Barnabas Reynolds

UK and EU Financial Services

The Legal Framework for Free Trade after Brexit

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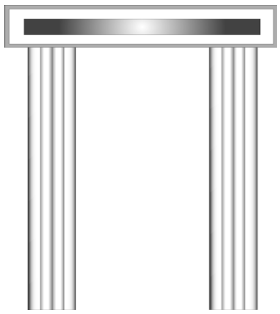

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PREFACE

Trading for Success

UK-EU Financial Services - Future Trade to Mutual Benefit

Sheila Lawlor, Director, Politeia*

For financial services the UK is one of the world's leading centres, benefitting businesses and consumers across the EU and globally. Success has been built on providing and attracting the finance, services and expertise that Britain needed to develop into one of the world's leading trading powers. Today the City of London is rivalled only by New York. It continues to attract global liquidity and international trade in a wide variety of business activities – including investment banking, bank lending, insurance, derivatives, foreign exchange and commodities trading. It is home to the professional services that support such activities, for example legal, actuarial, consulting, economic and accounting services, many of which have global reach.

This success owes much to the country's stable system of government, one perceived to rest on historic freedoms, on the understanding that the authority to govern derives from the people. To these the UK's legal system, in which both property rights and freedoms are protected by the rule of law, is central. The unique standing of the UK Courts, a separate constitutional power, owes much to the expertise of the legal profession and the independence of the judiciary, operating without fear or favour and irrespective of the politics of the day.

Britain's free market economy, based on competition and entrepreneurship, has gone hand in hand with its system of government and the common law tradition. The UK's economic model is the antithesis of the EU system. In France, a centrally-planned, dirigiste economy developed from the 17th century. One foundation for success in France was an ambitious education system, designed to produce a highly skilled elite - engineers, economists, administrators - dedicated to the economic and political success of France, the continent's leading unitary power. When aspects of this centrally planned structure were adopted for the EEC (and then the EU), France intended the project would be under Franco-German leadership, with German economic power locked into political cooperation with and under France. Although today the structures and solutions needed to sustain and hold together the diverse group of member states and economies may be more complex, at heart the EU's single market - centrally controlled and regulated under EU law – remains true to the original politico-economic project.

When people in the UK decided in June 2016 to leave the EU, they did so largely to reassert Britain's sovereignty and the people's freedom to determine how they were governed and by whom - and to re-establish the political, economic and constitutional arrangements of the country, its institutions, parliament, courts and executive so as to become independent of the EU.

The aim for future UK-EU trade of all kinds must therefore be to respect the different UK and EU systems, while agreeing a legal framework that brings certainty to businesses and consumers and secures mutual access for all activities and financial services. So far as UK-EU trade in services is concerned, the general principle of mutual recognition by each that the other's laws lead to similar outcomes and standards has already been accepted by both parties. For financial services the basis is to be equivalence. It is, as the UK Chancellor insisted, vital that, in this important sector for the UK, this country cannot be a rule taker.

The thinking behind the equivalence proposal was developed at Politeia with Barnabas Reynolds, who leads his city firm's global and EU financial regulatory practice. His *Template for Enhanced Equivalence* informs the basis of the UK's July 2018 White Paper and the subsequent UK-EU Political

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* Sheila Lawlor is the Director of Politeia. This preface draws on some of the analysis in her *Deal, No Deal? The Battle for Britain's Democracy*, (October 2018).

Declaration. It can be implemented alongside an EU-UK free trade deal on the lines of the EU-Canada or CETA+ model or various other options.

Although the same principle is equally important for goods trade, this analysis is concerned with services and specifically with financial services. With as yet no legally binding agreement for future EU-UK trade, the UK remains committed to equivalence for financial services trade, a principle which the EU's Michel Barnier made clear is workable and for which there are already successful precedents.

As the UK under a new prime minister accelerates preparations for departure on 31 October, some questions remain. How can an agreement be framed for legal certainty to the mutual benefit of both parties? How best can the UK ensure that businesses and consumers in the UK and EU continue to profit from free trade, giving access to competitive capital markets and expertise in the full range of activities found in London? What steps must be taken to provide stronger legal underpinning and avoid scope for future ambiguity?

These aims can be achieved through enhanced equivalence via different legal options. The first option, to amend domestic law in the EU and the UK, was proposed in Reynolds' previous *Template,* combining extensive operative amendments with elements of the arrangement in a chapter of a Free Trade Agreement. The second option, developed earlier in his 2018 publication (see p.3 below) and revived here by Reynolds, is via a chapter in a Free Trade Agreement, the more detailed operative provisions of which are agreed by Treaty. This has the advantage of binding both parties more stringently under law. At the same time the UK must take care to avoid legal uncertainties that could arise, including on the topical question of what constitutes 'equivalence' and who decides. For instance, how can the danger be avoided that the EU arrogates to itself and its court the ultimate power to decide what activities should be covered, or how disputes should be resolved?

Reynolds makes clear that, whether the route chosen is via amendments to domestic law in the EU and UK, or via a chapter in a Free Trade Agreement, the parties should insist on two features to avoid doubt in implementation, and so that the intended goal is realised. First, to avoid future potential ambiguity about what constitutes equivalence and its determination, independent supervisory arbitration is needed rather than leaving the decision to each party's own courts. Second, given that the EU and UK are starting off with identical laws, the aim should be to cover all the services now traded, rather than to begin with a list of exceptions.

The advantages of a genuine equivalence trade agreement are great, whichever precise route to it is chosen. Each party would keep its own laws, recognising the other's when they result in similar outcomes. Neither party would have a dominant say in deciding what constitutes equivalence. Disputes would be settled by an independent resolution mechanism. This basis, and the certainty and independence it brings, will matter not only for the sector's future success, but for that of the economic system and whole economy. It will return to the UK the powers to shape the law and play to the country's economic strengths in a system that thrives on free markets, competition and constitutional freedom.

Moreover, the arrangement proposed in the chapters that follow would, as in the previous *Template*, meet the EU's own precedents for equivalence trade with various countries, including the US. It would respect the principles of UK law that underpin financial centres globally, from New York to Singapore. It would also meet the needs of businesses and ensure the continuity of free trade.

But above all, it would meet the constitutional and political obligations of the referendum, ensure UK law governs this dynamic economic sector, and it would respect the authority of the voters on which the UK's democratic system rests.

Sheila Lawlor, Director, Politeia
12 July 2019

THE AUTHOR

Barnabas Reynolds is a partner at Shearman & Sterling LLP, where he is head of the global financial institutions and financial advisory practice. He practises in UK and EU financial regulation and advises all types of financial markets participant on their legal and regulatory situations, difficulties and opportunities, and their legal risk profiles.

He is the author of *EU-UK Financial Services After Brexit – Enhanced Equivalence: A Win-Win Proposition* and chapters in *How to Leave the EU: What's Best for Britain, Best for the EU?* published by New Direction-Politeia in February 2018 and March 2017 respectively. His other related publications include *Free Trade in UK-EU Financial Services – How Best to Structure a Brexit Free Trade Deal*, *The Art of the No Deal: How Best to Navigate Brexit for Financial Services*, *A Template for Enhanced Equivalence: Creating a Lasting Relationship in Financial Services Between the EU and the UK* and *A Blueprint for Brexit: The Future of Global Financial Services and Markets in the UK*, published by Politeia in October 2018, November 2017, July 2017 and November 2016 respectively.

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

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

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Summary and Analysis

The UK will soon have a new Prime Minister and, most likely, a new approach to Brexit. The UK is scheduled to leave the EU on 31st October 2019. It seeks new trading arrangements with the EU. The mechanics for arriving at those arrangements, proposed to the UK and EU legislators by the former UK administration and the EU negotiators, have so far been found to be unsatisfactory. Thus, the UK Parliament has rejected on three occasions the Draft Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland dated 14 November, together with the Draft Political Declaration of the same date which set out a (non-binding) framework and arrangements for the future relationship between the EU and the UK. Both documents were agreed at negotiators' level and in principle at an inter-governmental level, but they were found unacceptable by the UK Parliament.

It is clear that the UK Parliament had concerns about many elements of the Agreement. Some would say it failed to recognise UK sovereignty. Others focus on the controversial Northern Ireland Backstop. Others still would point to the lack of any clarity on acceptable future trading arrangements. However, regardless of whether any version of the Agreement is ultimately accepted, it is possible for the UK and EU to trade successfully in financial services to mutual benefit after Brexit, including in the event of a so-called "hard" Brexit, and this publication shows how.

From a financial services perspective, the Agreement and Political Declaration provide for little. The Withdrawal Agreement says nothing about financial services, and the Political Declaration includes three paragraphs on the topic, effectively reaffirming the ideas set out by the author of this paper in July 2017 in *A Template for Enhanced Equivalence: Creating a Lasting Relationship in Financial Services Between the EU and the UK*[1] (hereafter the *Template*) which were later adopted by the UK Government in its so-called "Chequers" plan and subsequent White Paper of July 2018.[2]

As regards financial services therefore, the UK position remains that broadly set out in the post-Chequers White Paper. In summary, the proposal is for mutual recognition of UK and EU financial regulations and supervision, enabling businesses established in one jurisdiction to conduct financial business cross-border in the other without duplicative regulation or supervision. It also provides for an easier procedure and requirements for setting up a branch in the other jurisdiction.

This position is workable – and should be improved upon by addressing the following two key issues which the White Paper left out, but which were included in the *Template*. First, the White Paper omitted to stipulate that there should be an independent tribunal to oversee the application of the equivalence definition. Secondly, it stated that it was not looking for an equivalence mechanic across all existing areas. This leaves the proposals insufficiently ambitious. The revised proposals contained here, which reflect earlier proposals in *Free Trade in UK-EU Financial Services – How Best to Structure a Brexit Free Trade Deal,*[3] reinstate these two points.

Notably, the legal text contained here would mean the UK could avoid the need for any transitional period in financial services and so could circumvent the democratic and constitutional concerns to which a transition period gives rise. The arrangements could be implemented immediately, effective from the current proposed exit date of 31 October. As it stands, the Agreement and Political Declaration envisage a time during which the UK is subject to new EU laws developed and adopted after Brexit, without the UK's input or vote. For financial services that puts UK and EU taxpayers at risk by severing the control of regulation by the supervisors, and preventing the dynamic regulation of hugely sophisticated global markets. These markets need constant, real-time attention.

This paper sets out the advantages to both the EU and the UK of a deal for financial services, premised on the Chequers and White Paper proposals for the sector and my own *Template*. It is split into three sections:

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1 Barnabas Reynolds, Politeia, July 2017.
2 HM Government, *The future relationship between the United Kingdom and the European Union*, CM 9593, July 2018.
3 Barnabas Reynolds, Politeia, October 2018.

1. A UK-EU Financial Services Deal – The Advantages.
2. The Existing EU Concept of Equivalence – How Would a Deal Fit?
3. How to Make Equivalence Even More Fit for Purpose?

A UK-EU Financial Services Deal – The Advantages

Economic Benefits, Financial Benefits

There is little doubt about what would be the best picture for UK-EU free trade in financial services after Brexit. All the evidence shows that the financial benefits and the benefits of choice to the EU27 citizens of having a single market in financial services across Europe, encompassing the UK and the EU27, are very significant.[4] This single market exists now through the EU financial services passports, which cover wholesale and retail financial business across most areas, but although the passport cannot be the basis for the continued operation of a single market post-Brexit,[5] the benefits of the single market can be perpetuated – perhaps even improved – by proper implementation of a financial services deal with a different legal framework as happens between the EU and other jurisdictions like the US.

To do so would be to everyone's benefit. The UK provides the most liquid and therefore cheapest source of capital available to finance European business and personal aspirations across the European timezones. It hosts the global financial markets, with their deep liquidity and sophistication. The City of London is one of the world's two financial centres, and one which also happens to sit in the European timezones. It services businesses from Africa to Asia, the CIS, the Americas, Europe and beyond. The City also provides the most innovative source of financial products and services in European timezones. To deny EU firms full and free access to these markets would have serious ramifications for the real economy within the EU27.

