

European financial services law and its third-country regimes

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European financial services law rests on the passport: an institution authorised in one member state may offer its services in all the others. For third-country institutions, that law provides limited access regimes, most of which depend on an equivalence decision by the European Commission finding that the third country's regulation and supervision are equivalent to those of the Union. Investment services to professional clients and eligible counterparties may, in principle, be provided from a third country after registration with the European markets authority, subject to an equivalence that the Commission has never granted to Switzerland under this regime.¹ Services to private clients fall under the national law of each member state, which may require a branch or a subsidiary.

Third-country alternative investment fund managers could have benefited from a passport provided for by the 2011 directive, whose activation, recommended by the European markets authority for Switzerland as early as 2015, never took place.² Swiss funds can be distributed in the Union only under the national private placement regimes, which explains the domiciliation of funds in Luxembourg described in Chapter III. Swiss central counterparties enjoy European recognition, and certain equivalences exist for derivatives and prospectuses, but those equivalences are technical, limited and revocable.³

The consequence for Geneva is a geography of access in three circles. Institutional and professional clients in the Union can, with precautions, be served from Geneva. Private clients must be served through subsidiaries in the Union or within narrow limits. Funds must be domiciled in the Union in order to be distributed there. This geography has not changed in twenty years, and nothing in the 2026 package alters it.

1 Notes

1. Regulation (EU) No 600/2014 (MiFIR), Art. 46 (registration of third-country firms with ESMA) and Art. 47 (Commission equivalence decision: binding prudential, organisational and conduct requirements of equivalent effect, effective supervision and enforcement, equivalent system for the recognition of investment firms; in-depth assessment where of systemic importance; withdrawal possible) (ESMA, Interactive Single Rulebook); Federal Council, report of 27 October 2021 (efd.admin.ch): the equivalence regime does not extend to wealth management services for private clients. ↩
2. ESMA, press release of 19 July 2016, “ESMA advises extension of funds passport to 12 non-EU countries”: “there are no significant obstacles impeding the application of the AIFMD passport to Canada, Guernsey, Japan, Jersey and Switzerland”; first advice of July 2015 covering six countries (Guernsey, Hong Kong, Jersey, Switzerland, Singapore, United States). ↩
3. ESMA, List of third-country central counterparties recognised to offer services and activities in the Union (esma.europa.eu): “SIX x-clear AG”, Switzerland, recognised on “23 March 2016”, classified “Tier 1”; on stock-exchange equivalence, see Part A (equivalence decision not extended as of 1 July 2019, Swiss protective measure lifted as of 1 May 2025). ↩

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