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# CAUSATION OF DAMAGE, DAMAGE COMPENSATION AND INSURANCE

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EQUIVALENCE IN THE INSURANCE SECTOR  
UNDER SOLVENCY II  
– SOME REMARKS – \*\*

*Summary*

*The author analyses the application of institute of equivalence in the insurance sector. First, the concept of equivalence in general and its ramifications are discussed. Following that, the focus is changed to the insurance industry, with an emphasis on the Solvency II regime, presenting areas where this mechanism applies and the involvement of relevant supranational bodies. Furthermore, part of the paper focuses on the impact of Brexit on the financial services and insurance industries. Finally, the conclusions summarize the research findings.*

**Keywords:** *Financial Markets, Insurance, Third Country Access, Equivalence, Solvency II, Brexit.*

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## 1. Introduction

Access of third-country entities to the financial markets in the European Union is a longstanding issue. Since the 1980s, this debate has run in parallel with the “ongoing integration of markets in Europe and the broader process of globalisation of financial services”.<sup>1</sup> In the past several years, there has been a renewed interest in this matter, partly due to Brexit,<sup>2</sup> and partly due to the development of a new framework for some forms of access such as equivalence.<sup>3</sup> On the one hand, a less stringent regime for market access positively influences competition, innovation, range of products and services, but, on the other hand, it is necessary to preserve the stability of the market and therefore control who has access.<sup>4</sup> In an effort to find a balance between the aforementioned, the European Union has developed several approaches to third-country access to the EU financial markets. Still, these rules are “fragmented and contained in different sectoral regulations”.<sup>5</sup>

This paper is aimed at presenting the mechanisms of access based on the principle of equivalence. Since this mechanism exists in various legal acts in the EU, we have decided to narrow the scope of the research to one specific area – the insurance sector. Though important in business and everyday life, and with great potential for influence on systemic risks, we feel that this area in the context of equivalence and its implications is not sufficiently researched.

The paper is structured as follows. First, the concept of equivalence and its implications are presented. Afterwards, the equivalence in insurance industry was researched with a focus on the Solvency II regime, presenting areas where this mechanism applies, the role of the European Insurance and Occupational Pensions Authority (hereinafter EIOPA) in the process, as well

<sup>1</sup> European Parliament, Understanding equivalence and the single passport in financial services Third-country access to the single market, 2017, [https://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599267/EPRS\\_BRI\(2017\)599267\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599267/EPRS_BRI(2017)599267_EN.pdf), last visited 15. 6. 2024.

<sup>2</sup> J. Čeranić, M. Glintić, “Evropska unija nakon Breksita – sa posebnim osvrtom na kontinentalno partnerstvo kao model za redefinisiranje odnosa između Ujedinjenog Kraljevstva i EU”, *Pravni život* 12/2017, 397–411.

<sup>3</sup> A. Višekruna, “The access to the EU financial market for the companies from non-member states”, *EU and comparative law issues and challenges series 2/2018*, 658.

<sup>4</sup> *Ibid.*, 660.

<sup>5</sup> A. Višekruna, „Pristup finansijskom tržištu Evropske unije putem režima ekvivalenosti – novi pravci razvoja instituta u svetlu Brexit-a”, *Revija za evropsko pravo* 24(1)/2022, 106.

as examples of good practice. Also, one part of the research is dedicated to the impact of Brexit on the financial services and insurance industry. Finally, the concluding remarks summarise the research findings.

## **2. Equivalence in the European Union – Requirements, Characteristics and Consequences**

One of the instruments of market access to the EU financial markets is based on the assessment of equivalence between the third country's regulatory and supervisory framework and the EU's regime in the relevant area. The procedure for establishing equivalence is outcome-based – the legislation of the third country does not have to be identical to the regime provided for by a certain EU act, but it must achieve the same regulatory and supervisory results,<sup>6</sup> i.e. the rules and regulations of the home and host country “must fulfil the same objective and achieve the same level of protection”.<sup>7</sup> Even though it is a way to gain market access, European Commission sees the determination of equivalence primarily “as serving prudential purposes and benefits mainly to EU market participants”.<sup>8</sup>

