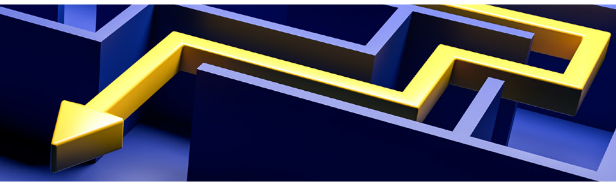
SwissFinanceCouncil
Fostering International Dialogue



ISSUE NOTE 5
MARCH 2023

EU MARKET ACCESS IN FINANCIAL SERVICES: A SWISS PERSPECTIVE

KEY TAKEAWAYS

- The EU and Switzerland have a close and long-standing relationship with deep economic, social and political interconnectedness.
- In the last 50 years, Switzerland and the EU have entered into numerous bilateral agreements, cementing their cooperation and connectedness.
- The Capital Markets Union (CMU) paves the way towards more integrated European capital markets, which should remain open and provide predictable market access to international investors, benefitting EU and Swiss consumers and businesses alike.
- In financial services (other than insurance), Switzerland is treated as a third country and market access for Swiss financial institutions is governed by various third country regimes.
- Since increasing politicisation of market access has led to a lack of a rule-bound market access regime, there is need for a predictable, transparent and well-regulated market access perspective to ensure the EU's continued attractiveness to international investments.
- A move away from third country regimes towards a more tailored market access approach that balances legitimate needs and expectations of the host and home supervisory authorities and enhances competition and customer choice would merit further reflection.
- An effective regulatory cooperation and dialogue between Switzerland and the EU is an essential tool to discuss and foster open markets which contribute to prosperous economies to both sides' benefit.

EU-Swiss Relation: A Mutually Beneficial Partnership

Switzerland's position at the heart of Europe explains its cultural proximity with the European Union (EU), with which it shares the same democratic and liberal values, humanitarian tradition, rule of law and common goals of peace and economic prosperity. Such proximity has evolved into a close and long-standing relationship, which has created mutual benefits and has led to a major economic partnership. Today, the integration of the EU and Switzerland goes far beyond free trade and has developed into an array of bilateral agreements. They encompass reciprocal market access in some key areas of the EU's Single Market (free movement of persons, transport, technical barriers to trade, agriculture). The bilateral relationship also covers full participation in the Schengen area and Dublin system, cohesion payments to various EU countries, participation in EU research and innovation programmes,[1] contribution to peace and stability with civilian experts and military troops in EU-led missions in the Western Balkans and the Sahel region. Further – and unrelated to the bilateral agreements – Switzerland implements the EU sanctions against Russia.

Some key figures show the strong economic interdependence between the EU and Switzerland. For trade in goods, Switzerland ranked fourth among the EU's most important trading partners after China, the US and the UK in 2021. For Switzerland, the EU was the most important trading partner in 2021 with total trade in goods amounting to more than 1 billion CHF per working day. For trade in services, Switzerland ranks third among the EU's trading partners and the EU's largest trade surplus in 2021 was recorded with Switzerland (51 billion CHF). Switzerland was both the third-biggest investor into the EU and the third-biggest destination for EU foreign direct investments in 2021. Finally, 1.4 million EU citizens live in Switzerland, corresponding to about 16% of Switzerland's total population of over 8.7 million inhabitants. In addition, more than 350,000 people commute to Switzerland to work.[2]

Like the EU, Switzerland is an open, export-oriented economy, committed to global principles and standards. Switzerland adopts EU legislation in relevant areas governed by bilateral agreements and seeks to align its law in many other cases, and thereby contributes to the mutually beneficial relationship. Robust and well-regulated relations between the EU and Switzerland are in the interest of both sides.

1 This participation is today limited after the termination of the negotiations on a framework agreement which would have governed the overarching relationship between the EU and Switzerland. See: FDFA website.

2 La Suisse et l'UE en chiffres, Statistiques relatives au commerce, à la population et au transport, Secrétariat d'Etat Suisse 2022.

Major Bilateral Agreements EU-Switzerland: An Overview[3]

1973 - 1993

- Free trade on industrial goods
- Non-life insurance
- Customs facilitation and security

1999: Bilateral Agreements I

- Free movement of persons
- Technical barriers to trade
- Public procurement
- Agriculture
- Research
- Air transport
- Land transport

2004: Bilateral Agreements II

- Schengen & Dublin
- Automatic exchange of information for tax purposes
- Fight against fraud
- Processed agricultural products
- MEDIA program
- Environment
- Statistics
- Pensions
- Education, vocational education and training, young people

2006 - 2022

- Europol & Eurojust
- European Defence Agency
- Cooperation between competition authorities
- Galileo
- European Asylum Support Office
- Linking of emissions trading schemes

Switzerland's Access to the EU's Financial Markets

Switzerland is one of the world's leading financial centres, however, the country's close and long-standing relationship with the EU is not mirrored in the area of financial services. Despite the numerous agreements that exist in other areas, there is no general agreement on financial services. As a result, Swiss financial institutions are treated no differently than institutions from other third countries. For the third country headquartered financial industry, access to the EU's financial market is governed by EU and Member States' regulation through so-called third country regimes.

