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REPORT

on relationships between the EU and third countries concerning financial services regulation and supervision
(2017/2253(INI))

Committee on Economic and Monetary Affairs

Rapporteur: Brian Hayes

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on relationships between the EU and third countries concerning financial services regulation and supervision (2017/2253(INI))

The European Parliament,

- having regard to the report of 25 February 2009 by the High-Level Group on Financial Supervision in the EU, chaired by Jacques de Larosière,
 - having regard to its resolution of 11 March 2014 with recommendations to the Commission on the European System of Financial Supervision (ESFS) Review¹,
 - having regard to the Commission staff working document of 15 May 2014 entitled ‘Economic Review of the Financial Regulation Agenda’ (SWD(2014)0158),
 - having regard to the Commission report of 8 August 2014 on the operation of the European Supervisory Authorities (ESAs) and the European System of Financial Supervision (ESFS) (COM(2014)0509),
 - having regard to its resolution of 12 April 2016 on the EU role in the framework of international financial, monetary and regulatory institutions and bodies²,
 - having regard to the Commission communication of 23 November 2016 entitled ‘Call for Evidence – EU regulatory framework for financial services’ (COM(2016)0855),
 - having regard to its resolution of 19 January 2016 on ‘Stocktaking and challenges of the EU Financial Services Regulation: impact and the way forward towards a more efficient and effective EU framework for Financial Regulation and a Capital Markets Union’³,
 - having regard to the Commission staff working document of 27 February 2017 entitled ‘EU equivalence decisions in financial services policy: an assessment’ (SWD(2017)0102),
 - having regard to its resolution of 14 March 2018 on the framework of the future EU-UK relationship⁴,
 - having regard to Rule 52 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A8-0263/2018),
- A. whereas since the financial crisis, more than 40 new pieces of EU financial legislation have been adopted, of which 15 include ‘third-country provisions’ that give the Commission, on behalf of the EU, discretion to unilaterally decide whether regulatory

¹ Texts adopted, P7_TA(2014)0202.

² Texts adopted, P8_TA(2016)0108.

³ Texts adopted, P8_TA(2016)0006.

⁴ Texts adopted, P8_TA(2018)0069.

rules in foreign jurisdictions can be considered equivalent;

- B. whereas equivalence and passporting rights are distinctly different concepts, providing different rights to and obligations for regulators, supervisors, financial institutions and market participants; whereas equivalence decisions do not confer ‘passporting rights’ to financial institutions established in third countries as this concept is inextricably linked to the internal market with its common regulatory, supervisory, enforcement and judicial framework;
- C. whereas no trade agreement concluded by the EU has ever incorporated cross-border mutual access provisions on financial services;
- D. whereas there is no single framework underpinning equivalence decisions; whereas each legislative act sets out a targeted equivalence regime tailored to its policy objectives; whereas current equivalence provisions offer different approaches that allow for a range of possible benefits depending on the financial service provider and the market in which it operates;
- E. whereas equivalence is, among other things, a tool to promote international regulatory convergence, which may lead to more competition in the EU internal market on a level playing field, while preventing regulatory arbitrage, protecting consumers and investors, preserving the EU's financial stability and maintaining consistency within the internal market; whereas equivalence is also a tool to ensure fair and equal regulatory and supervisory treatment between EU financial institutions and third-country financial institutions;
- F. whereas equivalence decisions are based on the EU single rulebook and are taken on the basis of a technical assessment; whereas they should nonetheless be subject to a greater degree of scrutiny by Parliament;
- G. whereas the Commission describes equivalence as ‘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’;
- H. whereas the forthcoming withdrawal of the UK from the EU will potentially have a significant impact on the regulation and supervision of financial services, given the close relationship that currently exists between Member States in this area; whereas the negotiations for the withdrawal of the UK from the EU are still ongoing;
- I. whereas in the event that the Withdrawal Agreement, including the transition period, is agreed and ratified, financial institutions will have a longer period to adapt to Brexit; whereas, in the absence of a transition period, the Commission and the ESAs must be prepared to protect financial stability, the integrity of the internal market and the autonomy of decision-making in the EU;
- J. whereas it is necessary for the purposes of the Union's financial stability to fully consider the interconnectedness between third-country markets and the EU's single market;

- K. whereas in its resolution of 19 January 2016 on ‘Stocktaking and challenges of the EU Financial Services Regulation’, Parliament called on the Commission to ‘propose a consistent, coherent, transparent and practical framework for procedures and decisions on third-country equivalence, taking into account an outcome-based analysis and international standards or agreements’;

Relationships with third countries since the crisis

1. Notes that since the financial crisis, the EU has further developed its financial regulation through wide-ranging reforms and implementing international standards; welcomes the increased regulatory and supervisory cooperation between the EU and third countries; recognises that this has contributed to improving global consistency in financial regulation and has contributed to making the EU more resilient to global financial shocks;
2. Considers that the EU should promote global financial regulatory reforms aimed at reducing systemic risk and enhancing financial stability, and should work towards an open, integrated, efficient and resilient financial system that supports sustainable and inclusive economic growth, job creation and investment; stresses that any framework of international regulatory and supervisory cooperation should safeguard financial stability in the Union and respect its regulatory and supervisory regime and standards and their application;
3. Notes with concern that international cooperation is increasingly difficult to achieve owing to different national interests and the inherent incentive to shift risks to other jurisdictions;