One of the characteristics of equivalence is that it is limited in scope since it doesn't cover all the areas of financial services, and it sometimes refers only to certain types of clients.<sup>9</sup> Furthermore, rather than establishing a uniform framework, each legislative act has its own rules and requirements tailored to its needs; therefore, there is no singular meaning of equivalence.<sup>10</sup>

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<sup>6</sup> D. Howarth, L. Quaglia, “Brexit and the Single European Financial Market”, *Journal of Common Market Studies* 55(S1)/2017, 162; N. Moloney, *EU securities and financial markets regulation*, Oxford University Press, Oxford 2023, 851. D. Zetzsche, “Competitiveness of Financial Centers in Light of Financial and Tax Law Equivalence Requirements”, in: *Reconceptualising Global Finance and its Regulation* (eds. R. P. Buckley, E. Avgouleas, D. W. Arner), Cambridge University Press, Cambridge 2016, 392. The author argues it is enough for the providers to be regulated in a „substantively similar way”.

<sup>7</sup> D. Zetzsche, 395.

<sup>8</sup> A. Van Den Hurk, “Equivalence and Insurance”, *European Business Organization Law Review* 25(1)/2024, 210.

<sup>9</sup> A. Višekruna (2018), 663.

<sup>10</sup> A. Margerit, M. Magnus, B. Mesnard, Third-country equivalence in EU banking legislation, 2016, 2, [http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/587369/IPOL\\_BRI\(2016\)587369\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/587369/IPOL_BRI(2016)587369_EN.pdf), 22. 3. 2018. According to the European Commission, around 40 provisions in EU legislation can serve as the foundation for an equivalence decision, which has been made in more than

The prerequisite for the application of the equivalence regime is that its approval is foreseen in the specific act. European Commission evaluates and recognizes the foreign country's legal regime as equivalent by adopting an implementing or delegated act. As said, the decision on equivalence is centralized in the hands of the European Commission, with European Supervisory Authorities playing an advisory role in the decision-making process.<sup>11</sup> Since there is no fixed deadline for reaching the decision, the length of the process can vary.<sup>12</sup> When examining the equivalence, two steps play a crucial role – determining the objectives of the norms and comparing the results of legislation and supervision of the countries in question. Applying these steps can produce a great deal of uncertainty “about the authority of the sources used and the assessment methodologies”.<sup>13</sup> The process is unilateral – the decision lies in the hands of competent EU authorities, and the equivalence decision may be withdrawn unilaterally by the European Commission at any time. The process is also discretionary and can be easily used as an instrument for achieving political goals.<sup>14</sup>

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280 cases in favour of over 30 countries. European Commission, Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions, Equivalence in the area of financial services, COM(2019) 349 final, Brussels, 29. 7. 2019, 3, [https://eur-lex.europa.eu/resource.html?uri=cellar:-989ca6f3-b1de-11e9-9d01-01aa75ed71a1.0001.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:-989ca6f3-b1de-11e9-9d01-01aa75ed71a1.0001.02/DOC_1&format=PDF), last visited 10. 7. 2024.

<sup>11</sup> European Supervisory Authorities is an overarching term for three supervisory authorities – European Banking Authority (EBA), European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA).

<sup>12</sup> European Parliament, Understanding equivalence and the single passport in financial services Third-country access to the single market, 2017, 3, [https://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599267/EPRS\\_BRI\(2017\)599267\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599267/EPRS_BRI(2017)599267_EN.pdf), last visited 10. 7. 2024. As this research shows, in some areas, the process took from two to four years.

<sup>13</sup> D. Zetzsche, 395.

<sup>14</sup> E. Wymeersch, Brexit and the Equivalence of Regulation and Supervision, *European Banking Institute Working Paper Series 2017 - no. 15*, 2017, <https://ssrn.com/abstract=3072187>, 1. 8. 2024; P. Böckli *et al.*, The consequences of Brexit for companies and company law, 15, <https://ssrn.com/abstract=2926489>, 30. 7. 2024; F. Penesi, “Equivalence in the area of financial services: An effective instrument to protect EU financial stability in global capital markets?”, *Common Market Law Review* 58(1)/2021, 51; D. Zetzsche, 415-416.

