

6th Annual QED Conference on
**Cross-Border Regulation of
Financial Services**



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SPEAKERS

Almorò Rubin de Cervin

Head of Unit A4 - International Affairs, DG FISMA, European Commission

Nick Collier

Managing Director, Brussels Office, City of London Corporation

Eve Finn

Managing Director, L&G Investment Management Ireland

Matthias Heer

Managing Director, Swiss Finance Council

Sharon Yang

Director, International Financial Markets, U.S. Department of the Treasury

MODERATOR

Prof. Dr. Kern Alexander

Professor of Banking and Financial Market Regulation, University of Zurich



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Professor Kern Alexander, Chair for Law and Finance, University of Zurich, introduced the discussion by considering **the recent history of cross-financial regulation cooperation that has been driven by financial crises**. He mentioned how the break-down of the IMF's Bretton Woods system that led to floating currency exchange rates and to increased turbulence in global financial markets with several resulting bank failures including the Herstatt Bank and Franklin National in 1975. This led to the creation of the Basel Committee and to the international principle of home-host country supervision based on minimum international harmonisation of regulatory standards. Further crises in the 1990s and the global financial crisis of 2007-08 led to enhanced international coordination of financial supervision with the creation of the Financial Stability Board which focuses on macro-prudential systemic risks across all financial sectors. The post-crisis international framework of cross-border financial supervision has driven regulatory reforms in Europe, the US and other jurisdictions with significant financial market activity. Now new regulatory challenges are on the agenda including climate change risks, digital currencies and other fintech innovations that require further enhanced cross-border oversight of financial markets. The following speakers addressed important aspects of these market and regulatory changes.



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Almorò Rubin de Cervin

Head of Unit A4 - International Affairs, DG FISMA, European Commission

“The challenge facing regulators is to combine the globalisation of the financial system with financial stability at home,” was Mr. de Cervin’s opening remark, adding that “the multilateral framework is essential for stability, along with the importance of a level playing field.” However, he pointed out that a multilateral approach alone is not sufficient; it has to be combined with bilateral cooperation, partly in trade agreements and partly in more regulatory cooperation, particularly in regions. Another dimension is equivalence, which is the system used within the EU to deal with cross-border aspects. As these aspects are highly diverse, equivalence also takes on a diverse character. He said that **equivalence always has a prudential concern, either relating to financial stability, investor protection or market integrity**. Mr. de Cervin remarked that equivalence requires trust and cooperation, and gave an example of the field of anti-money laundering and taxation blacklisting where a breakdown in trust and cooperation will have a significant repercussion on equivalence. Another aspect of equivalence is monitoring development in certain countries. Mr. de Cervin finished by saying that “the three elements of multilateral, bilateral and equivalence, are part of a complex, imperfect system which deals with a very living body – the financial system – in its international dimensions.”



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Nick Collier

Managing Director, Brussels Office, City of London Corporation

Mr Collier opened by saying that **“Brexit must not distract the EU and Member States from the work that still needs to be done in regard to the banking union and capital markets union.”** He said that Europe is still a fragmented market with 50 or more trading venues, and corporates are still too dependent on bank finance, so there is a lot still to be done, including ways to handle third countries. He pointed out that cross-border activity is normal, despite some experts thinking otherwise, and he believes that the EU has to address this and embrace globalisation, despite it being more complex than it used to be. Mr Collier said that there are various ways of doing this; a model that the private sector likes is the European model of mutual recognition, which works very well in the single market and depends on trust, clear and identical rules, as well as the rule of law under the ECJ, although he considers it is not particularly appropriate for third countries. Another option is the “exemptive relief approach” which is pragmatic but works only for wholesale markets. Other options are the extra-territorial approach, and deference (substituted compliance). He believes that the EU regime is mixed, incorporating equivalence (or adequacy when it extends to data protection), is applied rather ad hoc, and has been politicized. He therefore welcomes the Commission looking again at equivalence. Returning to his first topic of Brexit, Mr Collier believes that the EU and the UK can have a close and deep bilateral dialogue, set up under some kind of free trade agreement.



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How can we make sure equivalence is interpreted the same way by everyone? Can equivalence be a catalyst for building enduring relationships between the EU and third countries?
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Eve Finn

MD, LGIM Europe Ltd

Ms Finn said that L&G’s customers are looking for security and returns for retirement income; open markets that allow best-in-class investment solutions; smoothly working EU capital markets; and for the EU to work as part of the global market. She remarked that the key to making trade work is to make sure that it’s inclusive and that it benefits global citizens. In this respect it is essential to build a regulatory community that trusts and defers to one another. She also pointed out that “international standards are incredibly helpful for international trade so long as everyone follows them.” Ms Finn highlighted some EU success stories in the global market; particularly the huge success of UCITS. Moving to the topic of equivalence, Ms Finn believes that it is a good concept although the regime could be improved, especially in the areas of consistency and continuity, for example in deciding which countries are equivalent. Regarding equivalence coverage, she believes it was never meant to be mean equal, but said that key questions needed to be asked: **“How can we make sure equivalence is interpreted the same way by everyone? Can equivalence be a catalyst for building enduring relationships between the EU and third countries?”** In Ms Finn’s opinion, there is a need to reform equivalence. Currently, it can be withdrawn after 30 days, but this doesn’t support in an ideal way an enduring relationship. A better process for the EU withdrawing is therefore required – with a longer timeframe and a set-out process for withdrawal, potentially with political input via the European Parliament.



