top tier level ('central maintenance service') and operating a securities settlement system ('settlement service')[32]. CSDR also provides for a corresponding third country equivalence regime.
- Under the Settlement Finality Directive (**SFD**), EU Member States are required to ensure that their laws protect payment and settlement systems of other Member States from the impact of insolvency proceedings on the finality of settlement and the enforceability of a collateral. SFD does not provide for a third country (equivalence) regime.

[32] Annex 1 CSDR.

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ANNEX I – TABLE OF SELECTED EU LEGISLATION RELATING TO FINANCIAL SERVICES

AIMFD	Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010; HTTP://EUR-LEX.EUROPA.EU/LEGAL-CONTENT/EN/TXT/?URI=CELEX%3A32011L0061.
BENCHMARK REGULATION	Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014; HTTP://EUR-LEX.EUROPA.EU/LEGAL-CONTENT/EN/TXT/?URI=CELEX%3A32016R1011.
BRRD	Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council; HTTP://EUR-LEX.EUROPA.EU/LEGAL-CONTENT/EN/TXT/?URI=CELEX%3A32014L0059.
CIWUD	Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions; HTTP://EUR-LEX.EUROPA.EU/LEGAL-CONTENT/EN/ALL/?URI=CELEX:32001L0024.
CRA	Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies; HTTP://EUR-LEX.EUROPA.EU/LEXURISERV/LEXURISERV.DO?URI=OJ:L:2009:302:0001:0031:EN:PDF.
CRD IV	Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC; HTTP://EUR-LEX.EUROPA.EU/LEGAL-CONTENT/EN/TXT/?URI=CELEX:32013L0036.
CSDR	Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012; HTTP://EUR-LEX.EUROPA.EU/LEGAL-CONTENT/EN/TXT/?URI=CELEX%3A32014R0909.
EMIR	Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories; HTTP://EUR-LEX.EUROPA.EU/LEGAL-CONTENT/EN/TXT/?URI=CELEX%3A32012R0648.
EMD	Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC; HTTP://EUR-LEX.EUROPA.EU/LEGAL-CONTENT/EN/TXT/?URI=CELEX%3A32009L0110.
ETLIF REGULATION	Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds; HTTP://EUR-LEX.EUROPA.EU/LEGAL-CONTENT/EN/TXT/?URI=CELEX%3A32015R0760.
EUSEF REGULATION	Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds; HTTP://EUR-LEX.EUROPA.EU/LEXURISERV/LEXURISERV.DO?URI=OJ:L:2013:115:0018:0038:EN:PDF.
EUVECA REGULATION	Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds; HTTP://EUR-LEX.EUROPA.EU/LEXURISERV/LEXURISERV.DO?URI=OJ:L:2013:115:0001:0017:EN:PDF.
IDD	Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast); HTTP://EUR-LEX.EUROPA.EU/LEGAL-CONTENT/EN/TXT/?URI=CELEX:32016L0097.
IMD	Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation; HTTP://EUR-LEX.EUROPA.EU/LEGAL-CONTENT/EN/TXT/?URI=CELEX%3A02002L0092-20140702.
MCD	Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010; HTTP://EUR-LEX.EUROPA.EU/LEGAL-CONTENT/EN/TXT/?URI=CELEX:32014L0017.

MIFID	Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC; HTTP://EUR-LEX.EUROPA.EU/LEGAL-CONTENT/EN/TXT/?URI=CELEX%3A32004L0039.
MIFID II	Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU; HTTP://EUR-LEX.EUROPA.EU/LEGAL-CONTENT/EN/TXT/?URI=CELEX%3A32014L0065.
MIFIR	Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012; HTTP://EUR-LEX.EUROPA.EU/LEGAL-CONTENT/EN/TXT/?URI=CELEX%3A32014R0600.
PROPOSAL MONEY MARKET FUNDS REGULATION	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Money Market Funds /* COM/2013/0615 final - 2013/0306 (COD); HTTP://EUR-LEX.EUROPA.EU/LEGAL-CONTENT/EN/TXT/?URI=CELEX%3A52013PC0615.
PROPOSAL PROSPECTUS REGULATION	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the prospectus to be published when securities are offered to the public or admitted to trading, COM/2015/0583 final - 2015/0268 (COD); HTTP://EUR-LEX.EUROPA.EU/LEGAL-CONTENT/EN/TXT/?URI=CELEX%3A52015PC0583.
PROSPECTUS DIRECTIVE	Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC; HTTP://EUR-LEX.EUROPA.EU/LEGAL-CONTENT/EN/TXT/?URI=CELEX%3A02003L0071-20140523.
PSD	Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC; HTTP://EUR-LEX.EUROPA.EU/LEGAL-CONTENT/EN/ALL/?URI=CELEX%3A32007L0064.
PSD II	Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC; HTTP://EUR-LEX.EUROPA.EU/LEGAL-CONTENT/EN/TXT/?URI=CELEX%3A32015L2366.
SEPA REGULATION	Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009; HTTP://EUR-LEX.EUROPA.EU/LEGAL-CONTENT/EN/TXT/?URI=CELEX%3A02012R0260-20140131.
SEPA RULES	Criteria for participation in the SEPA schemes for communities of banks or financial institutions outside the European economic area (EEA), EPC061-14; HTTP://WWW.EUROPEANPAYMENTSCOUNCIL.EU/INDEX.CFM/KNOWLEDGE-BANK/EPC-DOCUMENTS/CRITERIA-FOR-PARTICIPATION-IN-SEPA-SCHEMES/EPC061-14-CRITERIA-FOR-PARTICIPATION-IN-SEPA-SCHEMES-V20PDF/.
SFD	Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems; HTTP://EUR-LEX.EUROPA.EU/LEGAL-CONTENT/EN/ALL/?URI=CELEX%3A31998L0026.
SOLVENCY II	Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast); HTTP://EUR-LEX.EUROPA.EU/LEGAL-CONTENT/EN/ALL/?URI=CELEX:32009L0138.
UCITS DIRECTIVE	Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast); HTTP://EUR-LEX.EUROPA.EU/LEGAL-CONTENT/EN/ALL/?URI=CELEX:32009L0065.

ANNEX II – TRANSPOSITION TABLE FOR UK IMPLEMENTATION OF SELECTED EU FINANCIAL SERVICES LEGISLATION ADOPTED BETWEEN 2006 AND 2016

AIMFD	Alternative investment fund managers regulation 2013
BRRD	Bank recovery and resolution order 2014; Bank Recovery and Resolution (No 2) Order 2014; Banks and Building Societies (Depositor Preference and Priorities) Order 2014; Banking Act 2009 (Mandatory Compensation Arrangements Following Bail-in) Regulations 2014; Banking Act 2009 (Restriction of Special Bail-in Provision, etc.) Order 2014; Building Societies (Bail-in) Order 2014
CRD IV	Capital requirements regulations 2013; Capital Requirements (Country-by-Country Reporting) Regulations 2013; Financial Services and Markets Act 2000 (Qualifying EU Provisions) (No. 2) Order 2013; Capital Requirements (Capital Buffers and Macroprudential Measures) Regulations 2014
EMD	Electronic Money Regulations 2011
IDD	(to be implemented by 23 February 2018 - legislative process pending)
MCD	Mortgage credit directive order 2015
MIFID II	(to be implemented by 3 July 2017- legislative process pending)
PSD II	(to be implemented by 13 January 2018- legislative process pending)
SOLVENCY II	Solvency II Regulations 2015
UCITS DIRECTIVE	Undertakings for Collective Investment in Transferable Securities Regulations 2011

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