### 3. Equivalence in the Insurance Industry

#### 3.1. Solvency II Regime of Equivalence

##### 3.1.1. Types of Equivalence under Solvency II

Due to the potentially international character of the insurance group's activities, Solvency II equivalence may be significant to them and the entities with which they operate.<sup>15</sup> Under Solvency II, there is no single determination of equivalence in relation to a third country's regime, but each equivalence provision has its requirements and specific effects.<sup>16</sup> The areas of equivalence assessment under Solvency II refer to:

1. Reinsurance (Article 172). This provision is relevant for reinsurers from third countries. If the third country's rules are deemed equivalent, such reinsurers must be treated by EEA supervisors in the same way as the EEA reinsurers, which will also contribute to the number of reinsurance arrangements signed with reinsurers from third countries.
2. Solvency calculation (Article 227). This provision is relevant for EEA insurers operating in a third country. If an equivalence decision is reached, EEA insurance groups can use the local (non-EU) rules to calculate capital requirements and available capital (own funds) instead of the Solvency II rules.
3. Group supervision (Article 260). This provision is relevant for insurers from third countries operating in the EEA. If the third country's rules are deemed equivalent in this area, EEA supervisors will under certain conditions rely on the group supervision exercised by a third country, thus minimizing burdens arising from dual group supervision.

Equivalence under Solvency II can have different forms – it can be full, temporary or provisional. Full equivalence is granted for an indefinite period, but due to the nature of the institute, it can be unilaterally revoked at any time.<sup>17</sup> Moreover, EIOPA monitors the application of the equivalence and reports its progress annually. Under Solvency II, temporary equivalence could be determined for a limited period, that is, until 31 December 2020 with a possibility of

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<sup>15</sup> A. Van Den Hurk, 212.

<sup>16</sup> Clifford Chance, *Brexit: passporting and equivalence implications for the UK insurance sector*, 2016, 3, <https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2016/08/brexit-passporting-and-equivalence-implications-for-the-uk-insurance-sector.pdf>, last visited 15. 6. 2024.

<sup>17</sup> A. Van Den Hurk, 215.



a one-year extension. Having in mind that this deadline is long past, this type of equivalence is now obsolete. Provisional equivalence can be granted for a limited period of ten years and is renewable for further ten-year periods. Provisional equivalence is suitable for countries that are modernising their regimes or have well-functioning solvency regimes unlikely to be updated soon.<sup>18</sup>

In the insurance industry, equivalence is granted only to certain countries – full equivalence was determined only for two (Bermuda and Switzerland), while provisional equivalence is granted only for a number of countries (Australia, Brazil, Canada, Mexico, USA, Japan).

Unlike some other areas, equivalence under Solvency II is not used to grant direct access to the internal market for non-member market actors.<sup>19</sup> Equivalence in Solvency II has prudential background.<sup>20</sup> The equivalence framework in insurance described as “relevant in practice, relatively advanced and still evolving”.<sup>21</sup>

<b>Type of equivalence</b>	<b>Full equivalence</b>	<b>Temporary equivalence</b>	<b>Provisional equivalence</b>
<b>Solvency II areas</b>	All three areas	Reinsurance (art. 172.4) and groups doing business in EEA (art. 260.5)	EEA groups doing business in third countries (art. 227.5)
<b>Duration</b>	Unlimited period	Limited period (until 31 December 2020, with the possibility of a one-year extension)	Limited period (10 years, with possible another 10-year extension)
<b>Countries</b>	Switzerland, Bermuda	Japan	Australia, Brazil, Canada, Mexico, USA, Japan

### *3.1.2. The Role of EIOPA*

The decision on equivalence lies in the hands of the European Commission, but supervisory authorities in the relevant areas play a significant role in the process. In the realm of insurance, EIOPA assists in the process of determining the equivalence. When founded in 2010, EIOPA was mandated to develop the guidelines for the assessment of the equivalence of third-country supervisory regimes for national supervisory authorities which were enacted in 2015.<sup>22</sup>

<sup>18</sup> *Ibid.*, 212.