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Matthias Heer

Managing Director, Swiss Finance Council

Mr. Heer focused on market access into the EU from a third country (Switzerland), where the expert group Brunetti considered four solutions to approach changes in the EU framework. The first was to do nothing, although this would not keep the status quo. The second was to approach the Member States and get market access directly through them, depending on the remaining sovereignty. The third was a (financial) service agreement, although these can take a considerable time to agree upon and implement. The fourth was equivalence. He then moved onto the reasons why cross-border regulation is still on the agenda. One reason is that market access is only a patchwork, with no passport for MiFID but one for MiFIR; and potentially one for AIFMD one for UCITS ect. Also, **“the process to get equivalence in individual regulations is extremely demanding, with a lot of requirements to fulfil and processes to complete, all of which can be very time consuming.”** Politicization is also an issue, exemplified by the Swiss Stock Exchange equivalence, which is closely linked to progress on the bilateral framework agreement between Switzerland and the EU. Finally, Mr Heer said that “Brexit creates a fundamental challenge to the concept of equivalence; as important financial service markets will be outside the EU, creating new discussions on equivalence and its possibility to connect and harmonize markets.” However, Mr Heer still remains optimistic that there will be a good outcome from Brexit and the bilateral framework agreement, and that all sides will get value from cross-border business.



Panel discussion

Moderator: Prof. Dr. Kern Alexander Professor of Banking and Financial Market Regulation, University of Zurich

Prof Alexander asked about the concerns for third country equivalence and what recent developments are underway at the Commission regarding any policy dialogue for calibrating the equivalence process to take into account the concerns expressed by panellists? Mr de Cervin said that the Commission has made it clear that there is a proportionality in the way equivalence is handled, and they are trying to be more transparent about how equivalence is calculated and offered. He values a prudent approach and is unsure how much forward planning or commitments can be made public; He said that some reforms have been made in various places such as central clearing. Ms Finn said that from a business and consumer perspective, the 30-day rule has a major impact on affected consumers and businesses and it therefore needs to be addressed. On the other hand, she pointed out that to date, equivalence has never been revoked, so this could be just a hypothetical argument.

Prof Alexander asked about the exemptive relief approach and whether, as post-Brexit UK regulation evolves, we might see a return to a framework involving practitioners more involved in setting regulatory standards. Mr Collier believes there should definitely be close consultation with industry on rule-making, and also that there should be a role for industry in market conduct. A delegate asked whether money laundering might become part of any equivalence decisions? Mr de Cervin agreed that more has to be done in this area, but what the exact format of this work is like to be, remains unclear at the moment.

A delegate asked panellists to comment on the recent report from the FSB and IOSCO on fragmentation in global markets and their warning that rules (e.g. the EU's Euroclearing restrictions) and their uneven implementation raise costs and decrease financial stability. Mr de Cervin said that it's fair to question whether the way a common standard is implemented in various jurisdictions actually creates market fragmentation. So he believes it's good that the FSB looks at these kinds of potential effects. Mr Collier gave the example of South Africa, where the major banks quickly realised that with a national clearing house, the capital requirements would be huge and therefore unfeasible.

Prof Alexander asked how international regulation of cross-border financial services is likely to develop in the future, and how can Europe play a role in influencing standards in this area? Ms Finn said that the EU is already doing a lot in this area. The international standard setters are rightly concerned with getting those rules or principles right and then having them filter down through the different layers (international, supranational, consumer etc.) and making sure that everyone is committed to being in line with these international standards.

A delegate asked whether it would make sense to think about some high-level principles that could be introduced around ex ante coordination on the impact of regulation on significant third countries and to work towards convergence? Mr de Cervin said that the danger of setting international standards for governance is that it touches the very heart of domestic regulatory processes, which is a very sensitive democratic issue. He sees the biggest challenge lies with countries where the democratic process is less strong. Mr Collier agreed that this is a tricky issue as no regulator wants to be constrained, but it would be useful to hard-code some assessment of the impact on third countries, via the impact on the private sector (e.g. investors in Swiss stocks, Irish pensioners etc.). This has to be an autonomous sovereign decision by regulators or the European Commission, but he believes that there should be a due process that goes with it.

Prof Alexander wanted to know the industry's view of the importance of obtaining a passport for market access. Mr Heer said that currently the big obstacle is Brexit, which throws up the possibility of new proposals coming up post-Brexit as to how equivalence can be developed and evolve. In Switzerland he said the big topic is the bilateral framework agreement, and until this is resolved it's clear that when it comes to further market integration or market access, there won't be much to discuss.