Financial services are also key enablers of wealth creation and preservation, including by facilitating investment, retirement planning and business financing. These are core elements of a successful society.

Regulatory Barriers – The Costs

In financial services the key barriers to trade are regulations rather than tariffs. The EU27's default position, in the absence of a deal, would be to allow financial services and products into its zone from the UK, but in a manner requiring some elements of capital and collateral to be maintained for certain business lines within the EU27, and for specific (largely marketing) jobs to be located in the EU27. In that case, certain financial activities would be subject to duplicative regulation, bringing with it significant additional costs. Services and products would be regulated twice: once in the home state of the UK, where the global markets and the liquid and deep capital pools are located; and they would then be regulated a second time by the EU for elements of the service deemed to be provided within the EU's jurisdiction. The irony is that, far from imposing additional costs specially on those UK service-providers or providing a relative advantage to service providers in the EU27, the additional costs of this regulation would be passed back to the EU27 customer base. These inefficiencies benefit no one.

A Single European Financial Market – Replicating the Benefits

The Single Market in financial services comprises a 'passporting' arrangement whereby businesses are solely regulated in one EU jurisdiction for most business. This arrangement initially involved mutual recognition of regulations across the EU, which were required to meet certain minimum standards. Since the 2007-8 financial crisis there has been an iterative introduction of a 'single rulebook' across the EU which is intended to be applied consistently by the member state regulators. There has also been the introduction of EU oversight bodies whose role is in part to seek to ensure consistent interpretations are taken.

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4 See Oliver Wyman, *The Impact of the UK's Exit from the EU on the UK-based Financial Services Sector*, October 2016, available here: https://www.oliverwyman.com/content/dam/oliver-wyman/global/en/2016/oct/Brexit_POV.PDF.

5 For reasons explained in *A Blueprint for Brexit: The Future of Global Financial Services and Markets in the UK*, by Barnabas Reynolds, Politeia, November 2016.

The passport itself cannot be preserved without the other components of the 'four freedoms' – which the UK intends to end with its membership of the EU and Single Market. However, the core benefits of the passporting system, which can also exist in other legal frameworks, are in the interests of all. In fact, the 'loss' of passporting could well end up being to the advantage of both parties.

The UK's markets have never sat comfortably with the single rulebook regime into which the passporting system developed following the 2007/8 financial crisis. The UK had previously accepted – indeed developed – a free economic zone whereby each member state relies on the others for proper regulation and supervision of business emanating from the other states. But ever-closer harmonisation of the rules moved the UK away from its traditional outcomes-based approach to regulation towards one designed to fit 28 different legal systems. Perhaps inevitably, this has ended up ill-fitting the markets hosted in the UK. The single rulebook has been made hugely detailed and specific in order to iron out potentially inconsistent discretions for the member state supervisors. This is arguably acceptable for the domestic markets in the EU27. It is increasingly dangerous and inappropriate however for the global markets which the UK regulates and has successfully regulated in line with the principles of English law.

Moving away from the passporting system will allow the UK to reset its own regulatory regime, but crucially will also allow the EU to progress and advance its objectives, without seemingly having to "drag" the UK along in many areas on which the UK's own law has worked well and successfully.

In particular, ending the passport system does not mean no single European financial market. The objective is one-time regulation and supervision of cross-border business. That can be achieved, without the passporting system, by making relatively minor adjustments to existing EU legal concepts already in use by the EU around the world, as is shown in this paper.

Gains and Losses. The EU27 – The Implications of not Collaborating?

The EU27 portion of the financial business serviced in the UK has been estimated at around 20-25 per cent of the UK's overall business.[6] The financial markets operate through economies and efficiencies of scale, benefitting from agglomeration effects. Whilst it would be possible to require some of the EU27-facing portion of the City's business to be conducted from locations in the EU27, that would be of considerable detriment to EU27 citizens and businesses benefitting from UK-originated services and products.

Given the overall economics, much of the business is likely in any event to remain in the UK as the most efficient financial centre in the region, and due to the liquidity and other benefits gained through the concentration of business in one place and the ability to net EU exposures against non-EU exposures.

Secondly, the EU would have no say in how business in the UK is conducted or regulated. Instead of continuing to collaborate, the UK would forge its own regulatory path entirely, without much reference to the EU.

[6] See page 6 of Oliver Wyman, *Impact*.

The Existing EU Concept of Equivalence – How Would a Deal Fit?

Enhanced Equivalence: Principles and Practice for Mutual Recognition and a UK-EU Financial Services Trade Deal

The negotiation on financial services must result in some form of mutual recognition of regulatory provisions and supervision. For many reasons, as set out in the previous *Template* publication, there is no other viable method for allowing the cheapest possible access to liquid capital across Europe and the avoidance of the unnecessary costs of duplicative regulation, consistent with the referendum decision. From the EU's perspective, the prize is to come up with an arrangement that allows global businesses most easily to serve EU27 customers and for EU27 customers to have the most efficient access to global capital. Capital costs are crucial for economic welfare and growth, enabling EU27 businesses to build, invest and prosper – and enabling EU27 citizens to save for health, lifestyle, retirement and other purposes. From the UK's perspective, the prize will be minimal disruption to its markets, market participants and access to the EU27 customer-base.

In the language of EU financial services, this mutual recognition manifests itself in the concept of 'equivalence', whereby the EU recognises the regulatory standards of another jurisdiction to be 'equivalent' to its own (and *vice versa*), and therefore does not seek additionally to impose its own regulatory standards on firms regulated in that other jurisdiction, even when they are performing services within the EU.[7] The standards need not be identical, but must overall be seen as achieving equivalent high-level outcomes. This principle acknowledges that individual jurisdictions are better placed to identify local problems.

For one party to recognise the other jurisdiction in this way, key interests need to be protected, often with common aims. In particular, both parties will need to ensure they do not incur unacceptable systemic risk, since that puts taxpayer monies at risk as was seen in the 2007-8 financial crisis. Both parties will also wish to protect their consumers (i.e., retail customers, rather than professional investors) by ensuring products or services sold or delivered to their consumers meet certain requirements and the sales process makes clear where protections are different when buying from abroad rather than from local suppliers.

The Equivalence-type Concept – Necessary at All?

Equivalence is not required in every context. First, many activities that have generally been treated as regulated due to the ease of applying for a cross-border passport do not – properly analysed – involve the provision or conduct of a cross-border regulated service or activity. Secondly, in some cases, compliance with the outcomes the EU's regime seeks to declare is considered so burdensome that falling outside its remit would be welcomed by participants. Thirdly, exemptions or exclusions might apply. For example, in the case of wholesale investment business the UK allows foreign businesses to deal with parties in the UK without regulation, using its 'overseas persons' exclusion.[8] The EU endeavours to do the same (or similar) through its so-called 'reverse solicitation' exclusion, under which EU customers can reach outside the EU to access services and products from elsewhere, becoming subject solely to the protection of the provider's regime.[9] However, across other matters, such as commercial banking and insurance, this is not the case. Nor is it the case that the EU applies reverse solicitation in as clear-cut and expansive a manner as that in which the UK applies the overseas persons exclusion for investment business, allowing free and unrestricted relationships to be formed in a broad context. The EU has generally so far been reluctant to allow foreign businesses

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7 For further information on equivalence in the Brexit context, see Section 2, *A Template for Enhanced Equivalence* ('Introducing Equivalence: The EU and the Concept of International Mutual Recognition').

8 Article 72, Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544).

9 Recital 111 and Article 42, 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 (MiFID II); and Recital 43 and Article 46(5), 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 (MiFIR).

to market financial services and products to the benefit of EU customers without seeking to exercise control. It is for those reasons that some type of equivalence regime is necessary.

Equivalence – What it Promises

The advantage of equivalence is that in those areas of financial services where equivalence is granted from time to time, the benefits of the passport are largely replicated. UK businesses will be permitted to operate across the EU markets without further licensing, additional compliance requirements or EU supervision. The same is true for EU businesses wishing to operate in the UK markets so long as EU standards are equivalent to those in the UK.

In this way, the end result that financial businesses have urged would be achieved.[10] Such an equivalence agreement would avoid the need for business adjustment as a result of Brexit or additional expense being incurred in altering current business models for servicing EU27 clients.

A successful equivalence framework in the Brexit context would provide for mutual recognition of financial regulatory standards between the UK and EU in a flexible manner. It would allow each jurisdiction, after Brexit, to operate in its own way, not being formally tied to the other – although, of course, in many cases they are likely to mirror each other in terms of making rules for and regulating safe financial markets, as those areas are mostly driven by global standards in any event.

Because it is based on the existing EU legal concepts for financial services, equivalence could form one of the best workable bases for both parties, having been developed by, and therefore being familiar to, both the UK and the EU. Equivalence as a concept has been extensively worked out in law already and is now used internationally as a proven basis for successful financial services trade.

There are numerous equivalence regimes already operational in EU law,[11] and the approach is already in use for the EU's trading relationship in financial services with the US, Japan, Singapore and elsewhere.[12] For the US, for instance, central counterparties based there can be recognised by the EU as being acceptable to satisfy the G20-driven obligations requiring certain EU businesses to enter into any liquid derivatives contracts with central counterparties rather than bilaterally with other market participants. By building on this approach, the proposal goes with the grain of existing law which the UK has worked on whilst part of the EU.

[10] See, for example, *Brexit and UK-based Financial and Related Professional Services*, TheCityUK, 12 January 2018.
[11] These are set out in Annex A of *A Blueprint for Brexit*.
[12] See Annex C of *A Blueprint for Brexit*.

How to Make Equivalence Even More Fit for Purpose?

A UK-EU Treaty for Financial Services – The Route to Stronger Legal Underpinning

As explained in previous publications, the concept of equivalence as it stands is inadequate for the UK-EU relationship, in part because it was not developed to cover all the extensive activities (such as lending, primary insurance, insurance mediation, mortgage credit and settlement finality) and the depth of such a significant relationship.[13] Therefore, improvements need to be made.

Equivalence should cover the full range of services, activities and products, including lending, insurance, settlement finality and retail financial business.[14] Moreover, in terms of definition and legal certainty, it should be made clearer that equivalence is determined by reference to high-level outcomes, where possible based on international standards.[15] The existing equivalence processes need to be rendered more consistent.[16] And there needs to be objectivity and procedural certainty over when equivalence is to be granted.[17]

The definition of outcomes is key, since it is on this that the workability of the equivalence concept depends. The proposal in the *Template* and here is that the outcomes achieved by both sets of rules should be defined at a sufficiently high level such that neither party is a rule taker from the other. This is accomplished by ensuring any outcomes required are, where possible, based on objective standards, taking international standards as determinative. Where those standards are inapplicable or ill-defined, the outcomes would be agreed upon at a technocratic level between the UK and the EU.

The Agreement: The Scope

The most robust backdrop to a financial services solution would be a wider Brexit Agreement (Free Trade Agreement, or FTA) that would comprehensively establish the various procedures and mechanisms underpinning the relationship as a whole, across all sectors, as described below.

It would in principle be possible merely to apply unilaterally existing or expanded EU equivalence mechanics. Indeed, this is what the European Commission have been doing by unilaterally declaring equivalence for UK central counterparties[18] and depositories,[19] with equivalence declarations in other areas possibly forthcoming. The EU needs access to these parts and others of UK financial infrastructure and markets, and it is hardly surprising therefore that the Commission felt the need to declare equivalence for certain infrastructure before Brexit, to prevent services to EU users ceasing entirely and forcing huge costs onto those EU users after Brexit. However, the mutual goal should be wider than that.

The Agreement: The Goal

The goal is to establish an attractive and workable solution for both parties:

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13 Section 3, *A Template for Enhanced Equivalence* ('Making Equivalence Work').

14 See Annex B of *A Blueprint for Brexit.*

15 See Section 5 of *A Template for Enhanced Equivalence* and Section 8 of *EU-UK Financial Services After Brexit – Enhanced Equivalence: A Win-Win Proposition*, Barnabas Reynolds, New Direction-Politeia, February 2018.