<sup>19</sup> *Ibid.*, 213.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

<sup>22</sup> EIOPA, Guidelines on the methodology for equivalence assessments by National Supervisory Authorities under Solvency II, 2015, EIOPA-BoS-14/182 EN,

EIOPA assess a series of principles, giving an opinion on whether the legal regime in question is equivalent.<sup>23</sup>

As stated by the body itself, EIOPA will particularly focus on the *monitoring* of regimes for which positive equivalence decisions have been taken, including temporary ones, and assess whether implementation and potential regulatory amendments still meet the criteria.<sup>24</sup> In the past two years, EIOPA finalized monitoring Bermuda (2022) and Switzerland (2023) equivalence. In 2023, EIOPA enacted the Single Programming Document 2024-2026 in which it reaffirmed its mission regarding equivalence. As one of its annual operational objectives, EIOPA sets effective monitoring of the application of equivalence decisions and market or regulatory developments impacting equivalence.<sup>25</sup> Further planning priorities will be defined considering a 3-year cycle for equivalence monitoring of jurisdictions with full equivalence and a 10-year cycle on provisional equivalence monitoring. As part of its cooperation with third states and international organisations, EIOPA envisages monitoring third-country regimes where there is an equivalence decision.<sup>26</sup> In 2020, changes were introduced to give EIOPA more responsibility regarding the equivalence in the insurance industry. In accordance with its mandate, EIOPA proclaims it will continue on-site visits, delivering third-country reports, and annual assessments, in addition to providing input to the European Commission when deciding upon equivalence.<sup>27</sup>

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[https://www.eiopa.europa.eu/document/download/6f493074-4457-440c-9881-eca30ba64ce5\\_en?filename=Guidelines%20on%20the%20methodology%20for%20equivalence%20assessments%20by%20national%20supervisory%20authorities%20under%20Solvency%20II](https://www.eiopa.europa.eu/document/download/6f493074-4457-440c-9881-eca30ba64ce5_en?filename=Guidelines%20on%20the%20methodology%20for%20equivalence%20assessments%20by%20national%20supervisory%20authorities%20under%20Solvency%20II), 30. 6. 2024.

<sup>23</sup> See, for example, the assessment of the Swiss regime. EIOPA, Advice to the European Commission Equivalence assessment of the Swiss supervisory system in relation to articles 172, 227 and 260 of the Solvency II Directive, 2011, <https://www.eiopa.europa.eu/system/files/2019-03/eiopa-bos-11-028-swiss-equivalence-advice.pdf>, last visited 13. 8. 2024.

<sup>24</sup> [https://www.eiopa.europa.eu/browse/regulation-and-policy/international-relationships-and-equivalence\\_en](https://www.eiopa.europa.eu/browse/regulation-and-policy/international-relationships-and-equivalence_en)

<sup>25</sup> EIOPA, Single Programming Document 2024-2026, 2023, 50, [https://www.eiopa.europa.eu/document/download/73ad1211-1cbd-475f-883b-cbc864afb447\\_en?filename=EIOPA%20Final%20SPD%202024-2026.pdf](https://www.eiopa.europa.eu/document/download/73ad1211-1cbd-475f-883b-cbc864afb447_en?filename=EIOPA%20Final%20SPD%202024-2026.pdf), last visited 30. 6. 2024.

<sup>26</sup> EIOPA, Single Programming Document 2024-2026, 111.

<sup>27</sup> *Ibid.*

### 3.1.3. *Good Practice – The Case of Bermuda*

Equivalence decisions can be examples of “the good, the bad and the ugly”.<sup>28</sup> Namely, equivalence can bring numerous benefits for the third country (“the good”), but it can also bring uncertainty (“the bad”) or more stringent requirements (“the ugly”). One of the good examples of impact of equivalence in general is precisely in the area of insurance where Bermuda is seen as a positive example.

