

Serving Italian Clients from Switzerland: Market Access and Cross-Border Services — overview and summary

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A relationship manager in Lugano who telephones a client in Varese, sends him a new fund factsheet or takes the train to Milan to discuss a Lombard loan performs an act that two legal orders claim to govern. Swiss law treats the service as Swiss because the bank, its licence and its books are in Switzerland. Italian law treats the same service as Italian because the client lives in Italy, receives the advice there and bears the risk of the product there. For most of the twentieth century this double claim had little practical consequence, since the Italian client who banked in Lugano did so in secret and neither state had an interest in examining the channel through which he had been served. Chapters D.II and E.II describe how that world ended. The present chapter asks what remains once the money is declared: under which rules may a Swiss bank, securities firm or asset manager serve a client resident in Italy from Switzerland, and what happens to the institution and its employees when it oversteps them.

The argument of the chapter is that market access, which was long a secondary question behind banking secrecy, has become the decisive constraint on Lugano's business with Italy. European Union law leaves the treatment of firms from third countries largely to the Member States, and Italy has used this freedom restrictively. Since the implementation of the second Markets in Financial Instruments Directive (MiFID II) in 2018, a Swiss bank may provide investment services to Italian retail clients only through an authorized branch in Italy. From 11 January 2027, the transposition of the sixth Capital Requirements Directive (CRD VI) extends a comparable branch requirement to deposits, loans and guarantees. The European Commission has never adopted an equivalence decision for Switzerland under the Markets in Financial Instruments Regulation (MiFIR), and the Swiss-Italian Roadmap of 23 February 2015,

which held out the prospect of better access, has produced dialogue and a supervisory memorandum of understanding without any change in the law. What remains for the Swiss provider is the narrow ground of the client's own initiative, the professional client and the Italian subsidiary or branch.

The chapter is built in eleven sections. It begins with the question of where a crossborder service takes place, then sets out the European rules on third-country firms and the absence of equivalence, the Italian implementation in Articles 28 and 29-ter of the Consolidated Law on Finance (*Testo unico della finanza*, TUF) and the new banking regime under the Consolidated Banking Law (*Testo unico bancario*, TUB). It turns to reverse solicitation and to marketing, cold calling and the distribution of funds, then to the criminal, administrative and tax sanctions and to the cases in which Italian prosecutors and tax authorities have applied them to Swiss banks and bankers. The Swiss side follows: the expectations of the Swiss Financial Market Supervisory Authority (FINMA), the country manuals and travel rules of the banks, the Financial Services Act (FinSA) and the inverse case of foreign advisers in Switzerland. The last sections treat the cross-border workers (*frontalieri*) who serve as relationship managers, the Italian branches and subsidiaries of Swiss banks, the political history from the Roadmap to the Switzerland–EU package of 2025/2026 and a practitioner's checklist. Chapter E.I describes the banks concerned, Chapter E.II the end of banking secrecy, Chapter E.III the independent asset managers under the Financial Institutions Act and Chapter E.V the succession and residence planning of Italian families.

1 Conclusion

The question of how Lugano may serve Italian clients has become, since the end of banking secrecy, the central legal question for the Ticino financial centre. Italian law gives a clear answer. Investment services to private clients require an authorized branch in Italy under Articles 28 and 29-ter TUF, which Italy introduced in 2018 when it exercised the option in Article 39 MiFID II. Investment services to eligible counterparties and per se professional clients may be authorized without a branch by CONSOB or the Banca d'Italia, a route that the supervisory memorandum of 2023 has opened in practice. From 11 January 2027 core banking services, deposits, loans and guarantees, will also require a branch under Article 21c CRD as transposed by Article 14-bis TUB. Outside these channels only the client's exclusive initiative remains, which ESMA and the Italian authorities read narrowly.

The sanctions for overstepping these limits are severe and cumulative. Article 166 TUF threatens the relationship manager with imprisonment of up to eight years, and the bank faces administrative measures, corporate liability for laundering and tax offences and taxation as a hidden permanent establishment. The cases of 2009 to 2020, from the inspections of 76 branches to the settlements of Credit Suisse, PKB and UBS, show that Italian authorities apply these rules. They began from the files of Italian clients who had regularized their assets, and they reconstructed the conduct of Swiss bankers in Italy from those files. Swiss supervisory law adds its own demand through FINMA's expectation that banks control the legal and reputational risks of cross-border business.

Politics has not changed the law. The Roadmap of 2015 promised a dialogue on market access and produced, after eight years, a supervisory memorandum that helps institutional business. The Switzerland–EU package signed in 2026 does not cover financial services, and the absence of equivalence under Article 47 MiFIR continues. The Lugano banks have adapted by documenting the client's initiative, restricting travel, building Italian branches or EU subsidiaries and using delegation and the EEA. The Italian market, which made Lugano the third financial centre of Switzerland, is now one that the canton's banks may serve fully only from inside Italy.

2 In five sentences

A Swiss bank or securities firm serving an Italian resident provides, in the view of Italian and European law, a service in Italy, for which its Swiss licence confers no right. Since 2018 Italy has required an authorized branch for investment services to retail clients and professional clients on request under Articles 28 and 29-ter TUF, and from 11 January 2027 Article 14-bis TUB, transposing Article 21c CRD, extends the branch requirement to deposits, loans and guarantees, with transitional deadlines of 11 July 2026 and 10 January 2028 for existing contracts. Outside the branch, a Swiss provider may serve Italian clients only at their exclusive initiative, documented service by service, or, if they are eligible counterparties or per se professional clients, under a CONSOB or Banca d'Italia authorization made practicable by the FINMA–CONSOB– Banca d'Italia memorandum of August 2023. Unauthorized activity exposes relationship managers to imprisonment of one to eight years under Article 166 TUF and banks to tax claims as hidden permanent establishments, as the Italian proceedings against Credit Suisse, PKB and UBS between 2016 and 2020 illustrate, while FINMA treats such breaches as a failure of proper business conduct. Neither the Swiss-Italian Roadmap of 23 February 2015 nor the Switzerland–EU package signed in 2026 has opened the Italian retail market, so that Lugano's banks now serve it through passive relationships, Italian branches, EU subsidiaries and Liechtenstein entities.

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