16 *Ibid.*

17 *Ibid.*

18 Commission Implementing Decision (EU) 2018/2031 of 19 December 2018 determining, for a limited period of time, that the regulatory framework applicable to central counterparties in the United Kingdom of Great Britain and Northern Ireland is equivalent, in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council.

19 Commission Implementing Decision (EU) 2018/2030 of 19 December 2018 determining, for a limited period of time, that the regulatory framework applicable to central securities depositories of the United Kingdom of Great Britain and Northern Ireland is equivalent in accordance with Regulation (EU) No 909/2014 of the European Parliament and of the Council.

- The EU could continue unfettered with its own legislative and judicial approach, which works for the EU.

- The UK would be able to legislate and regulate in a manner consistent with the Common Law, ensuring a proper marriage of legislation, regulation and predictable judicial interpretation.

- The proposed regime would fill in the gaps found in the existing EU framework,[20] to the benefit of the EU, not just in relation to the UK.

- It would provide for cooperation mechanics for supervision and enforcement, and information flows between regulators.[21]

- There would be collaboration on new legislative and regulatory initiatives.[22]

- There would be an independent tribunal which oversees the application of the equivalence definition and the procedures for granting and withdrawing equivalence, [23] providing the necessary certainty for businesses.

- So long as the relevant outcomes are met in a particular area of financial services business, then access would be maintained in that area.

Because each party's rules are currently identical there would be equivalence across all areas immediately on Brexit. After that, either party could at any point decide not to continue with equivalence-based access in a particular area for its businesses to the other party's jurisdiction and could make entirely different rules in that area which did not achieve equivalent outcomes to those achieved by the other party. This seems unlikely for the UK, given that the UK has been and remains instrumental in developing international standards, but the optionality is built into the arrangement for such radical divergence to occur.

Certainty benefits both parties. The EU is concerned that the UK might race to deregulate, despite the fact that the UK has for decades applied higher regulatory standards than elsewhere.[24] Conversely, the UK is concerned that the EU might wish to oblige it in practice to be a rule taker, which would introduce unacceptable systemic and taxpayer risk even were the point to be politically supportable.[25] Both outcomes would be unacceptable. It is therefore important to embed more substantive, operative provisions in Treaty text so as to ensure no slippage is possible from the principles agreed.

The proposed agreement that follows in this paper is therefore a different route (but ultimately to the same end) to that set out in the *Template*. It embeds all of the arrangements more fully in a binding Treaty to ensure maximum predictability. It also improves upon the UK's stated position by addressing the Government's two omissions, neither of which would be attractive to retain - for the UK nor the EU. And it deals with some important points not covered in the White Paper's description of how equivalence should work.

Recommendations

The two UK Government omissions described above should be replaced, irrespective of which route is taken to enhanced equivalence. In particular, there should be an independent tribunal to oversee the entirety of the arrangements rather than leaving things where the White Paper left them. It is for the EU, and the UK, to apply the term equivalence in exactly the agreed manner. The independent tribunal should take on the role of ultimate arbiter of the meaning and application of the equivalence

[20] Article 5(1) of the Draft Equivalence Regulation in *A Template for Enhanced Equivalence*.
[21] Article 3(2)(e) of the Draft Equivalence Regulation in *A Template for Enhanced Equivalence*.
[22] Article 6 of the Draft Equivalence Regulation in *A Template for Enhanced Equivalence*.
[23] Article 9 of the Draft EU-UK Bilateral Agreement in *A Template for Enhanced Equivalence*.
[24] Financial Times, *'EU seeks powers to stop post-Brexit bonfire of regulation'*, 1 February 2018.
[25] See, for example, Philip Hammond's speech on Financial Services, 7 March 2018.

definition as between the two parties, rather than the ECJ or the UK courts. In order to ensure a framework which removes any possibility of politicised decision-making in the future, it would seem reasonable for both parties to commit to their words and to subject themselves to independent verification of that point on a technical level. This is consistent with the standard approach in trade agreements and is compatible with each party's individual autonomy. The parties will independently decide to enter into the free trade arrangement on the basis specified, and, as for any agreement, they will expect to be bound by what they agree to for the duration of the agreement.

Secondly, whereas the White Paper provides that the UK will not be seeking equivalence across all areas of financial services, this paper proposes a route that removes this qualification from the proposed financial services agreement because the laws of the two regimes, the UK's and the EU's, are generally identical, and the parties should be ambitious in continuing with full mutual access across all areas for the foreseeable future. Indeed, this point should, along with that for oversight by the independent tribunal, be added to the Government's White Paper plans if those are persisted with.

The mechanics of the new option for a proposed agreement are such that if in due course either party decides to opt out of its businesses having equivalence-based access to the other party in a particular area, it can do so whilst leaving the trade agreement to operate across the remaining financial services areas.

Moving On from Passporting, Respecting Sovereignty

This approach is consistent with both parties' position that there will be no more passporting for businesses in the UK, and it leaves intra-EU passporting arrangements untouched. Passporting involves automatic access from across the EU predicated on joint rulemaking made within the EU system. Being outside the EU the UK cannot participate in the rulemaking process nor can it apply the EU rules. In the future, access from the UK will instead arise where each party's rules achieve similar high-level outcomes. There is no guarantee that this will be the case. New rules developed by one party will need to be reviewed against international standards in order to determine whether the high-level outcomes are being applied. If not, no access is provided for. The mechanic is therefore different from the passport, and requires ongoing collaboration and iterative discussion of new initiatives against objectively necessary outcomes, defined forensically with a view to avoiding systemic risk arising in the other party.

A Sectoral Approach

In the proposals that follow, the granting and removal of access would be defined by reference to specific sectors, which are (conveniently) already reflected as a general matter in existing EU legislation. So one sector would be investment business (reflected in the Markets in Financial Instruments Directive, MiFID II), another would be clearing (reflected in the European Markets Infrastructure Regulation, EMIR), and so on. Such a parallel approach would be consistent with the existing design of the EU's equivalence architecture, which already demonstrably works across a large number of sectors.

Arrangements for Branches and Other Recognitions

It is also envisaged that there would be clear equivalence mechanics for establishing local financial institution branches and for other recognitions facilitating cross-border business.

No Cliff Edge

The approach set out here could be put in place before Brexit, including for the 'no deal'/WTO Brexit, often described as a 'hard' Brexit. This would avoid the need for any transitional period in financial services, with all the difficulties that brings with it for the UK and EU. Those difficulties are not just constitutional. They involve increased taxpayer exposure by not permitting for appropriate dynamic adjustments to regulation as the global markets evolve. In addition, the proposed arrangements would

remove any talk of a cliff edge for over-the-counter (OTC) derivatives and insurance contracts, which is a topic currently being addressed in a patchwork fashion at member state level.

The Overseas Persons Exclusion and Reverse Solicitation

In addition, it is proposed that the overseas persons exclusion should be maintained by the UK and that the EU's reverse solicitation exclusion should also be maintained, but in a form which makes it more reliable and certain. It is clear from the UK's experience that an open border for the wholesale financial markets is entirely workable and safe, and that it enhances the free flow of capital to the benefit of all.

Euro Clearing

The position of euro clearing has been very controversial, with attempts from some in the EU to procure, on Brexit, the relocation of euro clearing business from the UK to the Eurozone. If there is a strong regulatory framework between the UK and EU, concerns over euro clearing should not arise. The equivalence and cooperation arrangements envisaged here should mean that the need for deep liquidity pools and global markets can be maintained. Movement of euro clearing is therefore not accommodated in this proposal - nor in the White Paper, nor the *Template*. There are also many reasons why permitting the forced relocation of euro clearing or the splitting of financial infrastructure would be dangerous for the global markets. These reasons have been set out extensively elsewhere.[26] The EU is separately passing measures which seek to give it more of a supervisory role in third country euro clearing, which would apply to euro clearing taking place in the UK after Brexit.[27]

Contractual Continuity

The text of the agreement should address continuity of contract issues such that in-flight contracts at the moment of withdrawal of equivalence in a sector continue to be performed in accordance with their terms.[28] Although there are good legal arguments as to why such contacts are in any event unaffected by the withdrawal of an equivalence determination,[29] the UK authorities have expressed concern that the matter should be put beyond doubt by including a provision in an agreement between the parties. It is in no-one's interests for there to be uncertainty on the point. Also, on the basis of what is proposed here, full mutual access would continue for financial services immediately after Brexit to the benefit of both parties, so no continuity of contracts provision will be necessary at that juncture.

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[26] See, for example, Part 2 ('Freedom to Trade and Clear in Reserve Currencies') of *A Blueprint for Brexit*; Barnabas Reynolds, *'EU-managed control of euro clearing is not viable'*, Financial Times, 15 May 2017; Barnabas Reynolds , *'UK Safer For City's Financial Sector than EU'*, Politeia, 3 May 2017.

[27] Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority) and amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs.

[28] See, for example, Articles 2.14-2.15 ('Contractual Continuity'), of the Draft Equivalence Regulation in *A Template for Enhanced Equivalence*.

[29] *'Continuity of Contracts and Business on a 'Hard' Brexit: Human Rights and Reverse Solicitation to the Rescue!'*, Shearman & Sterling Publication, 31 October 2017.

Conclusion

Properly implemented, what is proposed here is a win-win. It would allow the UK and the EU to maintain the current levels of cooperation and to continue to develop a pan-European regulatory framework, building on their successful collaboration over the past years to mutual gain. It would bring greater certainty to the industry, the advantages to both parties (in terms of market safety) of legal independence to the UK in this global sector, and a constructive, but legally clear basis for successful UK-EU free trade.

Many thanks to Oliver Linch and Wilf Odgers for their help in the preparation of this volume. All faults that remain are my own.

Proposed UK-EU Treaty for Financial Services

Article 1. Definitions

[…]

1.1 [Intro text]:

(a) "agreed equivalence recognitions" means the recognitions which have been agreed in Article 4 and as further detailed in Schedule 1, whereby each Party confirms the sector of the financial services regulatory regime of the other party which is agreed to be equivalent and the national legal effect that is intended to result from the relevant equivalence recognition;

(b) "disagreement on compliance" has the meaning specified in Article 9.35;

(c) "disagreement on suspension" has the meaning specified in Article 9.35;

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

(e) "equivalence change" means a request to amend the legal effect of an agreed equivalence recognition or a request to supplement the agreed equivalence recognitions with further provisions or a request to remove a recognition from the agreed list of equivalence recognitions in Schedule 1;

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

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

(ii) there is no significant risk of increased systemic risk in the financial markets either globally or within the jurisdiction of a Party.

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

(g) "financial services" means any service of a financial nature offered by a financial service supplier established in and/or authorised by a Party. Financial services include all insurance and insurance-related services, all banking and other financial services and financial infrastructure. Financial services may include the following activities:

Insurance and insurance-related services

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

(A) life; and

(B) non-life;

(ii) reinsurance and retrocession;

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

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

Banking and other financial services

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

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

(vii) financial leasing;

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

(ix) guarantees and commitments;

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

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

(B) foreign exchange;

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

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

(E) transferable securities; and

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

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

(xii) money broking;

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

(xiv) settlement and clearing services for financial assets, including receiving and transmitting orders or trades, securities, derivative products and other negotiable instruments;

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

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

(xvii) market infrastructure:

(A) clearing;

(B) exchange/platform trading; and

(C) central securities depositories, depositories and settlement systems;

(xviii) marketing of financial services; and

(xix) agreements concerning any of the products and services mentioned in paragraphs (i) to (xviii) above.

