

Text to be circulated to the US during TTIP negotiations on 10-14 March 2014.

Regulatory Co-operation on Financial Regulation in TTIP

**(To be included to the EU proposal for services and investment chapter,
Section VI – Financial services)**

Article 53¹ – Regulatory co-operation

The Parties agree to work together towards further strengthening of global financial stability.

The Parties engage in regulatory cooperation based on the principles and prudential standards agreed at multilateral level and following the principles as set out below.

Article 54 – Principles of regulatory co-operation

The Parties endeavour to ensure consistent implementation and application of internationally agreed standards for regulation and supervision in the financial services sector.

The Parties commit to engage in a process towards convergence of their respective regulatory and supervisory frameworks for financial services.

The Parties shall consult each other in advance on proposed financial regulation and when taking prudential measures which may significantly affect market operators of the other Party, with the view to ensuring inter-operability of the regulation and measures.

The Parties ensure that their regulatory frameworks contain provisions allowing for mutual reliance/equivalence/substituted compliance with respect to the regulatory and supervisory framework of the other Party.

For the purposes of applying their rules, the Parties commit to rely on the rules of the other Party provided that one Party assesses the rules of the other Party as equivalent in outcome.

The Parties provide for effective enforcement of prudential rules implementing internationally agreed standards or any other prudential rules on which the other Party [re]lies. The Parties commit to co-operation of regulators and supervisors in this respect.

¹ The Articles may need to be renumbered as the place holder for the EU FS text foresees only two articles for regulatory cooperation.

The Parties avoid introducing rules affecting market operators and the jurisdiction of the other Party, unless there are overriding prudential reasons to introduce such rules, in conformity with Art. 52 (prudential carve-out).

On the request of one Party, the other Party commits to jointly examine any measures which have an impact on the ability of market operators to provide financial services within the territory of both Parties, with the view to rendering the measures inter-operable while keeping the prerogative to take measures for prudential reasons in conformity with Art. 52 (prudential carve-out) and where doing so would not unduly damage financial stability.

Where for the purposes of applying its rules a Party relies on the rules of the other Party, it retains the right to revert to enforcement of its own rules in cases when the other Party fails to enforce its rules effectively or modifies its rules in a way that reliance on the other Party's rules does not achieve any more the objective of the Party's rules. Parties shall consult each other prior to reverting to enforcement of their own rules in accordance with Art. 61.

Article 55 – The scope of Regulatory Co-operation

The regulatory cooperation covers all areas of financial regulation unless specifically agreed by the Parties otherwise.

The regulatory co-operation includes the process leading to mutual Reliance/equivalence/substituted compliance and also the consultation process among the regulators for future rules.

Article 56 – Mutual reliance, Equivalence/Substituted compliance

The Parties agree on mutual reliance on each other's rules, subject to positive outcome of the equivalence/substituted compliance test. For the purposes of assessing whether reliance on compliance with the other Parties' rules will achieve the same objective as compliance with their own rules, the Parties shall not require that the other Parties' rules are identical to their own rules, but shall base their assessment on regulatory outcomes.

The Parties shall assess the rules, their effective enforcement, and the arrangements for effective cooperation in close cooperation and consultation with the authorities of the other Party.

The Parties shall take into account any available assessments of whether the other Parties' rules comply with internationally agreed standards.

Where possible, both Parties shall conduct their assessments jointly to ensure mutually acceptable results.

The Parties allow for comments of the other Party before reaching final conclusion. Before adopting the final assessment, the Parties shall address in writing substantive comments received from the other Party with respect to the proposed assessment.

The Parties shall publish the conclusion of their assessment. Where appropriate, the publication shall specify the conditions under which the assessment may be reconsidered.

Article 57 – Joint EU/US Financial Regulatory Forum

The Parties hereby establish the Joint EU/US Financial Regular Forum (“the Forum”).

The Forum is in charge of regulatory co-operation between the Parties in the domain of Financial services. The Forum is bound by the principles of regulatory co-operation laid out in Art. 54 and Guidelines on Mutual Reliance/Equivalence and Substituted compliance in Art. 58.

Article 58 – Guidelines on Mutual reliance/Equivalence/Substituted compliance

The Joint EU/US Financial Regulatory Forum shall agree on detailed guidelines on mutual reliance adapted for each specific area of financial regulation no later than one year from the entry into force of this agreement.

[N.B. Parties may consider drafting the detailed guidelines within the framework of the TTIP negotiation and present them to the Forum for agreement.]

Article 59 – Governance of the Joint EU/US Financial Regulatory Forum

[Placeholder: The Parties shall agree on the detailed rules for the governance of the Forum at a later stage. It is envisaged that the Forum will be chaired by officials at ministerial level in charge of the financial regulation, who would meet annually. The Forum would be composed of working groups of regulators and supervisors of each Party, which would meet regularly and conduct consultations. The working groups would report to the annual meeting of the Forum. The Forum would collect and share the necessary and appropriate data among regulators to allow the day to day supervision of cross-border firms and effective co-operation and planning around the resolution of these firms. The rules on the governance of the Forum would also include rules on transparency vis-à-vis the stakeholders of the Parties.]

[Comment to EU Member States : The proposal for the composition of the EU representation at the Forum, including the involvement and representation of Member States, will be discussed with Member States and will be only sent to the U.S. at a later stage in the negotiation.]

Article 60 – Review of equivalence/substitutive compliance

The Parties shall maintain the prerogative to review the reliance on the other Parties' rules in conformity with Art. 52 (prudential exception). These circumstances include in particular the following situations:

- (i) Lack of effective enforcement of the legislation by the other Party,
- (ii) Inadequate cooperation of the other Party in the supervision of financial institutions including the insufficient exchange of financial data, amendments in the regulatory framework of the other Party reducing the level of prudential regulation.

Article 61 – Technical Mediation

Where a Party considers that circumstances justifying review of mutual reliance are fulfilled or that the other Party denies mutual reliance/equivalence/substituted compliance in breach of the principles of regulatory cooperation, the Party may request to resolve the matter in a process of technical mediation.

Upon Party's request a working group for mediation shall be established. The working group for mediation shall be composed of a representative of both Parties and shall be chaired by a supervisory expert not linked to the Parties selected jointly by the Forum. The chair shall submit a report to the Forum.

Parties undertake to act in good faith in an attempt to resolve the matter.

Parties shall agree on detailed guidelines for technical mediation [*add time limit*].

[N.B. It is not foreseen to provide for access of the Parties to dispute settlement mechanism established under TTIP with respect to regulatory cooperation in financial services.]

Article 62 – Claw Back

If the matter is not resolved or if one Party does not adhere to the outcome of the procedure, the other Party could exercise claw back powers as regards mutual reliance.