

Financial services outside the package

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For a book on a financial centre, the most striking feature of the package is what it leaves out. The package contains no agreement on financial services and creates no right for Swiss banks, asset managers or investment firms to provide services in the Union. The Swiss negotiating mandate did not seek one. Any agreement on financial services would have required Switzerland to adopt a very large and fast-moving body of Union law, from capital requirements to investor protection and anti-money laundering rules, which the Swiss industry itself did not wish to import wholesale.¹ The Swiss Bankers Association has nevertheless supported the package, since stable relations and the protection against arbitrary measures serve the industry indirectly.²

Swiss access to the Union's financial market therefore continues to depend on the third-country regimes of Union law and on the national rules of the member states. Part E, Chapter II has described the basic situation. Under the Markets in Financial Instruments Regulation, a third-country firm may serve eligible counterparties and per se professional clients across the Union after an equivalence decision of the Commission and registration with ESMA. No such decision has been adopted for Switzerland, and the Commission is not obliged to adopt one.³ For retail clients and opted-in professional clients, MiFID II allows member states to require a branch, and the national rules differ widely, with Germany applying a licensing requirement for cross-border business targeting German clients while allowing exemptions in individual cases.⁴

The practical answer of the Swiss banks has been to establish subsidiaries in the Union, as Part E, Chapter II described, and to rely on reverse solicitation, that is on services provided at the exclusive initiative of the client. Reverse solicitation is a narrow and fragile basis for a business model, because supervisory authorities interpret it restrictively and because any marketing activity can destroy it.⁵ The question of market

access for Swiss banks belongs to the future of the Swiss banking model, which Chapter III of this Part has examined. This chapter concentrates on a single development whose consequences for the Basel banks and their clients in Germany and France are direct.

1 Notes

1. On the exclusion of financial services from the package and the reasons (scope of the EU acquis, preferences of the Swiss industry), see the dispatch of 13 March 2026, the publications of SIF and the positions of the Swiss Bankers Association. To be verified. ↩
2. On the position of the Swiss Bankers Association on the package of agreements, see its press releases and position papers of 2025 and 2026. To be verified. ↩
3. Arts. 46 and 47 of Regulation (EU) No 600/2014 (MiFIR) on third-country firms providing services to eligible counterparties and professional clients after an equivalence decision; no equivalence decision for Switzerland has been adopted. Status to be verified. ↩
4. Art. 39 of Directive 2014/65/EU (MiFID II) on the establishment of a branch by third-country firms; § 32 of the German Banking Act (KWG) and the exemption practice of BaFin under § 2 para. 4 KWG. To be verified. ↩
5. Art. 42 MiFID II on the provision of services at the exclusive initiative of the client and ESMA's statements and Q&A on reverse solicitation (including the statement of 13 January 2021). To be verified. ↩

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