(h) "GATS" means the General Agreement on Trade in Services and the GATS Annex on Financial Services;

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

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

(k) "recognition conditions" has the meaning specified in Article 4.4 and as further detailed in Schedule 2;

(l) "recognition principles" has the meaning specified in Article 3.1;

(m) "Regulatory Committee" has the meaning specified in Article 6.1;

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

(o) "relevant regulatory development" means: (i) a proposed or new legislative development in either Party's jurisdiction which, if proposed could, or if already effective does, alter the previously agreed legal effect in either Party's jurisdiction of an agreed equivalence recognition; or (ii) a proposed or new legislative development in either Party's jurisdiction which, if proposed could be, or if already effective is, relevant to determining whether the recognition conditions applicable to an agreed equivalence recognition remain satisfied;

(p) "Tribunal" means the tribunal established under Article 10;

(q) "Union recognition body" means the [description of representative body] which will represent the Union in all matters relating to this Agreement;

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

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

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

(u) "United Kingdom" means the United Kingdom of Great Britain and Northern Ireland;

(v) "Union" means the European Union;

(w) "Vienna Convention on the Law of Treaties" means the Vienna Convention on the Law of Treaties, concluded on 23 May 1969; and

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

[…]

Article 2. Overseas Persons Exclusion

2.1 The Parties agree to maintain an overseas persons exclusion (in the case of the United Kingdom) and to maintain a reverse solicitation exclusion in a form which is at least as wide as the United Kingdom's overseas persons exclusion (in the case of the Union) under the law of their respective jurisdictions to facilitate the provision of financial services between the jurisdictions of each of the Parties.

2.2 For the purposes of this Article 2, an "overseas persons exclusion" and a "reverse solicitation" exclusion means, in respect of a Party, an exclusion under law from the requirement to be authorised to conduct [any financial services activities] / [specified financial services activities][1] for or on behalf of clients in that Party's jurisdiction for persons with no permanent place of business in that Party's jurisdiction from which financial services activities are conducted or offers to conduct financial services activities are made, subject to certain [specifications and] conditions.

2.3 The [specifications and] conditions referred to in Article 2.2 are as follows:

(a) [no direct marketing efforts;

(b) no clients who are individuals; and

(c) no retail clients][2]

2.4 For financial services activities which fall outside the scope of the overseas persons exclusion and reverse solicitation exclusion maintained under this Article 2, the Parties may adopt equivalence recognitions in accordance with the remainder of this Agreement.

[1] NOTE: Adapt as required and state any specified activities in the conditions in 2.3.

[2] NOTE: Consider reflecting current conditions (i.e. dealing or arranging with or through an authorised person or entering into a deal as a result of a 'legitimate approach') that apply under the UK's overseas persons exclusion contained in Article 72 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544).

Article 3. Equivalence Recognition Principles

3.1 The following principles in this Article 3 are designated as "recognition principles" for the purposes of governing the mutual recognition relationship established between the Parties under this Agreement and in accordance with the principles established in Article VII of the GATS.

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

Good faith

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

Transparency, objectivity and impartiality

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

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

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

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

Legal effect and inconsistent acts

3.6 The agreed equivalence recognitions are based on the Parties giving legal effect to the agreed equivalence recognitions (subject to any specific terms and conditions contained in Schedule 1) and on a reciprocal basis (unless otherwise specified in Schedule 1 or in any other written agreement between the Parties which refers to this provision).

3.7 The Parties shall ensure that measures are not adopted in their respective jurisdictions which are inconsistent with the legal effect that the agreed equivalence recognitions are intended to have, as described in Article 4 and Schedule 1, unless the relevant change procedures contained in Article 11 have been complied with.

Non-discrimination

3.8 Each of the Parties shall ensure that its laws, regulations, procedures, supervision, enforcement and judicial rulings do not subject financial services suppliers authorised by and/or established in the other Party's jurisdiction to less favourable treatment than:

(a) like financial services suppliers authorised by and/or established in its own jurisdiction; or

(b) like financial services suppliers authorised by and/or established in any other country which the other Party permits to carry out financial services business in the other Party's jurisdiction.

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

Equivalence

3.10 The agreed equivalence recognitions are premised on the Parties achieving the same key regulatory outcomes, but not necessarily adopting the same approach or legal wording. Alternative approaches from those taken by one Party in reducing prudential risk or achieving other regulatory outcomes may legitimately be adopted within the framework of continuing equivalence, so long as the Party remains equivalent by achieving the same key regulatory outcomes. The effect of an equivalence recognition shall be that, immediately on entry into force of such recognition, relevant legal persons in one Party's jurisdiction may access the other Party's country, and consumers, investors, deposit holders, policy holders, clients, counterparties and/or any other persons who may be owed a fiduciary or other similar duty without further local licensing requirements or reporting obligations in the other Party's jurisdiction, based on the first Party's regulatory supervisor. The effect of the agreed equivalence recognitions are further detailed in Schedule 1.[3]

Assessments of equivalence

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

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

3.13 In making assessments of equivalence the Parties may also request and take into account the views of, or any technical data or market evidence provided by, representative bodies or market associations of financial services and market participants, and financial services and market participants, including, but not limited to, representative bodies and market participants established in the jurisdiction of the relevant Party, and relevant international bodies, such as the Basel Committee on Banking Supervision, the Financial Action Task Force, the Financial Stability Board, the International Association of Insurance Supervisors, the International Accounting Standards Board, the International Monetary Fund, the Organisation for Economic Co-Operation and Development, the Financial Action Task Force and the International Organisation of Securities Commissions.

Private law remedies

3.14 Unless specifically provided for in this Agreement, including in particular under Article 10 of this Agreement, nothing in this Agreement shall be construed as conferring rights or imposing

[3] NOTE: Precise details of the scope/effect of each agreed equivalence recognition would be described in full detail in Schedule 2. For example, it would be expected that Schedule 2 states incoming firms would be subjected to minimal registration requirements to benefit from an agreed equivalence recognition to provide services or establish a local branch or, if retail access is enabled, registration with a local financial services compensation scheme.

obligations on persons other than those created between the Parties pursuant to the terms of this Agreement (this does not affect any rights that persons other than the Parties may otherwise be entitled to under the national legal system of either Party on the grounds that a Party has adopted a measure or otherwise conducted itself in a manner that is inconsistent with this Agreement.

Compliance with Article VII of the GATS

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

3.16 In accordance with Article VII:4(b) of the GATS, each Party shall promptly inform the Council for Trade in Services when new agreed equivalence recognitions are adopted or existing ones under this Agreement are significantly modified.

Article 4. Agreed Equivalence recognitions

4.1 The Parties have agreed that the agreed equivalence recognitions shall consist of the equivalence recognitions, their corresponding legal effect in each Party's respective jurisdictions, and shall be subject to the recognition conditions, as detailed in Schedule 2 of this Agreement. [It is intended that all Financial Services areas will be subject to equivalence determinations immediately, and on a continuous basis, across wholesale and retail sectors, without further restrictions.]

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

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

4.4 The "recognition conditions" applicable to the agreed equivalence recognitions are set out in Schedule 2.

4.5 In assessing whether the recognition conditions have been met, the Parties must consider the views of, or any technical data or market evidence provided by representative bodies or market associations of financial services and market participants, including but not limited to representative bodies and market participants established in the jurisdiction of the relevant Party, and where relevant, international bodies such as the Basel Committee on Banking Supervision, the Financial Action Task Force, the Financial Stability Board, the International Association of Insurance Supervisors, the International Accounting Standards Board, the International Monetary Fund and International Organization of Securities Commissions.

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

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

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

(i) imposes limitations on:

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

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

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

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

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

(ii) restricts or requires specific types of legal entity or joint venture through which a financial institution may perform an economic activity.][4]

4.7 Provided it does not circumvent Article 4.6 above and is consistent with the other provisions of this Agreement, either party may:

(a) impose terms, conditions and procedures for the authorisation of the establishment and expansion of a financial institution's commercial presence to provide financial services; and/or

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

Article 5. Cooperation Agreements

5.1 [The Parties shall ensure that the terms of the cooperation agreements contained in Schedule [•] are implemented within their legal and regulatory regimes and/or shall otherwise ensure that the commitments made in those cooperation agreements are complied with.][5]

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

[5] NOTE: A comprehensive range of detailed cooperation agreements will have to be negotiated amongst EU and UK regulators. These can be drafted from the outset or agreed separately in other documents that refer to this provision of the Agreement. One key benefit of the enhanced equivalence structure is that extensive regulatory input, discussion and data sharing can be facilitated (if this is politically viable). Both parties will benefit from early visibility and coordination of regulatory developments.

Article 6. Regulatory Committee

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

6.2 The Regulatory Committee's roles shall consist of:

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

(b) [initiating the consultation process specified in Article 7 and issuing recommendations to the Union recognition body and UK recognition body regarding the implementation of the terms of the Agreement, and coordinating developments and reforms in the legal regimes of the Parties];

(c) [at its own initiative, or]where requested by the Union recognition body or the UK recognition body, considering whether the terms of the Agreement are not satisfied or complied with, and issuing recommendations [or initiating the consultation process under Article 7 where the Regulatory Committee deems necessary];

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

(e) [monitoring developments in the legal systems of either Party, and[, where requested,] making recommendations to the Union recognition body or the UK recognition body, or initiating the consultation process under Article 7 or the mediation process under Article 8 where the Regulatory Committee believes there is a risk of breach of the terms of the Agreement and in particular the recognition conditions]; and

(f) [participating in the consultation, mediation or dispute resolution processes of this Agreement in accordance with any relevant procedures established under, and the provisions of, this Agreement].[6]

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

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

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

6.6 The Regulatory Committee shall adopt its internal procedures initially by mutual consent of the permanent members, and subsequently in accordance with Article 6.5.

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

[6] NOTE: Indicative possible roles for the Regulatory Committee.

6.8 The Regulatory Committee shall meet in accordance with its established procedures, as necessary, to carry out its duties.

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

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

6.11 […][7]

Article 7. Consultation and Coordination[8]

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

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

7.3 A Party may submit a written request for consultations with the other Party regarding a relevant regulatory development, any dispute concerning the interpretation or application of the provisions of this Agreement or for the purposes of the change mechanisms set out in Article 11.

7.4 The requesting Party shall transmit the request for consultation to the responding Party, and shall set out the reasons for the request for consultation, including, if relevant, the identification of the specific measure [or Party's conduct] at issue, the legal basis for the request, any complaint or any proposal relating to a request for consultation pursuant to the change mechanisms under Article 11.

7.5 Subject to Article 7.6, the Parties shall enter into consultations within [30] days of the date of receipt of the request by the responding Party.

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

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

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

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

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

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

[7] NOTE: Additional details to be added as negotiated between the Parties.
[8] NOTE: The consultation provisions are based on CETA.

Implementation of mutually agreed solutions

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

7.10 [A Party's request for consultation and the mutually agreed solution that arises in relation to a relevant regulatory development or an equivalence change may be the subject of consultations under this Article 7 but may not be the subject of mediation under Article 8 or the dispute settlement procedures under Article 9.][9]

Role of the Regulatory Committee

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

7.12 The Regulatory Committee may prescribe detailed procedures for the purposes of this Article 7, including provisions regarding its involvement, if relevant, in initiating and assisting or otherwise participating in the consultation and coordination process.

7.13 In accordance with Article VII:4(c) of the GATS, the Regulatory Committee shall (on behalf of the Parties) promptly inform the Council for Trade in Services when it adopts new recognition measures or significantly modifies existing ones.

Article 8. Mediation

8.1 A Party may initiate the mediation process with the other Party regarding any matter arising under this Agreement.

8.2 The Parties shall conduct one another in good faith throughout the mediation process and afford reasonable consideration to any issues that have been raised by the initiating Party.

8.3 A Party may initiate the mediation process by providing a written notice for requesting mediation to the other Party and the Regulatory Committee with details of a proposed date, location and other administrative terms for the mediation process. The written notice must:

(a) identify the specific issue triggering the request for mediation;

(b) provide a statement of alleged consequences arising from the specified issue;

(c) include sufficient information and all relevant documents; and

(d) if relevant, propose a desired remedy or agreement that may be considered by the Parties at the conclusion of the mediation process.

8.4 The responding Party may agree to the dates, location and other administrative details for the mediation that have been proposed by the initiating Party or may respond with alternative proposals. The responding Party shall also inform the Regulatory Committee of its response.

[9] NOTE: The consultation provisions (and mutually agreed solutions arising out of the consultation process) are intended to be an informal venue for the Parties to reach an agreement on general matters relating to the administration of the recognition relationship prior to initiation of the formal dispute resolution phases (mediation and dispute resolution).

