

February 2018

The equivalence process

SBA position paper



The equivalence process

The Swiss banks make a significant contribution to value creation in Switzerland and provide high-skilled jobs. The prerequisites for this are framework conditions that enable the banks, also in future, to prove their international competitiveness. Access for Swiss financial services providers to foreign markets is of strategic importance in this regard. Market access means that Swiss banks can export their services out of Switzerland. The EU represents an important market for the Swiss banks' export business.

In the interests of safeguarding and improving market access, the equivalence process as well as bilateral agreements with EU partner states remain the priority for the near term.

The SBA's Position

- As a result of its over 120 bilateral agreements, Switzerland is very closely linked with the EU, and is therefore not merely a random third country. Switzerland and the EU are extremely close trading partners and benefit mutually from one another, which is why reciprocally open markets are in the interests of both.
- To improve market access, we call on the EU to recognise equivalence in the area of financial market regulation. Recognition of equivalent regulation is a requirement for access to the EU market. The political equivalence assessment on the EU side should be conducted using a reliable, clearly defined and principles-based process. The pending equivalence processes should be concluded as swiftly as possible on the EU side, particularly in cases where the technical process has long been concluded by the competent authorities.
- The Swiss government and administration must act with self-assertion: the SBA cannot comprehend the EU's decision to recognise Swiss stock exchange regulation for a limited period of time, and therefore shares the assessment of the Federal Council. What is actually a technical process has been politicised by virtue of the fact it has been linked to highly complex political negotiations regarding institutional matters. We demand that Switzerland – just like other third countries – receive unlimited equivalence, because technical equivalence has also been established by the EU authorities.
- Further to this, we would like to make reference to the fact that other key equivalence processes for the finance industry have still not been concluded. In the view of the SBA, sufficient progress in the area of recognition of equivalence has not yet been made.

• SwissBanking

The relationships between Switzerland and the EU are very close and varied. In the last 25 years, over 120 agreements have been signed. Switzerland and the EU are very close trading partners. Because of the high degree of interconnectedness of the relationships, Switzerland is in an exceptional situation vis-à-vis the EU, in that Switzerland has significantly more intensive trading relationships with the EU than other third countries.

Swiss banks in Switzerland are subject to supervision by a competent and comprehensive financial market supervisory authority that is also recognised by the EU. Further to this, Swiss legislation is also designed to be equivalent to EU law in areas that are relevant for market access. In global comparison, Switzerland enjoys a high level of political and financial stability. For all of these reasons, Switzerland should be recognised by the EU as a reliable trading partner. In the matter of equivalence, Switzerland should be handled with priority by the EU and assessed individually.

Recognition of equivalence in the area of financial market regulation

Swiss legislation strives for EU equivalence – where it appears possible, necessary for the business conducted by the banks and where commensurate. From the perspective of the banks, legal uncertainty prevails, because the existing processes for reaching EU equivalence are not defined clearly or reliably enough; for example, there are no specific timelines, nor is there a uniform benchmark for equivalence. There is no right to equivalence, instead, it is a political decision of the European Commission.

Business calls for full recognition of equivalence of financial market regulation, where provided for under EU law and where it is important for Switzerland. In the view of the SBA, sufficient progress in the area of recognition of equivalence has not yet been made.

The SBA regrets in this context that for political reasons, recognition of stock market equivalence has been limited to one year. The unrelated linking of technical recognition of equivalence with the progress made in the negotiations for a framework agreement is incomprehensible. We therefore call for a separation of the technical equivalence decisions and matters of an institutional nature. We understand, however, that the latter must be addressed with the necessary attention.

The key, as yet unresolved, equivalence processes

In December, the EU Commission granted temporary recognition of equivalence for Switzerland's stock exchange regulation (MiFIR 23) until the end of 2018. Over and beyond this area, there are further decisions regarding equivalence that in the view of the SBA are of great importance. These should be finalised as swiftly as possible.

- AIFMD 67 relates to the extension of the EU passport to third countries, so also countries other than Switzerland. A favourable decision would result in the admission of Swiss funds in the alternatives space across the EU. This would mean that the management and marketing of alternative Swiss funds would be uniformly regulated in the entire EU. This would open business Opportuni-

ties out of Switzerland that to date have only been possible out of EU locations (primarily Luxembourg and Ireland). A positive advice from ESMA for the extension of the passport to Switzerland was issued in July 2016. The political decision from the European Commission is still pending and could remain so for years due to a possible review of the corresponding EU directive.

- MiFIR 46/47 relates to the direct cross-border servicing of professional clients out of a third country into the EU. A favourable decision would make it possible to provide securities services to eligible counterparties and so-called per se professional clients EU-wide without branch offices. Swiss institutions would benefit from an EU passporting for third countries. Such passporting would significantly improve the possibility of cross-border service provision.
- EMIR 13 relates to recognition of Swiss derivatives regulation. A favourable decision on equivalence would make the fulfilment of certain obligations (such as clearing, risk mitigation, reporting) possible in accordance with Swiss law instead of EMIR (substituted compliance). For intra-group transactions, it would even result in an exemption from certain obligations under EMIR (clearing, risk mitigation). For the clearing exemption for intra-group transactions, it should be noted that this will expire at the end of 2018, which is why it is imperative that a corresponding recognition of equivalence be sought by that time. Technical questionnaires from the Commission were responded to in 2016 and 2017; however, to date there has been no response from the EU.
- CSDR 25 relates to the processing and settlement of securities transactions by providers in third countries. Recognition of equivalence in this area allows central securities depositories from third countries to provide custody services for clients in the EU. This process is also relevant with regard to EEA states. SIX SIS is not only the central securities depository for Switzerland, but also for Liechtenstein, and therefore performs functions centrally for the Liechtenstein financial centre. Equivalence is a prerequisite for continuing to provide these services.

Contact

Roberto Battegay, Head of Europe & Private Banking
roberto.battegay@sba.ch | +41 58 330 63 08

Michaela Reimann, Head of Public & Media Relations
michaela.reimann@sba.ch | +41 58 330 62 55

Serge Steiner, Head of Public & Media Relations
serge.steiner@sba.ch | +41 58 330 63 95

www.swissbanking.org | twitter.com/SwissBankingSBA