

Switzerland and the politics of equivalence

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The absence of an equivalence decision for Swiss investment firms has political causes. Swiss financial market law was rebuilt between 2015 and 2020 on European models: the Financial Market Infrastructure Act of 2015, then the FinSA and the Financial Institutions Act (FinIA), both of 15 June 2018 and in force since 1 January 2020. The FinSA rules on client segmentation, appropriateness, suitability, information and inducements follow MiFID II closely. The Federal Council expected that this alignment would open the door to equivalence under Article 47 MiFIR. That expectation was disappointed once the European Union linked further equivalence decisions to progress on the institutional framework agreement that Switzerland and the Union negotiated between 2014 and 2021.¹

The best-known episode concerned stock exchanges. The European Commission had granted Swiss trading venues equivalence under Article 23 MiFIR for a limited period. It allowed this equivalence to expire on 30 June 2019. Switzerland had prepared a protective measure by an ordinance of 30 November 2018, under which Swiss shares could be traded only on Swiss venues or on foreign venues recognized by FINMA. From 1 July 2019 this measure in effect excluded Swiss shares from trading on venues in the Union. The Federal Council lifted the measure with effect from 1 May 2025 after the MiFIR review had removed its purpose.² The episode showed that equivalence in the financial sector was, for the European Union, an instrument of bargaining in the wider relationship. For investment services under Article 47 MiFIR, Switzerland never obtained even a temporary decision.

1 What the professional client regime means for Lugano

For the Lugano banks the professional client route has limited value. Their Italian clientele consists largely of private individuals and families, many of

whom hold several million euros but do not meet the criteria of a per se professional client under Annex II MiFID II, which are designed for institutions and large undertakings. A private client may ask to be treated as a professional, but the elective professional client is placed on the same footing as the retail client under Article 39 MiFID II and the Italian provisions that implement it. The client who opts up therefore gains nothing for the Swiss bank's market access.³ For family holding companies, trust structures and family offices the position can differ, because an undertaking that exceeds two of the three size thresholds in Annex II (balance sheet of EUR 20 million, net turnover of EUR 40 million, own funds of EUR 2 million) is a per se professional client.

Common misconception. It is often said that a client with large assets is a professional client and may therefore be served from Switzerland without restriction. Under MiFID II and the TUF the decisive category is the per se professional client of Annex II. An individual who opts up to professional status remains, for the purposes of the third-country rules in Article 39 MiFID II and Articles 28 and 29-ter TUF, a client who can be served actively only through an Italian branch.

The legal consequence of these rules is a market divided by client type. Investment services to Italian institutions, large companies and per se professional family vehicles can be authorized by CONSOB or the Banca d'Italia without a branch, subject to conditions. Investment services to private individuals, which form the core of Lugano's business, require a branch in Italy or must rest on the client's own exclusive initiative. The Swiss–UK Berne Financial Services Agreement of 21 December 2023, in force since 1 January 2026, illustrates the alternative that Switzerland has been unable to obtain from the Union. It opens the British market to Swiss providers for high-net-worth individuals with net assets above GBP 2 million, a category that the European regime does not know.⁴ Chapter K.I compares the two models.

2 Notes

1. On the institutional framework agreement, whose negotiations the Federal Council broke off on 26 May 2021, see Chapter K.I. ↩
2. Urs Kägi and Florian Schweighofer (Bär & Karrer), "Lift of Swiss Protective Measures Against EU Trading Venues", Mondaq, 14 March 2025, <https://webiis10.mondaq.com/securities/1597398/lift-of-swiss-protective-measures-against-eu-trading-venues> (expiry on 30 June 2019, ordinance of 30 November 2018, decision of 29 January 2025 with effect from 1 May 2025). ↩

3. Matteo Catenacci (FiveLex), L'attuazione del regime MiFID 2 nell'aggiornamento alle disposizioni di vigilanza della Banca d'Italia, December 2019, https://www.dirittobancario.it/sites/default/files/allegati/catenacci_m_lattuazione_del_regime_mifid_2_nellaggiornamento_alle_disposizioni_di_vigilanza_della_banca_ditalia_2019.pdf (branch required for retail clients and professional clients on request; services without branch only for eligible counterparties and professional clients by law). ↩
4. EY, "The Berne Financial Services Agreement is now live: how it transforms UK–Swiss market access", https://www.ey.com/en_ch/insights/financial-services/the-berne-financial-services-agreement-is-now-live-how-it-transforms-uk-swiss-market-access (signature 21 December 2023, entry into force 1 January 2026, thresholds of GBP 2 million and CHF 2 million). ↩

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