8.5 The Party that wishes to initiate the mediation process shall confirm in writing to the other Party and the Regulatory Committee whether or not it has agreed to any alternative proposals submitted by the responding Party under Article 8.4.

8.6 The Parties shall make all reasonable efforts to agree on the date, location and other administrative details of the mediation. If this is not possible within [five] days of the written request to initiate the mediation process being sent, the Regulatory Committee shall confirm the date, venue and other administrative terms of the mediation, which the Parties shall comply with.

8.7 The mediation process shall continue for an initial period of [30] days from the commencement date agreed by the Parties under Article 8.4 or 8.5 or confirmed by the Regulatory Committee under Article 8.6.

8.8 The Parties may by mutual agreement extend the mediation process [for a maximum duration of [•] days from the initial commencement date agreed by the Parties under Article 8.4 or 8.5 or confirmed by the Regulatory Committee under Article 8.6].

8.9 At or before the end of the initial period (or any agreed extension pursuant to Article 8.8) of the mediation process, the Parties shall reach a mutually agreed solution. If a mutually agreed solution has not been reached by the date that the mediation process terminates, either Party may choose to initiate the dispute resolution process contained in Article 9.

8.10 The Regulatory Committee may initiate the mediation process and shall, throughout the mediation process, assist and make recommendations to assist the Parties in reaching a mutually agreed solution.

8.11 A mutually agreed solution may be reached by the Parties describing the relevant terms and any commitments that have been agreed by the Parties in a document that refers to this Article 8.

Implementation of mutually agreed solutions

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

8.13 Failure to implement the mutually agreed solution within any relevant agreed timeframes in accordance with the terms of the mutually agreed solution entitles either Party to initiate the dispute resolution process under Article 9 notwithstanding any other provision of this Agreement that might require the Party to undergo the consultation process under Article 7 or the mediation process under this Article 8 before initiating the dispute resolution process under Article 9.

Article 9. Dispute Resolution[10]

9.1 The Parties shall endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt to arrive at a mutually satisfactory resolution of any matter that might affect its operation (including under the consultation process under Article 7 or the mediation process under Article 8 outside the dispute resolution process under this Article 9). However, a party may initiate the processes under this Article 9 at any time without any requirement to first submit the matter to any other process subject only to Articles 9.3 to 9.6.

[10] NOTE: The dispute resolution provision included here is based on CETA.

9.2 Except as otherwise provided in this Agreement, this Article 9 applies to any dispute concerning the interpretation or application of the provisions of this Agreement.

Choice of forum

9.3 [Recourse to the dispute settlement provisions of this Article 9 is without prejudice to recourse to dispute settlement under the WTO Agreement or under any other agreement to which the Parties are party.]

9.4 Notwithstanding Article 9.3, if an obligation is materially similar in substance under this Agreement and under the GATS, or under any other agreement to which the Parties are party, a Party may not seek redress for the breach of such an obligation in the two fora. In such case, once a dispute settlement proceeding has been initiated in one forum, the Party shall not bring a claim seeking redress for the breach of the substantially similar obligation in another forum, unless the forum selected fails, for procedural or jurisdictional reasons, to make findings on that claim.

9.5 For the purposes of Article 9.4:

(a) dispute settlement proceedings under the GATS are deemed to be initiated by a Party's request for the establishment of a panel under Article 7 of the DSU;

(b) dispute settlement proceedings under this Article 9 are deemed to be initiated by a Party's request for the establishment of an arbitration panel under Article 9.7; and

(c) dispute settlement proceedings under any other agreement are deemed to be initiated by a Party's request for the establishment of a dispute settlement panel or tribunal in accordance with the provisions of that agreement.

9.6 Nothing in this Agreement shall preclude a Party from implementing the suspension of obligations authorised by the WTO Dispute Settlement Body. A Party may not invoke the GATS to preclude the other Party from suspending obligations pursuant to this Article 9.

Request for the establishment of an arbitration panel

9.7 Unless the Parties agree otherwise and subject to Articles 9.3 to 9.6, if a matter referred to in Articles 7 or 8 has not been resolved within:

(a) [45] days of the date of receipt of the request for mediation; or

(b) [25] days of the date of receipt of the request for consultations for matters referred to in Article 7.3; or

(c) in the case where the Parties have engaged in a mediation proceeding in accordance with Article 8, if a mutually agreed solution has not been agreed during the initial period (or any agreed extension thereto) under Article 8.9,

the requesting Party may refer the matter to arbitration by providing its written request for the establishment of an arbitration panel to the responding Party.

9.8 The requesting Party shall identify in its written request the specific measure at issue and the legal basis for the complaint, including an explanation of how such measure constitutes a breach of the provisions referred to in Article 9.2.

Composition of the arbitration panel

9.9 The arbitration panel shall be composed of [three] arbitrators.

9.10 The Parties shall consult with a view to reaching an agreement on the composition of the arbitration panel within [10] working days of the date of receipt by the responding Party of the request for the establishment of an arbitration panel.

9.11 In the event that the Parties are unable to agree on the composition of the arbitration panel within the time frame set out in Article 9.10, either Party may request the chairperson of the Regulatory Committee, or the chair's delegate, to draw by lot the arbitrators from the list established under Article 9.16. One arbitrator shall be drawn from the sub-list of the requesting Party, one from the sub-list of the responding Party and one from the sub-list of chairpersons. If the Parties have agreed on one or more of the arbitrators, any remaining arbitrator(s) shall be selected by the same procedure in the applicable sub-list of arbitrators. If the Parties have agreed on an arbitrator, other than the chairperson, who is not a national of either Party, the chairperson and other arbitrator shall be selected from the sub-list of chairpersons.

9.12 The chairperson of the Regulatory Committee, or the chair's delegate, shall select the arbitrators as soon as possible and normally within [five] working days of the request referred to in Article 9.11 by either Party. The chairperson of the Regulatory Committee, or the chair's delegate, shall give a reasonable opportunity to representatives of each Party to be present when lots are drawn.

9.13 The date of establishment of the arbitration panel shall be the date on which the last of the [three] arbitrators is selected.

9.14 If the list provided for in Article 9.16 is not established or if it does not contain sufficient names at the time a request is made pursuant to Article 9.11, the [three] arbitrators shall be drawn by lot from the arbitrators who have been proposed by one or both of the Parties in accordance with Article 9.16.

9.15 Replacement of arbitrators shall take place only for the reasons and according to the procedure [prescribed by the Regulatory Committee for the purposes of this Article] / [prescribed by Schedule [•] of this Agreement].

List of arbitrators

9.16 The Regulatory Committee shall, at its first meeting after the entry into force of this Agreement, establish a list of at least [15] individuals, chosen on the basis of relevant experience in financial services economics, law and regulation, objectivity, reliability and sound judgment, who are willing and able to serve as arbitrators. The list shall be composed of three sub-lists: one sub-list for each Party and one sub-list of individuals who are not nationals of either Party to act as chairpersons. Each sub-list shall include at least [five] individuals. The Regulatory Committee may review the list at any time and shall ensure that the list conforms with this Article 9.16.

9.17 The arbitrators must have specialised knowledge of international financial services law and regulation. The arbitrators acting as chairpersons must also have experience as counsel or panellist in dispute settlement proceedings on subject matters within the scope of this Agreement. The arbitrators shall be independent, serve in their individual capacities and not take instructions from any organisation or government, or be affiliated with the government of any of the Parties[, and shall comply with any code of conduct prescribed for the purposes of this Article by the Regulatory Committee].

Interim panel report

9.18 The arbitration panel shall present to the Parties an interim report within [150] days of the establishment of the arbitration panel. The report shall contain:

(a) findings of fact; and

(b) determinations as to whether the responding Party has conformed with its obligations under this Agreement.

9.19 Each Party may submit written comments to the arbitration panel on the interim report, subject to any time limits set by the arbitration panel. After considering any such comments, the arbitration panel may:

(a) reconsider its report; or

(b) make any further examination that it considers appropriate.

9.20 The interim report of the arbitration panel shall be confidential.

Final panel report

9.21 Unless the Parties agree otherwise, the arbitration panel shall issue a report in accordance with this Article 9.21 and Articles 9.22 and 9.23. The final panel report shall set out the findings of fact, the applicability of the relevant provisions of this Agreement and the basic rationale behind any findings and conclusions that it makes. The ruling of the arbitration panel in the final panel report shall be binding on the Parties.

9.22 The arbitration panel shall issue to the Parties [and to the Regulatory Committee] a final report within [30] days of the interim report.

9.23 Each Party shall make publicly available the final panel report, subject to any [agreement reached between the Parties as to confidential sections of the final panel report which shall not be made publicly available] / [procedures regarding the confidentiality of panel reports as agreed between the Parties for the purposes of this Article].

Urgent proceedings

9.24 In cases of urgency, including those involving events of substantial systemic risk to the financial services sectors of either of the Parties, the arbitration panel and the Parties shall make every effort to accelerate the proceedings to the greatest extent possible. The arbitration panel shall aim at issuing an interim report to the Parties within [75] days of the establishment of the arbitration panel, and a final report within [15] days of the interim report. Upon request of a Party, the arbitration panel shall make a preliminary ruling within [10] days of the request on whether it deems the case to be urgent.

Compliance with the final panel report

9.25 The responding Party shall take any measure necessary to comply with the final panel report. No later than [20] days after the receipt of the final panel report by the Parties, the responding Party shall inform the other Party [and the Regulatory Committee] of its intentions in respect of compliance.

Reasonable period of time for compliance

9.26 If immediate compliance is not possible, no later than [20] days after the receipt of the final panel report by the Parties, the responding Party shall notify the requesting Party [and the Regulatory Committee] of the period of time it will require for compliance.

9.27 In the event of disagreement between the Parties on the reasonable period of time in which to comply with the final panel report, the requesting Party shall, within [20] days of the receipt of the notification made under Article 9.26 by the responding Party, request in writing the arbitration panel to determine the length of the reasonable period of time. Such request shall be notified simultaneously to the other Party [and to the Regulatory Committee]. The arbitration panel shall issue its ruling to the Parties [and to the Regulatory Committee] within [30] days from the date of the request.

9.28 The reasonable period of time may be extended by mutual agreement of the Parties.

9.29 At any time after the midpoint in the reasonable period of time and at the request of the requesting Party, the responding Party shall make itself available to discuss the steps it is taking to comply with the final panel report.

9.30 The responding Party shall notify the other Party [and the Regulatory Committee] before the end of the reasonable period of time of measures that it has taken to comply with the final panel report.

Temporary remedies in case of non-compliance

9.31 If:

(a) the responding Party fails to notify its intention to comply with the final panel report under Article 9.25 or the time it will require for compliance under Article 9.26;

(b) at the expiry of the reasonable period of time, the responding Party fails to notify any measure taken to comply with the final panel report; or

(c) the arbitration panel on compliance referred to in Article 9.36 establishes that a measure taken to comply is inconsistent with that Party's obligations under the provisions referred to in Article 9.2,

the requesting Party shall be entitled to take measures to suspend [any of the requesting Party's obligations under this Agreement [including the agreed legal effect of any of the agreed equivalence recognitions]] / [benefits in the financial services sector that have an effect corresponding to the measure complained of [including the agreed legal effect of any of the agreed equivalence recognitions]]. The [level] / [proportionality] of the suspension shall be assessed from the date of notification of the final panel report to the Parties.

9.32 Before suspending obligations, the requesting Party shall notify the responding Party [and the Regulatory Committee] of its intention to do so, including a description of the level of obligations it intends to suspend.

9.33 [Except as otherwise provided in this Agreement, the suspension of obligations (including the legal effect of an agreed equivalence recognition) may concern any provision referred to in Article 9.2 and shall be limited at a level proportionate to the nullification or breach of this Agreement caused by the violation.]

9.34 The requesting Party may implement the suspension [10] working days after the date of receipt of the notification referred to in Article 9.32 by the responding Party, unless a Party has requested arbitration under Articles 9.35 and 9.36.

9.35 A disagreement between the Parties concerning the existence of any measure taken to comply or its consistency with the provisions referred to in Article 9.2 ("disagreement on compliance"), or on the equivalence between the level of suspension and the nullification or impairment caused by the violation ("disagreement on suspension"), shall be referred to the arbitration panel.

