



Brexit and the way forward for UK-Swiss Financial & Related Professional Services

Context

1. Following consultation with their memberships, TheCityUK and Economiesuisse have written this initial paper containing views on priority issues for financial and related professional services in relation to UK-Swiss engagement, particularly in the context of Brexit.
2. Brexit puts at risk the solid legal framework that has greatly contributed to the successful and deep bilateral relationship between Switzerland and the UK. This has the potential to cause major disruption. Currently, businesses are facing uncertainty which has a negative impact on business opportunities. Addressing these issues is essential and time critical.
3. On the other hand, the new dynamics of the UK leaving the EU will open up the potential for new agreements that can be concluded with UK and Swiss priorities in mind. Given the shared interests of Switzerland and the UK, and the profile of trade & investment between the two countries, which is deep and complementary, these agreements should be an early win-win for both countries.
4. The UK and Switzerland should look to conclude a bespoke agreement as soon as possible that delivers mutual market access, transitional arrangements which allow enough time to implement the new relationship and access to talent for the financial and related professional services industry. It is essential that both Governments provide clarity and legal certainty for businesses from the outset of this process.

Importance of UK-Swiss trade & investment relationship

5. The UK and Switzerland host many of Europe's leading financial centres and complement each other in terms of areas of relative strengths. This not only includes dynamic cross-border trade flows, but also highly developed ecosystems of financial capability with world-class support services which are adept at servicing international clients and markets.
6. In bilateral trade, Switzerland is a top ten destination for UK goods exports and the third largest non-EU export market, after US and China. For services exports, Switzerland is a top five destination for the UK, with more than three times the total value of UK services exports to China (2015).
7. Similarly, the UK is Switzerland's third largest export market worldwide both for goods and services. For the UK and Switzerland, services exports to each other's markets are worth more than those to Brazil, Russia, India and China combined.

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8. For foreign direct investment Switzerland is the third largest non-EU and seventh largest overall foreign direct investor in the UK with net inward investment stock of £37.8 billion. At the same time, the UK is Switzerland's fourth largest foreign direct investor with a stock of CHF 51.6 billion. Swiss companies currently provide close to 93, 000 jobs in the UK, while UK companies employ close to 27,000 in Switzerland.

	From UK to CH	From CH to UK
Services	£11.6 bn (2nd non-EU market)	CHF 7.8 bn (3rd market worldwide)
Direct Investment (stock)	£37.8 bn (3rd non-EU market)	CHF 50.9 bn (7th market worldwide)
Financial services	£1.8 bn (3rd non-EU market)	CHF 1.5 bn (2nd market worldwide)

Priority issues for UK & Swiss based financial and related professional services (FRPS) firms

9. Immediate priority issues for UK and Swiss FRPS include:
- Securing the existing status quo for UK-Swiss financial and related professional services (FRPS) once UK has left the EU
 - Delivering suitable and flexible transitional arrangements for UK-Swiss FRPS
 - Scoping future UK-Swiss relationship for FRPS after Brexit.

Securing the existing status quo for UK-Swiss FRPS

10. A series of over one hundred and twenty bilateral agreements between Switzerland and the EU covering issues from trade barriers, government procurement and free movement of people currently form the legal basis for the relationship between the UK and Switzerland (*see annex 1, for a list of major Swiss-EU bilateral agreements*). To ensure a seamless relationship once the UK leaves the EU, the UK and Switzerland must work together on a new regime setting out clearly the terms for bilateral UK-Swiss ties going forward. This should maintain the existing status quo on the existing Bilateral I & II and free trade agreement as well as the insurance agreement at the very minimum. The longer-term goal should be to complete a comprehensive bilateral free trade agreement.
11. Maintaining the existing status quo of the bilateral relationship for financial & related professional services is therefore an essential first step to ensure continuity and minimise the disruption to business. From a business perspective it will be important to safeguard at least the following:
- **Accessing a skilled global workforce** by maintaining free movement of people between the UK and Switzerland. It is important to establish clarity for the 41,000 UK citizens living in Switzerland and the 34,000 Swiss living in the UK. It will also be important to include the movement of professional services between markets and consulting specialists for individual projects, as well as full recognition of professional qualifications, including university and commercial degrees and practice rights.
 - **Securing grandfathering** provision for UK-EU-Swiss process will be very important for all current contracts and coverages and must apply to all business models and permissions that have already been granted.