Bermuda plays a key role in international insurance and reinsurance since it is the home country of around one-third of the top reinsurers in the world and many captive and insurance-linked securities.<sup>29</sup> Early on Bermuda’s authorities revised insurance regulation putting it in line with Solvency II resulting in full equivalence under all three articles.<sup>30</sup> In practice, that means that (re)insurers from Bermuda can conduct business in the EU on equal footing as EU companies without additional regulatory burdens.<sup>31</sup> Bermuda is seen as a “jurisdiction with an appropriate degree of stability, legal certainty, and commercial flexibility”,<sup>32</sup> and has attracted many insurance professionals over the years.<sup>33</sup>

## 3.2. *Impact of Brexit on Equivalence in Insurance Industry*

### 3.2.1. *Brexit and Equivalence in Financial Services – A Brief Overview*

One of the events that has strongly shaped the equivalence landscape was Brexit. In the area of financial services, the withdrawal of the UK from the EU has significant ramifications, but financial services are barely mentioned in the Trade and Cooperation Agreement (hereinafter TCA) which regulates UK-EU relations after Brexit.<sup>34</sup> Some outlines of the EU-UK relations in

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<sup>28</sup> L. Bonacorsi, *Quo vadis the UK? The Future of Equivalence in Brexit Negotiations*, 2020, 8, <https://ssrn.com/abstract=3670623>, 25. 5. 2022.

<sup>29</sup> *Ibid.*, 9.

<sup>30</sup> A dedicated team was set up that worked for more than six years to achieve equivalence.

<sup>31</sup> L. Bonacorsi, 10.

<sup>32</sup> A. Potts, J. O’Mahony, “Bermuda: regulating big insurance on a small island”, in: *Research Handbook on International Insurance Law and Regulation* (eds. J. Burling, K. Lazarius), Edward Elgar Publishing, Cheltenham 2023, 729.

<sup>33</sup> Bermuda offers a wide range of diverse and innovative insurance and reinsurance products. *Ibid.*, 729-730.

<sup>34</sup> On the dynamics of Brexit negotiations see D. V. Galushko, “The modern Brexit

the field of financial services can be found in the TCA Annex which contains a Joint declaration on financial services regulatory cooperation between the European Union and the United Kingdom. This is a non-binding act by which the contracting parties undertake to sign a memorandum of understanding (Memorandum of Understanding establishing a framework for regulatory cooperation on financial services – MoU), which should represent a framework for dialogue between the EU and the UK on the financial services market.<sup>35</sup> After many delays, the MoU was signed on 27 June 2023, creating the administrative framework for voluntary regulatory cooperation in the area of financial services between the EU and the UK, outside of the TCA structures which includes the establishment of a Joint EU-UK Financial Regulatory Forum.<sup>36</sup>

Brexit prompted a re-examination of the equivalence regimes, but contrary to expectations it made the process stricter so that it is now more difficult for the UK to achieve equivalence and gain access.<sup>37</sup> Unlike the other third countries where the question is *whether* there is equivalence, at the time of withdrawal UK's legal order is unquestionably in line with the EU's, but it is uncertain how the legislative process will continue to unfold in the future.<sup>38</sup> There is a chance that UK legislators will (un)intentionally diverge from EU legislation in an attempt to adapt to the new market conditions, making legal order less and less equivalent.

### 3.2.2. *Brexit, Equivalence and Insurance*

In 2016, the Treasury Committee launched an EU Insurance Regulation inquiry to determine the operation of Solvency II in the context of the UK's

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agenda: some consequences of 'take back control', *Strani pravni život* 67(4)/2024, 691–706.

<sup>35</sup> A. Višekruna (2022), 102–103.

<sup>36</sup> Commission signs Memorandum of Understanding on regulatory cooperation with the United Kingdom, 2023, [https://finance.ec.europa.eu/news/commission-signs-memorandum-understanding-regulatory-cooperation-united-kingdom-2023-06-27\\_en](https://finance.ec.europa.eu/news/commission-signs-memorandum-understanding-regulatory-cooperation-united-kingdom-2023-06-27_en), last visited 2. 7. 2024.

<sup>37</sup> L. Bonacorsi, 15; N. Moloney, "Reflections on the EU third country regime for capital markets in the shadow of Brexit", *European Company and Financial Law Review* 17(1)/2020, 49. Bush points out that now it has become increasingly important whether the financial service in question is (likely to be) of systemic importance. See D. Busch, "The Future of Equivalence in the EU Financial Sector", *European Business Organization Law Review* 25(1)/2024, 11.