9.36 A Party may reconvene the arbitration panel by providing a written request to the arbitration panel and the other Party [and the Regulatory Committee.] In case of a disagreement on compliance, the arbitration panel shall be reconvened by the requesting Party. In case of a disagreement on suspension, the arbitration panel shall be reconvened by the responding Party. In case of disagreements on both compliance and on suspension, the arbitration panel shall rule on the disagreement on compliance before ruling on the disagreement on suspension.

9.37 The arbitration panel shall notify its ruling to the Parties and to the Regulatory Committee accordingly:

(a) within [90] days of the request to reconvene the arbitration panel, in case of a disagreement on compliance;

(b) within [30] days of the request to reconvene the arbitration panel, in case of a disagreement on suspension; and

(c) within [120] days of the first request to reconvene the arbitration panel, in case of a disagreement on both compliance and suspension.

9.38 The requesting Party shall not suspend obligations until the arbitration panel reconvened under Articles 9.35 and 9.36 has delivered its ruling. Any suspension shall be consistent with the arbitration panel's ruling.

9.39 The suspension of obligations shall be temporary and shall be applied only until the measure found to be inconsistent with the provisions referred to in Article 9.2 has been withdrawn or amended so as to bring it into conformity with those provisions, as established under Articles 9.41 and 9.42, or until the Parties have settled the dispute.

9.40 At any time, the requesting Party may request the responding Party to provide an offer for temporary compensation, and the responding Party shall present such offer.

Review of measures taken to comply after the suspension of obligations

9.41 When, after the suspension of obligations by the requesting Party, the responding Party takes measures to comply with the final panel report, the responding Party shall notify the other Party and the Regulatory Committee and request an end to the suspension of obligations applied by the requesting Party.

9.42 If the Parties do not reach an agreement on the compatibility of the notified measure with the provisions referred to in Article 9.2 within [60] days of the date of receipt of the notification, the requesting Party shall request in writing the arbitration panel to rule on the matter. Such request shall be notified simultaneously to the other Party and to the Regulatory Committee. The final panel report shall be notified to the Parties and to the Regulatory Committee within [90] days of the date of submission of the request. If the arbitration panel rules that any measure taken to comply is in conformity with the provisions referred to in Article 9.2, the suspension of obligations shall be terminated.

Rules of procedure

9.43 The dispute settlement procedure under this Article 9 shall be governed by the rules of procedure for arbitration [prescribed by the [Regulatory Committee] for the purposes of this Article] unless the Parties agree otherwise.

General rule of interpretation

9.44 The arbitration panel shall interpret the provisions of this Agreement in accordance with customary rules of interpretation of public international law, including those set out in the Vienna Convention on the Law of Treaties. The arbitration panel shall also take into account relevant interpretations in reports of Panels and the appellate body adopted by the WTO Dispute Settlement Body.

Rulings of the arbitration panel

9.45 The rulings of the arbitration panel cannot add to or diminish the rights and obligations provided for in this Agreement.

Mutually agreed solutions

9.46 The Parties may reach a mutually agreed solution to a dispute under this Article 9 at any time. They shall notify the [Regulatory Committee] and the arbitration panel of any such solution. Upon notification of the mutually agreed solution, the arbitration panel shall terminate its work and the proceedings shall be terminated.

Article 10. Private Law Remedies

10.1 Without prejudice to the other rights and obligations of the Parties under Article 9, a relevant private party may submit to the Tribunal constituted under this Article 10 a claim that a Party has breached its obligations under this Agreement by acting inconsistently with [the recognition principles or Articles 4, 8 or 9,] where the relevant private party claims to have suffered loss or damage as a result of the alleged breach.

10.2 Claims under Article 10.1 may be submitted only to the extent that the action or inaction complained of relates to the existing business operations of the relevant private party.

10.3 The Panel shall not decide claims that fall outside the scope of Articles 10.1 and 10.2.

Consultations

10.4 A dispute should, to the extent possible, be settled amicably. Such a settlement may be agreed at any time, including after the claim has been submitted pursuant to Article 10.22. Unless the disputing parties agree to a longer period, consultations shall be held within [60] days of the submission of the request for consultations pursuant to Article 10.7.

10.5 Unless the disputing parties agree otherwise, the place of consultation shall be:

(a) London, if the measures challenged are measures of the United Kingdom; and

(b) Brussels, if the measures challenged are measures of the Union.

10.6 The disputing parties may hold the consultations through videoconference or other means where appropriate.

10.7 The relevant private party shall submit to the other Party a request for consultations setting out:

(a) the name and address of the relevant private party;

(b) if there is more than one relevant private party, the name and address of each relevant private party;

(c) the provisions of this Agreement alleged to have been breached;

(d) the legal and the factual basis for the claim, including the measures at issue; and

(e) the relief sought and the estimated amount of damages claimed.

The request for consultations shall contain evidence establishing that, if applicable, the relevant private party owns or controls any undertakings on whose behalf the request is submitted.

10.8 The requirements of the request for consultations set out in Article 10.7 shall be met with sufficient specificity to allow the respondent to effectively engage in consultations and to prepare its defence.

10.9 A request for consultations must be submitted within:

(a) [one] year after the date on which the relevant private party first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the relevant private party has incurred loss or damage thereby; or

(b) [one] year after a relevant private party ceases to pursue claims or proceedings before a tribunal or court under the law of a Party, or when such proceedings have otherwise ended and, in any event, no later than [10] years after the date on which the relevant private party first acquired or should have first acquired knowledge of the alleged breach and knowledge that the relevant private party has incurred loss or damage thereby.

10.10 A request for consultations concerning an alleged breach by the Union shall be sent to the Union recognition body.

10.11 A request for consultations concerning an alleged breach by the United Kingdom shall be sent to the UK recognition body.

10.12 In the event that the relevant private party has not submitted a claim pursuant to Article 10.22 within [one] year of submitting the request for consultations, the relevant private party is deemed to have withdrawn its request for consultations and, if applicable, its notice requesting a determination of the respondent, and shall not submit a claim under this Article 10 with respect to the same measures. This period may be extended by agreement of the disputing parties.

Mediation

10.13 The disputing parties may at any time agree to have recourse to mediation.

10.14 Recourse to mediation is without prejudice to the legal position or rights of either disputing party under this Article 10 and is governed by the rules agreed to by the disputing parties.

10.15 The mediator is appointed by agreement of the disputing parties. The disputing parties may also request that the Regulatory Committee appoint the mediator.

10.16 The disputing parties shall endeavour to reach a resolution of the dispute within [60] days from the appointment of the mediator.

10.17 If the disputing parties agree to have recourse to mediation, Articles 10.9 and 10.12 shall not apply from the date on which the disputing parties agreed to have recourse to mediation to the date on which either disputing party decides to terminate the mediation. A decision by a disputing party to terminate the mediation shall be transmitted by way of a letter to the mediator and the other disputing party.

Procedural and other requirements for the submission of a claim to the Tribunal

10.18 A relevant private party may only submit a claim pursuant to Article 10.22 if the relevant private party:

(a) delivers to the respondent, with the submission of a claim, its consent to the settlement of the dispute by the Tribunal in accordance with the procedures set out in this Article 10;

(b) allows at least [180] days to elapse from the submission of the request for consultations and, if applicable, at least [90] days to elapse from the submission of the notice requesting a determination of the respondent;

(c) has fulfilled the requirements related to the request for consultations;

(d) does not identify a measure in its claim that was not identified in its request for consultations;

(e) withdraws or discontinues any existing proceeding before a tribunal or court under domestic or international law with respect to a measure alleged to constitute a breach referred to in its claim; and

(f) waives its right to initiate any claim or proceeding before a tribunal or court under domestic or international law with respect to a measure alleged to constitute a breach referred to in its claim.

10.19 If the claim submitted pursuant to Article 10.22 is for loss or damage to an undertaking that the relevant private party owns or controls directly or indirectly, the requirements in Articles 10.18(e) and 10.18(f) apply both to the relevant private party and the relevant undertaking.

10.20 Upon request of the respondent, the Tribunal shall decline jurisdiction if the relevant private party or, as applicable, the relevant undertaking owned or controlled directly or indirectly by a relevant private party fails to fulfil any of the requirements of Articles 10.18 and 10.19.

10.21 The waiver provided pursuant to Articles 10.18(f) or 10.19 as applicable shall cease to apply:

(a) if the Tribunal rejects the claim on the basis of a failure to meet the requirements of Articles 10.18 or 10.19 on any other procedural or jurisdictional grounds;

(b) if the Tribunal dismisses the claim pursuant to Article 10.46 or Article 10.48; or

(c) if the relevant private party withdraws its claim, in conformity with the applicable rules under Article 10.23, within 12 months of the constitution of the division of the Tribunal.

Submission of a claim to the Tribunal

10.22 If a dispute has not been resolved through consultations, a claim may be submitted under this Article 10 by:

(a) a relevant private party of a Party on its own behalf; or

(b) a relevant private party of a Party, on behalf of an undertaking which it owns or controls directly or indirectly.

10.23 Subject to the provisions of this Article 10 or as otherwise agreed by the disputing parties, the arbitration shall be conducted under the UNCITRAL Arbitration Rules.

10.24 The rules applicable under Article 10.23 are those that are in effect on the date that the claim or claims are submitted to the Tribunal under this Article 10, subject to the specific rules set out in this Article 10.

10.25 The place of arbitration shall be determined in accordance with the same principles as the place of consultation under Article 10.5.

10.26 A claim is submitted for dispute settlement under this Article 10 when the notice under Article 3 of the UNCITRAL Arbitration Rules is received by the respondent.

10.27 Each Party shall notify the other Party of the place of delivery of notices and other documents by the relevant private parties pursuant to this Article 10. Each Party shall ensure this information is made publicly available.

Proceedings under another international agreement

10.28 Where a claim is brought pursuant to this Article 10 and another international agreement and:

(a) there is a potential for overlapping compensation; or

(b) the other international claim could have a significant impact on the resolution of the claim brought pursuant to this Article 10,

the Tribunal shall, as soon as possible after hearing the disputing parties, stay its proceedings or otherwise ensure that proceedings brought pursuant to another international agreement are taken into account in its decision, order or award.

Consent to the settlement of the dispute by the Tribunal

10.29 The respondent consents to the settlement of the dispute by the Tribunal in accordance with the procedures set out in this Article 10.

10.30 The consent under Article 10.29 and the submission of a claim to the Tribunal under this Article 10 shall satisfy the requirements of Article II of the New York Convention for an agreement in writing.

Third-party funding

10.31 Where there is third-party funding, the disputing party benefiting from it shall disclose to the other disputing party and to the Tribunal the name and address of the third-party funder.

10.32 The disclosure shall be made at the time of the submission of a claim, or, if the financing agreement is concluded or the donation or grant is made after the submission of a claim, without delay as soon as the agreement is concluded or the donation or grant is made.

Constitution of the Tribunal

10.33 The dispute shall be decided by a Sole Arbitrator, unless either of the disputing parties requests dispute resolution by a three-person Tribunal.

10.34 The Sole Arbitrator, if any, shall be appointed by agreement of the disputing parties. In the case of a three-person Tribunal, each disputing party shall nominate one arbitrator and the so-nominated two arbitrators shall then jointly nominate the third and presiding arbitrator, who shall not be a national of either Party to this Agreement. In the event the disputing parties are unable to agree within [45 days] of submission of a claim in accordance with Article 10.22 on the Sole Arbitrator, or in the case of a three-person Tribunal, the party-nominated arbitrators fail to jointly nominate the presiding arbitrator or if either disputing party fails to nominate its party-nominated arbitrator, each disputing party may request the Chairperson of the Regulatory Committee, or the chair's delegate, to make the relevant appointment. In the case of the Sole Arbitrator and the chairperson of a three-person Tribunal, the arbitrator shall be drawn from the sub-list of chairpersons. If the disputing parties were unable to reach agreement on the two (non-presiding) arbitrators of a three-person Tribunal, one arbitrator shall be drawn from the sub-list of the responding Party and one arbitrator shall be drawn from the sub-list of the other Party to this Agreement. In the event the disputing parties have agreed on the chairperson as well as on one of the other two arbitrators, the remaining arbitrator shall be drawn from the sub-list of chairpersons. Articles 9.12 to 9.15 apply, *mutatis mutandis*, to this Article.