EU equivalence procedures

4. Notes that several EU legislative acts contain specific provisions for regulatory cooperation with third countries, related to supervisory cooperation and prudential measures;
5. Stresses that the granting of equivalence is a unilateral decision taken by the EU, on the basis of EU standards; considers that in some specific cases international cooperation may be advanced also by cooperation arrangements between the EU and third countries;
6. Emphasises that the EU should encourage other jurisdictions to grant access to their financial markets to EU market participants;
7. Stresses that through the EU’s relationship with third countries on financial services regulation and supervision, the EU should enhance tax cooperation with third countries, in accordance with international and EU standards; believes that equivalence decisions should be made dependent on satisfactory third-country rules on fighting tax evasion, tax fraud, tax avoidance and money laundering;
8. Recognises that the EU’s equivalence regime is an integral part of a number of its regulatory and supervisory legislative acts for financial services and can offer several benefits, such as: increased competition, increased capital flows into the EU, more

instruments and investment choices for EU firms and investors, stronger investor and consumer protection, and financial stability;

9. Reiterates that, in most cases, equivalence decisions do not grant financial institutions established in third countries the right to provide financial services throughout the EU; points out that they may in some cases give third-country institutions limited access to the single market for certain products or services;
10. Underlines in contrast that the ‘EU passport’ gives undertakings the right to provide financial services throughout the EEA, under the license granted by their home country and under home country supervision, and that as such it is not available to financial institutions established in non-EEA countries as it relies on a set of prudential requirements harmonised under EU law and on mutual recognition of licenses;
11. Emphasises that the EU’s equivalence regime aims to promote international regulatory convergence and enhance supervisory cooperation on the basis of EU and international standards and to ensure equal treatment between EU and third-country financial institutions while preserving the EU’s financial stability and protecting investors and consumers;
12. Considers that, as things stand, the EU’s process for granting equivalence would benefit from more transparency towards the European Parliament; believes that a structured, horizontal and practical framework along with guidelines regarding the recognition of third-country supervisory frameworks and a level of granularity of the assessment of such frameworks would improve transparency;
13. Believes that equivalence decisions should be objective, proportionate, and risk-sensitive, while upholding the high standards of EU regulation; furthermore, considers that equivalence decisions should be taken in the best interests of the Union, its Member States and its citizens, having regard to the financial stability of the Union or of one or more of its Member States, market integrity, investor and consumer protection and the functioning of the internal market;
14. Considers that assessments for equivalence are technical in nature, but notes that equivalence decisions have a clear political dimension, possibly balancing different policy objectives; insists that the process for granting equivalence to a third country in the area of financial services should be subject to appropriate scrutiny by Parliament and the Council and that, for purposes of greater transparency, such decisions should be taken by means of delegated acts, and where necessary facilitated by an early non-objection procedure;
15. Notes that the Commission’s decision of 21 December 2017 to grant equivalence to Swiss share trading venues as part of the MiFID/MiFIR equivalence procedure – limited to a 12-month period with the possibility of an extension provided sufficient progress is made on a common institutional framework – had a clear political dimension;
16. Notes that the Commission has the right to withdraw equivalence decisions, particularly in cases of third-country material regulatory divergence, and believes that Parliament should be consulted in an appropriate manner, in principle before such a withdrawal decision is taken; calls for the introduction of transparent procedures governing the

adoption, withdrawal or suspension of equivalence decisions;

17. Considers that a consistent framework for ongoing supervision of an equivalent third-country regime should be developed; considers that the European Supervisory Authorities (ESAs) should be equipped with the power to advise the Commission and review regulatory and supervisory developments in third countries, given that such developments may have an effect on the Union through interconnectedness of the financial system; demands that Parliament should be kept informed of ongoing regulatory and supervisory reviews of third countries; notes in this regard the legislative package on the review of the European system of financial supervision, which foresees increased monitoring following an equivalence decision, including regulatory issues, supervision and enforcement and the situation in the market of the third country;
18. Considers that through the EU's future equivalence framework, third countries must keep the ESAs informed of any national regulatory developments and that the equivalence decision should require good regulatory and supervisory cooperation and exchange of information; considers that, likewise, third countries should maintain close dialogue with the EU;
19. Calls on the Commission to review and provide a clear framework for a transparent, coherent and consistent application of equivalence procedures which introduces an improved process for the determination, review, suspension or withdrawal of equivalence; calls on the Commission to assess the benefits of introducing an application process for granting equivalence for third countries;
20. Calls for equivalence decisions to be subject to ongoing monitoring by the relevant ESA and for the outcome of such monitoring to be made public; highlights that such monitoring should address the relevant legislation, enforcement practices and supervisory practices, as well as major legislative amendments and market developments, in the third country concerned; calls furthermore for the ESAs to make ad hoc assessments of developments in third countries based on reasoned requests from Parliament, the Council and the Commission;
21. Calls on the Commission to consider the current equivalence regime and to assess whether it contributes to achieving a level playing field between EU and third-country financial institutions, while preserving the financial stability of the Union or of one or more of its Member States, market integrity, investor and consumer protection and the functioning of the internal market; considers that this review, together with proposals for improvement where applicable, should be made public;
22. Calls on the Commission to annually report to the European Parliament all decisions on equivalence, including equivalence granted, suspended and withdrawn, and to explain the rationale for those decisions;
23. Recalls the importance of the ESAs in the analysis and monitoring of third-country supervisory and regulatory frameworks, and calls, in this respect, for the relevant ESAs to have the capacity and powers to collect, collate and analyse data; recalls the role of the National Competent Authorities (NCAs) in the authorisation process for financial institutions that wish to delegate part of their portfolio management or risk management to service providers in third countries where the regulatory regime is comparable to that