<sup>38</sup> L. Bonacorsi, 14.

withdrawal from the EU.<sup>39</sup> The inquiry intended to investigate various options for the UK insurance industry in case of exit, evaluate the impact of Solvency II on the competitiveness of the UK insurance industry, analyse how Solvency II will affect how insurance meets the needs of UK consumers and the country's businesses, and assess what lessons the sector and regulators might have learnt from its implementation.<sup>40</sup> After the consultations with stakeholders, the Treasury Committee published a Report on the Solvency II Directive in October 2017 proclaiming the insurance industry as a "priority sector during the Article 50 negotiations" and pleading for a form of bespoke agreement with the EU.<sup>41</sup> The report highlighted several complications that would ensue in the absence of a proper arrangement between the EU and the UK.<sup>42</sup> First of all, insurers from both the UK and the EU would have to restructure their business to adapt to the new circumstances. Second, withdrawal would affect the pre-Brexit insurance contracts, which would need to be addressed in order to have effect. Third, equivalence provisions are present only in Solvency II, while other insurance directives don't have such provisions so the issues of access would have to be resolved differently. Lastly, the problem of Lloyd's of London was emphasized. Being a unique organisation, Lloyd's faced unique challenges in the face of Brexit. It was able to operate across the EU because Solvency II had incorporated specific norms to accommodate its role. In the case of Brexit, such a model of operating would no longer be available. Since no agreement on financial services (including insurance) was reached, Lloyd's was obliged to find a new model for doing business in the EEA.<sup>43</sup> Hence, Lloyd's has established a subsidiary insurance and reinsurance company incorporated in Belgium – Lloyd's Insurance Company S.A. (Lloyd's Europe).<sup>44</sup> Subsequent anal-

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<sup>39</sup> Treasury Committee, Treasury Committee Inquiry into Solvency II - Terms of Reference, 2016, par. 3, <https://www.parliament.uk/globalassets/documents/commons-committees/treasury/Terms-of-reference/EU-insurance-regulation-ToR-16-17.pdf>, last visited 25. 6. 2024.

<sup>40</sup> *Ibid.*, par. 4.

<sup>41</sup> House of Commons Treasury Committee, The Solvency II Directive and its impact on the UK Insurance Industry, 2017, par. 201, <https://publications.parliament.uk/pa/cm201719/cmselect/cmtreasy/324/324.pdf>, last visited 25. 6. 2024.

<sup>42</sup> *Ibid.*, paras. 189-196.

<sup>43</sup> It was estimated that 3 billion pounds worth of capital is endangered. See J. Armour, "Brexit and financial services: the significance of 'third country equivalence'", in: *Brexit and the implications for financial services* (ed. P. Jackson), SUERF – The European Money and Finance Forum, Vienna-London 2017, 74.

<sup>44</sup> See Lloyd's, Brexit: what happens next?, 2020, <https://lloydseurope.com/events-and->

ysis of the impact of Brexit on financial services was more focused on other types of services, and the insurance industry was only mentioned where appropriate.<sup>45</sup> Despite that, problems that were identified in that analysis can also apply to the insurance sector.

Equivalence was one of the modalities of UK access that was considered. In favour of the positive UK equivalence decision in the insurance sector spoke the fact that the UK would easily achieve equivalence having in mind it “has been at the forefront of prudential regulation for insurance and, in some areas, is super-equivalent for Solvency II”.<sup>46</sup> But, as we have previously stated, during negotiations the entire area of financial services was given almost no attention despite possible ramifications. At first, it was considered that the supervisory regime in the UK insurance market would not deviate significantly from Solvency II, firstly because of the possible requirement to establish equivalence and secondly, because of the policyholder protection objectives proclaimed by the UK supervisory authority (PRA).<sup>47</sup> Nevertheless, Brexit gave the UK more flexibility in the legislative area, allowing it to be more competitive and rectify some of the current difficulties in Solvency II.<sup>48</sup> Deviations from the Solvency II could go two ways – if future changes of the Directive are not implemented in the UK insurance legislation or if UK deviates from Solvency II regime when reforming national legislation. In such circumstances, it is not clear whether the regime in force in the UK (Solvency UK) would be deemed equivalent. An equivalence decision has not yet been made, and the efforts of the British legislator to adapt the existing regime based on Solvency II to national circumstances heighten the uncertainty.<sup>49</sup> The UK Government has started legislative reforms of the financial services markets by enacting the Financial Services and Markets Bill.<sup>50</sup> The Bill allows for the implementation of reforms by revoking Solvency

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communications/news/brexit-what-happens-next, last visited 14. 8. 2024.