Ethics

10.35 The Members of the Tribunal shall be independent. They shall not be affiliated with any government. They shall not take instructions from any organisation or government with regard to matters related to the dispute. They shall not participate in the consideration of any disputes that would create a direct or indirect conflict of interest. They shall comply with the International Bar Association Guidelines on Conflicts of Interest in International Arbitration. In addition, upon appointment, they shall refrain from acting as counsel or as party-appointed expert or witness in any pending or new dispute under this or any other international agreement.

10.36 If a disputing party considers that a Member of the Tribunal has a conflict of interest, it may invite the President of the International Court of Justice to issue a decision on the challenge to the appointment of such Member. Any notice of challenge shall be sent to the President of the International Court of Justice within [15] days of the date on which the composition of the division of the Tribunal has been communicated to the disputing party, or within [15] days of the date on which the relevant facts came to its knowledge, if they could not have reasonably been known at the time of composition of the division. The notice of challenge shall state the grounds for the challenge.

10.37 If, within [15] days from the date of the notice of challenge, the challenged Member of the Tribunal has elected not to resign from the division, the President of the International Court of Justice may, after receiving submissions from the disputing parties and after providing the Member of the Tribunal an opportunity to submit any observations, issue a decision on the challenge. The President of the International Court of Justice shall endeavour to issue the decision and to notify the disputing parties and the other Members of the Tribunal within [45] days of receipt of the notice of challenge. A vacancy resulting from the disqualification or resignation of a Member of the Tribunal shall be filled promptly.

10.38 Upon a reasoned recommendation from the President of the Tribunal, or on their joint initiative, the Parties, by decision of the Regulatory Committee, may remove a Member from the Tribunal where his or her behaviour is inconsistent with the obligations set out in Article 10.35 and incompatible with his or her continued membership of the Tribunal.

Applicable law and interpretation

10.39 When rendering its decision, the Tribunal established under this Article 10 shall apply this Agreement as interpreted in accordance with the Vienna Convention on the Law of Treaties, and other rules and principles of international law applicable between the Parties.

10.40 The Tribunal shall not have jurisdiction to determine the legality of a measure, alleged to constitute a breach of this Agreement, under the domestic law of a Party. For greater certainty, in determining the consistency of a measure with this Agreement, the Tribunal may consider, as appropriate, the domestic law of a Party as a matter of fact. In doing so, the Tribunal shall follow the prevailing interpretation given to the domestic law by the courts or authorities of that Party and any meaning given to domestic law by the Tribunal shall not be binding upon the courts or the authorities of that Party.

10.41 An interpretation of this Agreement adopted by the Regulatory Committee shall be binding on the Tribunal established under this Article 10. The Regulatory Committee may decide that an interpretation shall have binding effect from a specific date.

Claims manifestly without legal merit

10.42 The respondent may, no later than [30] days after the constitution of the division of the Tribunal, and in any event before its first session, file an objection that a claim is manifestly without legal merit.

10.43 An objection shall not be submitted under Article 10.42 if the respondent has filed an objection pursuant to Article 10.48.

10.44 The respondent shall specify, as precisely as possible, the basis for the objection.

10.45 On receipt of an objection pursuant to Article 10.42, the Tribunal shall suspend the proceedings on the merits and establish a schedule for considering such an objection consistent with its schedule for considering any other preliminary question.

10.46 The Tribunal, after giving the disputing parties an opportunity to present their observations, shall, at its first session or promptly thereafter, issue a decision or award stating the grounds therefor. In doing so, the Tribunal shall assume the alleged facts to be true.

10.47 Articles 10.42, 10.45 and 10.46 shall be without prejudice to the Tribunal's authority to address other objections as a preliminary question or to the right of the respondent to object, in the course of the proceeding, that a claim lacks legal merit.

Claims unfounded as a matter of law

10.48 Without prejudice to the Tribunal's authority to address other objections as a preliminary question or to a respondent's right to raise any such objections at an appropriate time, the Tribunal shall address and decide, as a preliminary question, any objection by the respondent that, as a matter of law, a claim or any part thereof, submitted pursuant to Article 10.22, is not a claim for which an award in favour of the claimant may be made under this Article 10, even if the facts alleged were assumed to be true.

10.49 An objection under Article 10.48 shall be submitted to the Tribunal no later than the date the Tribunal fixes for the respondent to submit its counter-memorial.

10.50 If an objection has been submitted pursuant to Article 10.42, the Tribunal may, taking into account the circumstances of that objection, decline to address an objection submitted pursuant to Article 10.48.

10.51 On receipt of an objection under Article 10.48, and, if appropriate, after rendering a decision pursuant to Article 10.50, the Tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or award on the objection stating the grounds therefor.

Interim measures of protection

10.52 The Tribunal may order an interim measure of protection to preserve the rights of a disputing party or to ensure that the Tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the Tribunal's jurisdiction. The Tribunal shall not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in 10.40. For the purposes of this Article, an order includes a recommendation.

Discontinuance

10.53 If, following the submission of a claim under this Article 10, the relevant private party fails to take any steps in the proceeding during [180] consecutive days or such period as the disputing parties may agree, the relevant private party is deemed to have withdrawn its claim and to have discontinued the proceeding. The Tribunal shall, at the request of the respondent, and after notice to the disputing parties, in an order take note of the discontinuance. After the order has been rendered, the authority of the Tribunal shall lapse.

Transparency of proceedings

10.54 The UNCITRAL Transparency Rules, as modified by this Agreement, shall apply in connection with proceedings under this Article 10.

10.55 The request for consultations, the agreement to mediate, the notice of intent to challenge a Member of the Tribunal, the decision on challenge to a Member of the Tribunal and the request for consolidation shall be included in the list of documents to be made available to the public under Article 3(1) of the UNCITRAL Transparency Rules.

10.56 Exhibits shall be included in the list of documents to be made available to the public under Article 3(2) of the UNCITRAL Transparency Rules.

10.57 Notwithstanding Article 2 of the UNCITRAL Transparency Rules, prior to the constitution of the Tribunal, the United Kingdom or the Union, as the case may be, shall make publicly available in a timely manner relevant documents pursuant to Article 10.55, subject to the redaction of confidential or protected information. Such documents may be made publicly available by communication to the repository.

10.58 Hearings shall be open to the public. The Tribunal shall determine, in consultation with the disputing parties, the appropriate logistical arrangements to facilitate public access to such hearings. If the Tribunal determines that there is a need to protect confidential or protected information, it shall make the appropriate arrangements to hold in private that part of the hearing requiring such protection.

10.59 Nothing in this Article 10 requires a respondent to withhold from the public information required to be disclosed by its laws. The respondent should apply those laws in a manner sensitive to protecting from disclosure information that has been designated as confidential or protected information.

Information sharing

10.60 A disputing party may disclose to other persons in connection with the proceedings, including witnesses and experts, such unredacted documents as it considers necessary in the course of proceedings under this Article 10. However, the disputing party shall ensure that those persons protect the confidential or protected information contained in those documents.

10.61 This Agreement does not prevent a respondent from disclosing to officials of the United Kingdom or the Union such unredacted documents as it considers necessary in the course of proceedings under this Article 10. However, the respondent shall ensure that those officials protect the confidential or protected information contained in those documents.

Non-disputing Party

10.62 The respondent shall, within [30] days after receipt or promptly after any dispute concerning confidential or protected information has been resolved, deliver to the non-disputing Party:

(a) a request for consultations, a notice requesting a determination of the respondent, a notice of determination of the respondent, a claim submitted pursuant to Article 10.22, a request for consolidation and any other documents that are appended to such documents;

(b) on request:

(i) pleadings, memorials, briefs, requests and other submissions made to the Tribunal by a disputing party;

(ii) written submissions made to the Tribunal pursuant to Article 4 of the UNCITRAL Transparency Rules;

(iii) minutes or transcripts of hearings of the Tribunal, if available; and

(iv) orders, awards and decisions of the Tribunal; and

(c) on request and at the cost of the non-disputing Party, all or part of the evidence that has been tendered to the Tribunal, unless the requested evidence is publicly available.

10.63 The Tribunal shall accept or, after consultation with the disputing parties, may invite, oral or written submissions from the non-disputing Party regarding the interpretation of this Agreement. The non-disputing Party may attend a hearing held under this Article 10.

10.64 The Tribunal shall not draw any inference from the absence of a submission pursuant to Article 10.63.

10.65 The Tribunal shall ensure that the disputing parties are given a reasonable opportunity to present their observations on a submission by the non-disputing Party to this Agreement.

Final award

10.66 If the Tribunal makes a final award against the respondent, the Tribunal may only award monetary damages and any applicable interest.

10.67 Subject to Articles 10.66 and 10.70, if a claim is made under 10.22(b):

(a) an award of monetary damages and any applicable interest shall provide that the sum be paid to the undertaking which a relevant private party owns or controls directly or indirectly;

(b) an award of costs in favour of the relevant private party shall provide that it is to be made to the relevant private party; and

(c) the award may provide that it is made without prejudice to a right that a person, other than a person which has provided a waiver pursuant to Article 10.18(f), may have in monetary damages or property awarded under a Party's law.

10.68 Monetary damages shall not be greater than the loss suffered by the relevant private party or, as applicable, the undertaking which a relevant private party owns or controls directly or indirectly, reduced by any prior damages or compensation already provided. For the calculation of monetary damages, the Tribunal shall also reduce the damages to take into account any repeal or modification of the measure.

10.69 The Tribunal shall not award punitive damages.

10.70 The Tribunal shall order that the costs of the proceedings be borne by the unsuccessful disputing party. In exceptional circumstances, the Tribunal may apportion costs between the disputing parties if it determines that apportionment is appropriate in the circumstances of the claim. Other reasonable costs, including costs of legal representation and assistance, shall be borne by the unsuccessful disputing party, unless the Tribunal determines that such apportionment is unreasonable in the circumstances of the claim. If only parts of the claims have been successful, the costs shall be adjusted, proportionately, to the number or extent of the successful parts of the claims.

10.71 The Regulatory Committee shall consider supplemental rules aimed at reducing the financial burden on claimants who are natural persons or small and medium-sized enterprises. Such supplemental rules may, in particular, take into account the financial resources of such claimants and the amount of compensation sought.

10.72 The Tribunal, the Regulatory Committee and the disputing parties shall make every effort to ensure the dispute settlement process is carried out in a timely manner. The Tribunal shall issue its final award within [12] months of the date the claim is submitted pursuant to Article 10.22. If the Tribunal requires additional time to issue its final award, it shall provide the disputing parties the reasons for the delay.

Indemnification or other compensation

10.73 A respondent shall not assert, and the Tribunal shall not accept a defence, counterclaim, right of setoff or similar assertion, that a relevant private party or, as applicable, a locally-established enterprise, has received or will receive indemnification or other compensation pursuant to an insurance or guarantee contract in respect of all or part of the compensation sought in a dispute initiated pursuant to this Article 10.

Enforcement of awards

10.74 An award issued pursuant to this Article 10 shall be binding between the disputing parties and in respect of that particular case.

10.75 Subject to Article 10.76, a disputing party shall recognise and comply with an award without delay.

10.76 A disputing party shall not seek enforcement of a final award until:

(a) [90] days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside or annul the award; or

(b) enforcement of the award has been stayed and a court has dismissed or allowed an application to revise, set aside or annul the award and there is no further appeal.

10.77 Execution of the award shall be governed by the laws concerning the execution of judgment or awards in force where the execution is sought.

10.78 A final award issued pursuant to this Article 10 is an arbitral award that is deemed to relate to claims arising out of a commercial relationship or transaction for the purposes of Article I of the New York Convention.

