



# Beyond Equivalence: Third Country Regimes in European Financial Regulation—Introduction

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In European financial law, the regulatory and supervisory treatment of intermediaries from non-EU third countries has been debated over decades. Different approaches have been established for different sectors of financial markets for some time. Market access based on the notion of equivalence between the European and home country's regulatory and supervisory arrangements has been granted in some areas, but only to a limited extent, and clearly is not a universal basis for the treatment of third country institutions. In recent years, particularly following the exit of the United Kingdom from the European Union, the treatment of third country institutions within the EU has become a multi-polar political issue—market access for non-EU intermediaries has become a *quid pro quo*, granted in return for the access of European institutions in the respective foreign market, but also within the EU, where Member States have been reluctant to agree on a greater role for the European Commission as key decision-maker responsible for comprehensive market access.

The present special issue presents a comprehensive analysis of the third country regimes currently established in the European financial markets, as well as of the perspectives of major third country jurisdictions. The articles are based on papers

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at Stibbe law firm in Amsterdam on 11 and 12 May 2023 by Jens-Hinrich Binder, of Eberhard Karls University of Tübingen, and Danny Busch, of Radboud University Nijmegen. The workshop—the work product of Jens-Hinrich Binder’s Visiting Professorship at Radboud University’s Business Law Institute since 2020—brought together the views of academics and practitioners from different EU jurisdictions, Switzerland, the United Kingdom and the United States of America.

The special issue is organised in two parts, the first of which examines the broader context. In a general report, Danny Busch first presents a comprehensive analysis of the emergence and current developments of third country regimes in EU financial law. Niamh Moloney then follows up with a closer look at the UK perspective, complemented with a US perspective by Lissa Broome and a view from Switzerland by Aline Darbellay. The second part examines the existing arrangements (and, to the extent applicable, incoming changes) sector by sector. Jens-Hinrich Binder first explores the rudimentary third country regime currently in place for credit institutions and, against that backdrop, the proposed changes to that regime. Victor de Serière and Bas Zebregs then look into the area of central counterparties and, thus, one of the most contentious topics during the post-Brexit redefinition of the EU/UK regulatory relationship. Heinrich Nemeček then discusses the treatment of various FinTechs under current arrangements. Christian Schmies explores the existing third country arrangements for collective investment schemes, Marije Louisse and Mirik van Rijn those for investment firms, and, finally, Arthur van den Hurk those for insurers.

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