- **Preserving current guarantees of equivalence and rights** (see annex 2 for list of Swiss regulatory equivalence/adequacy decisions taken by EU) with respect to market access, for example in the CH-EU Non-Life Insurance Treaty. This ensures freedom of establishment for branches, coupled with homeland capital/prudential regulation.
- **Incorporating all relevant policy areas in relation to FRPS** including non-discriminatory access to market infrastructure and cross-border data flows.
- **Safeguarding current market access** to each other's financial markets and the infrastructure which supports it, including clearing houses (CCPs), trading venues and repositories, settlements, payments and securities transfer systems. This would involve a continuing close co-operation between both countries' authorities to ensure that regulatory needs are met, automatic exchange of information in tax matters and current market structures are undisturbed ensuring the least amount of disruption to the customers who rely on them.
- **A legal framework will need to be in place** which will recognise and enforce judgements from UK jurisdictions in Switzerland and vice-versa to ensure legal certainty for businesses operating in both markets.
- **Due consideration needs to be given on how local UK rules** (for example, consumer protection, market behaviour) **may increase complexity** for Swiss firms or vice-versa, creating new interfaces and additional costs after Brexit.

12. While the above listed issues are considered priorities for UK and Swiss-based FRPS firm at this stage, they are far from being exhaustive. As work progresses, more issues may become visible and need to be incorporated to safeguard the existing status quo. The current highly complex and dynamic environment will require a continuing flexible approach for tackling these issues.

Delivering suitable and flexible transitional arrangement for UK-Swiss financial & related professional services

13. A bilateral solution between Switzerland and the UK that secures the existing status quo in the UK-Swiss relationship immediately after Brexit for financial and related professional services should be agreed and may take the form of suitable and flexible transitional arrangements.
14. In principle, a bilateral transitional arrangement should ensure validity of regulations and principles relevant for cross-border financial services between the UK and Switzerland as well as the legal framework of operation for UK companies in Switzerland and vice-versa. This includes reference to notified bodies and regulatory oversight as well as regimes for equivalency, access to qualified labour or an efficient dispute settlement mechanism.
15. It is crucial that the UK and Swiss Governments ensure clarity for businesses from the outset of the process by an early declaration of their mutual commitment to ensure a level playing field on market access and mutual recognition of regulation as well as providing assurances on exemption for pre-existing contracts. Such a declaration should also include a joint commitment to support and uphold global financial regulatory standards as well as a joint approach to support increased liberalisation in trade in services at the global level. Agreeing a bilateral Memorandum of Understanding between the Authorities in both markets, no later than the first quarter of 2018, should provide sufficient clarity for business.

16. Ensuring synchronisation with a potential UK-EU deal will be very important. If the UK manages to secure the current level of EU market access for FRPS in Brexit negotiations, that will have significant implications for the shape of any UK-Swiss transitional arrangements. If the UK and EU should agree on a transitional period that allows for a seamless continuation of the current UK-Swiss FRPS relationship, the UK-Swiss solution would need to reflect this outcome and enable at least the same degree of market access as any UK-EU deal. Therefore, a UK-Swiss solution to maintain the current status quo may well be implemented in different stages, depending on the nature of a potential UK-EU transitional agreement period, with the ultimate goal of providing legal certainty and a frictionless business relationship as long as necessary.
17. Clear transitional arrangements will be required to deliver seamless functioning of the markets as well as uninterrupted provision of services to customers and clients. The transitional arrangements may include a bridging period to cover the time between when the UK exits the EU and the new bilateral UK-Swiss agreement is in place and an adaption period which would start on the date the bridging period would end. This would give business sufficient time to consider and adjust to the implications of the new arrangements.

Scoping a future UK-Swiss relationship for FRPS after Brexit

18. In the meantime, the issues and key priorities between the UK and Switzerland need to be explored and clearly scoped so that everything is in place to quickly and seamlessly transition into a post-Brexit relationship with a significantly enhanced bilateral trade and investment relationship.
19. Once the UK has left the EU it will be in a position to begin negotiating future free trade agreements, including financial and related professional services agreements, with important markets like Switzerland. A financial and related professional services agreement between the UK and Switzerland is a long-term goal which may be part of a wider free trade and investment agreement.
20. Delivering a bespoke financial services agreement based on a framework for mutual recognition of regulatory regimes across all sectors to help reduce costs for customer and clients and exploration of how existing cross-border investment products' (funds or discretionary mandates) regulation can be improved, are likely to take some time. This underlines the need for clear transitional arrangements and ultimately an implementation period sufficient in time and substance to allow business to adapt to the new legal framework. For the UK and Switzerland, productive scoping discussions should begin as soon as possible to achieve a comprehensive trade and investment agreement once the UK has left the EU.
21. TheCityUK and Economiesuisse have established independent practitioner working groups which are ready to scope the potential for an enhanced future financial and related professional services relationship between the UK and Switzerland, which will strengthen both markets' position as global financial services hubs. This will ultimately contribute to sustainable economic growth, innovation and prosperity in Switzerland and the UK.