<sup>45</sup> In 2022, the European Affairs Committee of the House of Lords submitted a Report “The UK-EU relationship in financial services”. See <https://committees.parliament.uk/publications/22728/documents/167235/default/>, par. 3.

<sup>46</sup> Clifford Chance, 4.

<sup>47</sup> A. Müller, S. Reuse, “Solvency II post-Brexit: equivalence discussion in light of the UK solvency II review and the financial services and markets bill”, *Journal of Financial Regulation and Compliance* 31(5)/2023, 632.

<sup>48</sup> Clifford Chance, 5.

<sup>49</sup> A. Müller, S. Reuse, 630.

<sup>50</sup> The Bill was introduced to the Parliament on 22 July 2022 and received the Royal Assent on 29 June 2023.

II and transferring that responsibility to the PRA so that the PRA can replace it with the appropriate regulatory requirements in its rulebook. During the reform process, the Bank of England conducted a series of consultations on the new Solvency II framework for the UK (Solvency UK). During 2023 and 2024, PRA has published several policy statements setting out new Solvency UK rules, confirming major reforms to Solvency II, with minor changes to its original proposals. The new framework removes onerous requirements and increases flexibility and competitiveness.<sup>51</sup>

#### **4. Conclusion**

The paper presented two potential frameworks of equivalence regulation in the insurance sector under Solvency II. One is the current framework under Solvency II applied to several major non-EU insurance industries. This framework is based on the approval from the European Commission based on the assessment by the supervisory authority (EIOPA). After gaining the equivalence decision, its continuation is conditional upon maintaining an appropriate level of alignment of the regulatory and supervisory framework with regulatory changes in the EU which is periodically checked. The other framework is still in the making and it relates to the former member state (i. e. the UK) and its contours are not definite. UK's position in the realm of financial services' equivalence is unique compared to other third countries as, at the moment of the withdrawal, its legislation was fully in line with the EU legislation. However, the passage of time and legislative reforms on both sides may alter the situation. Even before Brexit was finalized, the view was taken that the UK's withdrawal could have a significant impact on the Solvency II supervisory regime and equivalence decisions. Although it was initially thought that the UK would not deviate too much from Solvency II after Brexit, the current reforms show otherwise. The negotiation process revealed that financial services in general were not the top priority in defining EU-UK relations, leaving this area almost completely undefined. The insurance sector will inevitably be influenced by Brexit, but the extent of this is still unknown. Legislative reforms on the UK part, combined with the EU's stance that it will not make concessions, are shaping the future contours of equivalence decisions in the insurance sector.

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<sup>51</sup> PWC, PRA finalises new Solvency UK framework, 2024, <https://www.pwc.co.uk/financial-services/assets/pdf/pr-a-finalises-new-solvency-uk-framework.pdf>, last visited 14. 8. 2024.

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## **EKVIVALENTNOST U SEKTORU OSIGURANJA U DIREKTIVI SOLVENTNOST II – NEKA RAZMATRANJA –**

### *Apstrakt*

U radu se analizira primena instituta ekvivalentnosti u sektoru osiguranja. Prvo se uopšteno razmatra koncept ekvivalentnosti u oblasti finansijskih usluga i njegove posledice. Potom se fokus prebacuje na sektor osiguranja, tačnije Direktivu Solventnost II gde se predstavljaju oblasti u kojima se ovaj institut primenjuje i uloga supranacionalnih tela u njegovoj primeni. Jedan deo istraživanja posvećen je uticaju bregzita na tržišta finansijskih usluga i posebno na industriju osiguranja. Na kraju se rezimiraju nalazi istraživanja.

**Ključne reči:** finansijska tržišta, osiguranje, pristup tržištu od strane trećih država, ekvivalentnost, Solventnost II, bregzit.



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