Role of the Parties

10.79 A Party shall not bring an international claim, in respect of a claim submitted pursuant to Article 10.22, unless the other Party has failed to abide by and comply with the award rendered in that dispute.

10.80 Article 10.79 shall not exclude the possibility of dispute settlement under Article 9 in respect of a measure of general application even if that measure is alleged to have breached this Agreement in respect of which a claim has been submitted pursuant to Article 10.22.

10.81 Article 10.79 does not preclude informal exchanges for the sole purpose of facilitating a settlement of the dispute.

Consolidation

10.82 In the interest of facilitating the comprehensive resolution of related disputes and ensuring the consistency of awards, and upon request of either disputing party, the Tribunal may consolidate the proceedings with any other proceedings initiated pursuant to Article 10.22 in relation to a claim or claims under this Agreement. The Tribunal shall not consolidate such proceedings unless: (i) it determines that there are issues of fact or law common to the two proceedings so that a consolidated proceeding would be more efficient than separate proceedings, and (ii) no party would be prejudiced as a result of such consolidation through undue delay or otherwise. In the case of conflicting rulings on this question by the Tribunals constituted in the proceedings subject to a request for consolidation, the ruling of the Tribunal in the first-filed of the proceedings subject to a request for consolidation shall control.

10.83 In the case of a consolidated proceeding, the arbitrator(s) in the consolidated proceeding shall be appointed by the Regulatory Committee on the request of any of the disputing parties.

10.84 A relevant private party may withdraw a claim under this Article 10 that is subject to consolidation, and such claim shall not be resubmitted pursuant to Article 10.22. If it does so no later than [15] days after receipt of the notice of consolidation, its earlier submission of the claim shall not prevent the relevant private party's recourse to dispute settlement other than under this Article 10.

10.85 At the request of a relevant private party, the Tribunal may take such measures as it sees fit in order to preserve the confidential or protected information of that relevant private party in relation to other relevant private parties. Those measures may include the submission of redacted versions of documents containing confidential or protected information to the other relevant private parties or arrangements to hold parts of the hearing in private.

Article 11. Change Mechanisms

Amended and repealed legislation

11.1 Where the underlying national legislation relating to the agreed legal effect of an agreed equivalence recognition as detailed in Schedule 1 is, or is proposed to be, amended or repealed and replaced, either Party may submit a written request initiating the consultation process under Article 7 to implement necessary changes to any affected parts of Schedule 1 to reflect the amended or repealed and replaced underlying national legislation. Such amendments will be promptly notified to the GATS Council on Trade in Services in accordance with Article VII:4(c) of the GATS.

11.2 The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the consultation request through the consultation process under Article 7.

11.3 The change process described in Articles 11.1 to this Article 11.3 is intended to be used where the relevant underlying national legislation of either Party is amended or repealed and replaced and the proposed changes to any affected parts of Schedule 1 do not materially affect the original intended legal effect of an agreed equivalence recognition in the relevant jurisdiction.

Amending, supplementing and removing equivalence recognitions

11.4 Where a Party wishes to initiate discussions relating to an equivalence change, it may submit a written request initiating the consultation process under Article 7 for the purposes of negotiating an equivalence change with the responding Party.

Article 12. Suspensions

12.1 The Parties may not suspend or alter the agreed legal effect of any agreed equivalence recognition as detailed and contained in Schedule 1 unless the suspension or alteration of the national legal effect of any agreed equivalence recognition is:

(a) pursuant to the mutual written agreement of the Parties (and such agreement refers to this Article);

(b) in accordance with the change mechanisms specified in Article 11;

(c) in accordance with a mutually agreed solution that has been reached between the Parties in accordance with the consultation process specified in Article 7;

(d) in accordance with a mutually agreed solution that has been reached between the Parties in accordance with the mediation process specified in Article 8; or

(e) in accordance with the dispute resolution process specified in Article 9.

12.2 For legal certainty and stability, the Parties shall ensure that any national measures taken to suspend or alter the agreed legal effect of any agreed equivalence recognition as detailed and contained in Schedule 1 shall only take effect at the earliest [one year] after publication of the relevant national legal instrument [(subject to mutual agreement of the Parties or if required to comply with any panel ruling or report that is issued to the Parties pursuant to Article 9)].

Schedule 1

Agreed Equivalence Recognitions

Agreed equivalence recognition relating to: [•]	
Relevant Union Legislation	Relevant United Kingdom Legislation
[•]	[•]
Description of legal effect in the Union	Description of legal effect in the United Kingdom
[•]	[•]
Conditions applicable to Union legal effect of agreed equivalence recognition	Conditions applicable to United Kingdom legal effect of agreed equivalence recognition
[•]	[•]
Description of category of United Kingdom undertakings entitled to the agreed equivalence recognition	Description of category of Union undertakings entitled to the agreed equivalence recognition
[•]	[•]
Agreed equivalence recognition relating to: [•]	
Relevant Union Legislation	Relevant United Kingdom Legislation
[•]	[•]
Description of legal effect in the Union	Description of legal effect in the United Kingdom
[•]	[•]
Conditions applicable to Union legal effect of agreed equivalence recognition	Conditions applicable to United Kingdom legal effect of agreed equivalence recognition
[•]	[•]
Description of category of United Kingdom undertakings entitled to the agreed equivalence recognition	Description of category of Union undertakings entitled to the agreed equivalence recognition
[•]	[•]

Schedule 2

Recognition Conditions

A Party (the "Adopting Party") may adopt and maintain an equivalence recognition in favour of the other Party (the "Recognised Party") by an implementing act or by including it in a mutual recognition agreement if:

(a) the Recognised Party applies requirements which are materially equivalent in terms of outcome to the legally binding requirements applicable in the Adopting Party that correspond to a particular agreed equivalence recognition set out in the table in Schedule 1, as determined by the Adopting Party;

(b) the Recognised Party applies materially equivalent ongoing and effective supervision and enforcement to entities that are authorised and supervised in its jurisdiction;

(c) equivalent standards of professional secrecy and data protection are in place and enforced in the Recognised Party's jurisdiction;

(d) equivalent standards or requirements relating to anti-money laundering and anti-terrorist financing are in place and enforced in the Recognised Party's jurisdiction;

(e) appropriate cooperation agreements (including regulatory enforcement, information sharing and tax information exchange and regulatory cooperation) are or have been entered into between the financial services regulators of the Adopting Party and the Recognised Party in respect of each relevant sector that include, at the least, provisions relating to:

  (i) notifications between regulators;

  (ii) the establishment of public registers of the entities in the Recognised Party's jurisdiction that carry out financial services business in the Adopting Party's jurisdiction pursuant to any agreed equivalence recognition; and

  (iii) prompt notifications to the Adopting Party's financial services regulators by the Recognised Party's financial services regulators where entities authorised or supervised in the Recognised Party's jurisdiction that carry out financial services business in the Adopting Party's jurisdiction pursuant to arrangements established pursuant to this agreement are subject to disciplinary or infringement proceedings in the Recognised Party's jurisdiction, are subject to a variation, termination or suspension of authorisation to carry out any particular financial service under the Recognised Party's legal and supervisory regime, or enter into any insolvency, administration, receivership, resolution or any other similar event or process; and

(f) the Recognised Party provides reciprocal recognitions that are, or will be, effective in the Recognised Party's legal system specifically corresponding to each agreed equivalence recognition. This condition (f) is subject to the Adopting Parting electing not to require a reciprocal recognition be provided by the Recognised Party.

A Template for Enhanced Equivalence: Creating a Lasting Relationship for Financial Services between the EU and the UK
Barnabas Reynolds

Hard Choices: Britain's Foreign Policy for a Dangerous World
John Baron

Trading on the Future: Brexit Trade Options and the UK Economy
Patrick Minford

Triggering Article 50, Courts, Government and Parliament
D. Abulafia, J. Clark, P. Crisp, D. Howarth, S. Lawlor & R. Tombs

Prosperity not Austerity: Brexit Benefits — Britain's New Economy
John Redwood

A Blueprint for Brexit: The Future of Global Financial Services and Markets in the UK
Barnabas Reynolds

How to leave the EU: Legal and Trade Priorities for the New Britain
Martin Howe QC

Flawed Forecasts: The Treasury, the EU and Britain's future
Patrick Minford

The EU: An idea whose time has passed
Roger Bootle

Ruling the Ruler: Parliament, the People and Britain's Political Identity
Sheila Lawlor

Joining the World: Britain Outside the EU
Nigel Lawson

Banking on Recovery: Towards an accountable, stable financial sector
J. McFall, S. Kamall, G. Lyons, R. Roberts, F. Capie, G. Wood, K. Matthews, D. B. Smith, M. Powell, E. Michaels & S. Lawlor

Dumbing Down the Law: The SRA's Proposals for Legal Training
Anthony Bradney

The British Bill of Rights: Protecting Freedom Under the Law
Jonathan Fisher QC

Paying for the Future: Working Systems for Pensions and Healthcare
L. Schuknecht, M. Dauns & W. Erbert

What's the Point of the Human Rights Act? The Common Law, the Convention, and the English Constitution
Dinah Rose QC

Working Systems: Towards Safer NHS Nursing
T. Hockley & S. Boyle

Working Welfare: Contributory Benefits, the Moral Economy and the New Politics
Frank Field

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A Selection of Recent and Related Publications

Avoiding the Trap – How to Move from the Withdrawal Agreement
Martin Howe QC, Sir Richard Aikens and Thomas Grant

The EU, the UK and Global Trade – A New Roadmap
David Collins (2nd edition, June 2019, with New Direction)

The Withdrawal Agreement, State Aid & UK Industry: How to Protect UK Competitiveness
Barnabas Reynolds & James Webber

Intangible Assets: Funding Research in the Arts and Humanities
John Marenbon

The Court of Justice of the EU - Imperial, Not Impartial
Gunnar Beck

Deal, No Deal? The Battle for Britain's Democracy
Sheila Lawlor

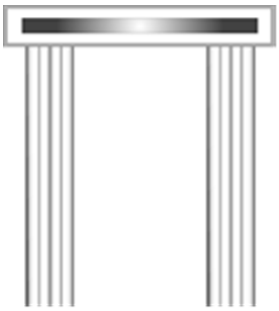
Brexit: Options for the Irish Border
Ray Bassett

The Brexit Settlement and UK Taxes
David B. Smith

Commercial Law After Brexit: Next Steps for the UK
Thomas Sharpe QC

Reversing Decline: Vocational Education and Training for a Highly Skilled Workforce
Sheila Lawlor

Rebalancing the Debate: The Benefits of Trade Liberalization and Implications For Future Policy
Andrea Potlogea



As a new prime minister prepares for office, the focus will be on future trade. For services, the Government intends that future UK-EU trade will be on the general principle of mutual recognition, with enhanced equivalence for the financial sector. Each side will recognise the other's financial rules as leading to equivalent high-level outcomes. Businesses from both the EU and the UK will thus be able to operate in both jurisdictions without other barriers, relying solely upon the laws, regulations and supervision of their own states.

In *UK and EU Financial Services: the Legal Framework for Free Trade after Brexit*, Barnabas Reynolds, who leads his City law firm's financial and regulatory practice, provides the legal draft for enhanced equivalence through a chapter in a Free Trade Agreement. This would have the advantage of being strong and binding, and would operate under treaty law.

But to avoid future ambiguity or uncertainty for businesses, two refinements to the Government's proposals are needed. First, each legal system should play an equal role in determining what constitutes equivalence, with disputed matters settled by an independent tribunal. Second, to ensure continuity with current trade, all the services now traded should be included from the start.

Because a predominantly treaty-based framework would bring greater certainty and predictability, the Government, he says, may prefer to adopt such a framework rather than partly relying on domestic law in the way he had suggested earlier in *A Template for Enhanced Equivalence*. Reynolds' proposals would bring the best of both worlds, with each side a winner. Each would keep its own laws, each its own legal and economic systems, each would benefit from the UK's expertise, range of services and London's pools of capital. For the UK such independence matters, both for the sector and for the success of the whole economy based on free markets and competition. For the EU it brings freedom to deal with the many domestic markets of the EU27, the needs of which are very different from those of the UK and global financial markets.

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