Many EU financial market regulations include a third country regime governing relations with non-EU countries. A number of regulations envisage the possibility for market access from third countries in case of regulatory equivalence. In general, these provisions allow for the European Commission to recognise a third country regulatory regime as equivalent to EU regulation, thereby opening the EU's financial markets to any financial institution supervised under the equivalent regime. However, these provisions are regulation specific, resulting in tailor-made requirements for different services and areas of market access. Furthermore, granting equivalence status is a unilateral decision by the Commission: even if third countries could prove that their regulation is materially equivalent, the equivalence status does not necessarily follow. This gives the Commission a great margin for discretion, which it has used in the past to link equivalence decisions to political objectives. After initially granting equivalence to Swiss stock markets in 2017, the Commission decided not to extend it as a result of the stalled negotiations on the Swiss-EU framework agreement[4], letting it expire in 2019. Similarly, ESMA had provided in 2015 a positive equivalence assessment on Switzerland (and six other countries) regarding the extension of the AIFMD passport[5], but the Commission did not grant equivalence. It should be noted that Member States can foresee specific national third country regimes if market access is not harmonised at EU level. These regimes usually concern a limited clientele (e.g., professional clients) and specific services (e.g., rendering credit services to professionals and/or corporates).

For Switzerland, equivalence has become a major path to market access since a general agreement for financial services does not seem to be on the horizon. Consequently, Switzerland has undergone significant legislative reforms to align its financial regulation with the EU. This has led to equivalence decisions in 13 areas.[6] However, in light of the comprehensive adaptation of Swiss regulation to EU law, the current status on market equivalence is generally considered disappointing: in many areas relevant for the Swiss financial centre equivalence assessments have not yet been conducted.

There are two exceptions where Switzerland does not have to rely on third country regimes and where bilateral agreements allow for direct market access. At EU level, the agreement on direct insurance other than life insurance, signed in 1989, remains the only treaty-based agreement to open market access in financial services to date between Switzerland and the EU.[7] At Member State level, Switzerland has reached an agreement with Germany in 2013 for the provision of cross-border financial services in the banking sector, which balances legitimate needs and expectations of the host and home supervisory authorities and enhances competition and customer choice. Under the agreement individual Swiss banks have access to a simplified authorisation procedure (German: vereinfachte Freistellung) with the German supervisor for the provision of cross-border financial services.

Brexit has been a driver for tightening third country financial services regulation in the EU, affecting Switzerland in its wake. Since Brexit, the City of London – Europe's most important financial centre – relies on the same third country market access provisions. However, the EU has been reluctant to take equivalence decisions in the post-Brexit context and is more focused on its Open Strategic Autonomy initiative.

3 List of all EU-Swiss agreements (in French).

4 See footnote 1.

5 See: ESMA.

6 Overview table of the equivalence decisions by the European Commission.

7 Text of the agreement on direct insurance other than life insurance (in French).

While not an instrument for market access, a regulatory dialogue is still an effective means towards regulatory cooperation. The European Commission maintains institutionalised dialogues with the USA, Canada and Japan. With Switzerland, a similar dialogue has been suspended by the European Commission after its last meeting in Bern in 2017.

Towards Strong and Interconnected Financial Markets

Switzerland is one of the largest financial centres in the world with internationally active, highly regulated and well-capitalised financial institutions subject to stringent supervision. Access to both sides' capital markets would provide mutual gains in terms of better opportunities for long-term investment, including the net zero transition, increased liquidity, more competition, innovation and products and service offerings available to consumers and businesses alike. The overall approach to market access and cross-border services provision should therefore be open – to the benefit of the EU economy and consumers.

The challenges the European economy is facing – the green and digital transition, global fragmentation and economic downturn – necessitate strong financial markets to provide capital and liquidity. Interconnected financial markets can strengthen Europe's resilience, recovery, transition and independence.

Hence, we support the Capital Markets Union (CMU). This key integration project can speed up the economic recovery, e.g., by using capital markets to equitize or refinance unsustainable debt. More integrated and interconnected European capital markets would also help to underpin a successful transition towards a green and digital economy, which would sustain a strong recovery. In order to deepen the EU's capital markets sufficiently so that they are right-sized for the EU economy, they need to be both more integrated across the EU and to remain open to international investors including third country financial services providers. A CMU that is open and attractive to international investment would leverage global capital and funding that is available and ready to invest, for instance in the technology sector for EU consumers and sustainable assets.

Restricting cross-border market access puts EU consumers, entrepreneurs, corporates, governmental entities and investors wishing to access global capital and international markets at a disadvantage and reduces the quality and level of competition in the Single Market.

The EU's main trade and economic partners and third country financial centres with internationally active financial institutions, like Switzerland, stand ready to contribute to the realisation of the full potential and financing of the CMU. In order to do so, a predictable, transparent and well-regulated market access perspective is necessary.

In light of the apparent obstacles towards equivalence in regulation or a general financial services agreement, we see an interesting alternative in the approach taken by the German-Swiss market access agreement with a move away from third country regimes towards a market access approach licensing single third country financial institutions.

Finally, an effective regulatory dialogue is an essential tool to discuss and foster open markets and connectivity that contribute to prosperous economies that can benefit both the EU and Switzerland and we therefore strongly encourage the resumption of such a cooperation framework.

CONTACT US

Swiss Finance Council
23 square de Meeûs | 1000 Brussels | Belgium
brussels@swissfinancecouncil.org
www.swissfinancecouncil.org

The Swiss Finance Council (SFC) engages in dialogue around policy developments in finance at a European and international level. It represents the interests of internationally active Swiss financial institutions and provides a platform to share their experience, expertise and knowledge through a permanent representative office in Brussels.