

Why the agreement was possible

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Several conditions made the agreement possible that do not exist in the relationship with the European Union. Both parties are sovereign states that can conclude agreements on financial services without the participation of other states. Both have large financial sectors with comparable standards of regulation and supervision. Each regarded the relationship as one between equals. The agreement relies on supervisory cooperation and on the possibility of termination where outcomes diverge. It creates no obligation to adopt the other party's future law and gives no court of either party the power to interpret the agreement with binding effect for the other. These are precisely the elements that the European Union requires in its agreements with Switzerland on access to the single market, as the institutional parts of the package of 2026 show. The BFSa is therefore a model of what Switzerland can obtain from a partner that accepts outcome-based recognition, and of what it cannot obtain from the Union.

The agreement matters for Lugano in a direct and an indirect way. Directly, it opens the British market to Lugano's banks and asset managers for wealthy clients who live in the United Kingdom. Some of these clients are Italians or other Europeans who moved to London and whose families have long banked in Ticino. Indirectly, it creates a template for the treatment of high-net-worth individuals as a category between retail and professional clients. Neither the European rules on investment services nor the Italian implementing rules recognize this category, and the European Union has no instrument for outcome-based recognition of a third country's private banking regime.

1 An Italian version of the British model

The question that matters most for Lugano is whether an arrangement of the Berne type could be concluded with Italy, or with the Union on Italy's

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behalf. Three legal obstacles stand in the way. The first is the distribution of competences within the Union. Under Article 3(2) of the Treaty on the Functioning of the European Union, the Union has exclusive competence to conclude an international agreement in so far as its conclusion may affect common rules or alter their scope.¹ Since the rules on investment services and, from 2027, on the cross-border provision of core banking services by third-country firms are largely harmonized, a bilateral agreement between Switzerland and Italy granting Swiss firms access to Italian clients in these fields would raise serious questions of competence.

The second obstacle concerns the space that Union law leaves to Member States. Article 39 of the Markets in Financial Instruments Directive allows a Member State to require third-country firms that wish to serve retail clients or professional clients on request in its territory to establish a branch. Italy has used this option in Articles 28 and 29-ter of the Consolidated Law on Finance (TUF). For eligible counterparties and *per se* professional clients, Article 46(4) MiFIR allows Member States to keep national regimes until an equivalence decision is adopted.² Within this space Italy could, by amending its own law, relax the branch requirement for professional clients on request, a category that would include many high-net-worth individuals who satisfy the criteria for treatment as professionals. Such a change would require no international agreement, but it would be a unilateral decision of the Italian legislator and supervisors, which the Swiss-Italian Roadmap of 2015 did not achieve.

The third obstacle is the sixth Capital Requirements Directive. Its Article 21c requires third-country undertakings to establish a branch in a Member State in order to provide core banking services, namely deposit-taking, lending and guarantees, in that Member State. The rule has exceptions, among them services provided at the client's own exclusive initiative and certain services ancillary to investment services, and it applies in Italy from 11 January 2027.³ Because Article 21c is a harmonized rule, Italy cannot waive it for Swiss banks by national law or bilateral agreement. An arrangement covering Lombard loans, mortgages on Italian property or deposits for Italian clients would require action at the level of the Union.

2 Notes

1. Treaty on the Functioning of the European Union, Art. 3(2), consolidated text at EUR-Lex, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016E003>, codifying the case law since Case 22/70 Commission v Council (ERTA) [1971] ECR 263.



2. Regulation (EU) No 600/2014 (MiFIR), Art. 46(4), text at EUR-Lex, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014R0600>; Directive 2014/65/EU, Art. 39; Arts. 28 and 29-ter TUF; see Chapter E.IV with sources. ↩
3. Directive 2013/36/EU, Art. 21c, inserted by Directive (EU) 2024/1619, text at EUR-Lex, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32024L1619> (exceptions for reverse solicitation and for investment services with their ancillary services); Italian transposition by Legislative Decree No. 208 of 2025 (above), applicable to third-country branches from 11 January 2027. See Chapter E.IV. ↩

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