of the EU, as well as the importance of supervisory convergence; notes the ongoing review of the ESAs, in particular the proposals on the supervision of delegation, outsourcing or risk transfer arrangements by financial institutions; considers that the ESAs and the NCAs should cooperate closely in order to share best practices and ensure uniform implementation of regulatory cooperation and activities with third countries;

EU's role in global standard-setting for financial regulation

24. Underlines the importance of the EU's active role in global standard-setting as a means of working towards international consistency in financial regulation, aiming to maximise financial stability, reducing systemic risk, protecting consumers and investors, preventing regulatory loopholes between jurisdictions and developing an efficient international financial system;
25. Calls for active involvement of the Union and the Member States participating in global standard-setting bodies in financial services; recalls the requests made to the Commission in its report on the EU role in the framework of international financial, monetary and regulatory institutions and bodies;
26. Calls to that end, moreover, for the Joint EU-US Financial Regulatory Forum to be upgraded to include more regular meetings with the aim of a more frequent and consistent coordination;
27. Points out that improving relations with third countries in the field of financial services and strengthening EU capital markets must not be regarded as mutually exclusive; stresses, therefore, the need for progress on the Capital Markets Union project;

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28. Instructs its President to forward this resolution to the Council and the Commission.

INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE

Date adopted	11.7.2018
Result of final vote	+: 46 -: 4 0: 2
Members present for the final vote	Gerolf Annemans, Burkhard Balz, Pervenche Berès, Esther de Lange, Markus Ferber, Jonás Fernández, Giuseppe Ferrandino, Sven Giegold, Neena Gill, Roberto Gualtieri, Brian Hayes, Petr Ježek, Barbara Kappel, Othmar Karas, Georgios Kyrtos, Philippe Lamberts, Werner Langen, Olle Ludvigsson, Ivana Maletić, Fulvio Martusciello, Costas Mavrides, Alex Mayer, Bernard Monot, Caroline Nagtegaal, Luděk Niedermayer, Stanisław Ożóg, Dimitrios Papadimoulis, Sirpa Pietikäinen, Dariusz Rosati, Pirkko Ruohonen-Lerner, Anne Sander, Alfred Sant, Martin Schirdewan, Molly Scott Cato, Pedro Silva Pereira, Peter Simon, Theodor Dumitru Stolojan, Paul Tang, Ramon Tremosa i Balcells, Ernest Urteaga, Marco Valli, Miguel Viegas, Jakob von Weizsäcker, Marco Zanni
Substitutes present for the final vote	Manuel dos Santos, Paloma López Bermejo, Luigi Morgano, Siegfried Mureşan, Joachim Starbatty, Romana Tomc, Lieve Wierinck
Substitutes under Rule 200(2) present for the final vote	Pilar Ayuso

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

46	+
ALDE	Petr Ježek, Caroline Nagtegaal, Ramon Tremosa i Balcells, Lieve Wierinck
ECR	Stanisław Ożóg, Pirkko Ruohonen-Lerner, Joachim Starbatty
EFDD	Bernard Monot, Marco Valli
ENF	Barbara Kappel
PPE	Pilar Ayuso, Burkhard Balz, Markus Ferber, Brian Hayes, Othmar Karas, Georgios Kyrtos, Esther de Lange, Werner Langen, Ivana Maletić, Fulvio Martusciello, Siegfried Mureşan, Luděk Niedermayer, Sirpa Pietikäinen, Dariusz Rosati, Anne Sander, Theodor Dumitru Stolojan, Romana Tomc
S&D	Pervenche Berès, Jonás Fernández, Giuseppe Ferrandino, Neena Gill, Roberto Gualtieri, Olle Ludvigsson, Costas Mavrides, Alex Mayer, Luigi Morgano, Alfred Sant, Manuel dos Santos, Pedro Silva Pereira, Peter Simon, Paul Tang, Jakob von Weizsäcker
Verts/ALE	Sven Giegold, Philippe Lamberts, Molly Scott Cato, Ernest Urtasun

4	-
GUE/NGL	Paloma López Bermejo, Dimitrios Papadimoulis, Martin Schirdewan, Miguel Viegas

2	0
ENF	Gerolf Annemans, Marco Zanni

Key to symbols:

+ : in favour

- : against

0 : abstention