Miles Celic
CEO, TheCityUK



Raj Singh
Chair, Switzerland MAG, TheCityUK



Monika Rühl
Chairwoman of the Executive Board, economiesuisse



Dr Jan Atteslander
Head of Foreign Trade, economiesuisse

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TheCityUK is the representative body for the UK-based financial and related professional services industry. In the UK, across Europe and globally, we promote policies that drive competitiveness, support job creation and ensure long-term economic growth. The industry contributes nearly 11 per cent of the UK's total economic output and employs over 2.2 million people, with two thirds of these jobs outside London. It is the largest tax payer, the biggest exporting industry and generates a trade surplus greater than all other net exporting industries combined.

Economiesuisse is the largest umbrella organization representing the Swiss economy. It has the support of more than 100,000 businesses of all sizes, employing a total of over 2.0 million people in Switzerland and abroad. Economiesuisse's direct membership includes 100 trade and industry associations, 20 cantonal chambers of commerce and several individual companies. Its mission is to create an optimal economic environment for Swiss business. In order to achieve this, it aims to preserve entrepreneurial freedom for all businesses, to continuously improve Switzerland's global competitiveness in manufacturing, services, and research, and to promote sustained growth as a prerequisite for a high level of employment in Switzerland.

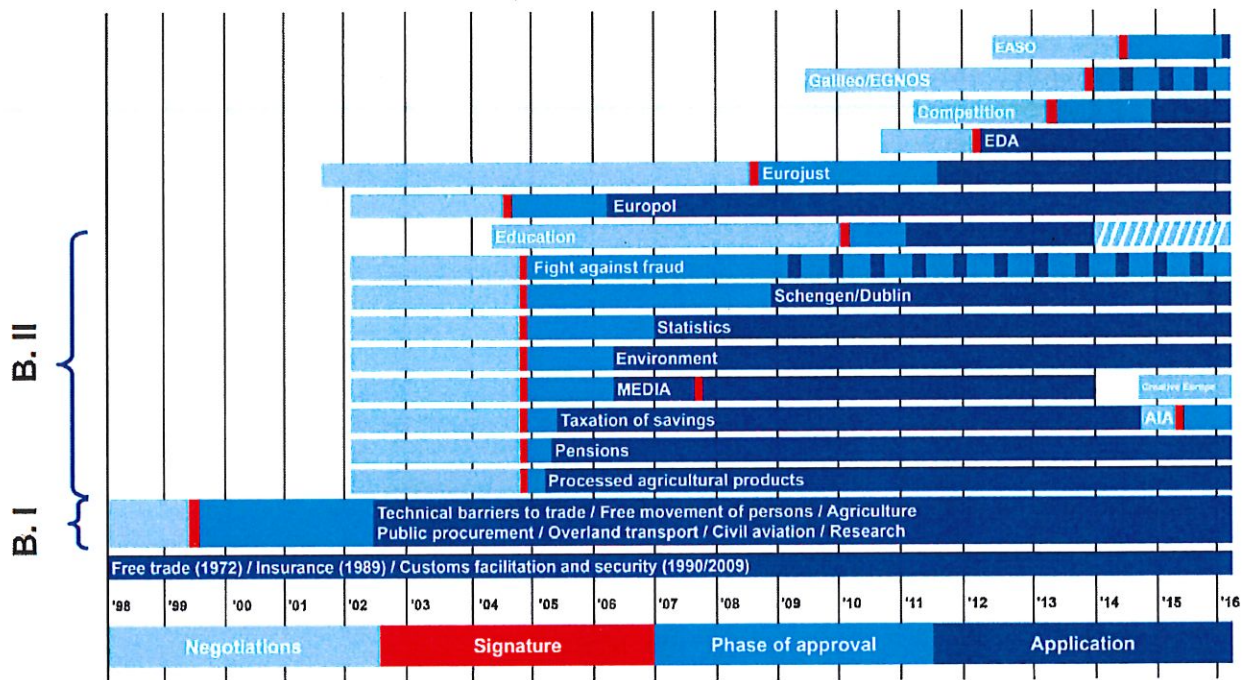
ANNEX 1

The major bilateral agreements between Switzerland – EU

Source: Swiss Federal Department of Foreign Affairs (FDFA)



Bilateral agreements Switzerland–EU



Swiss policy on the EU: The bilateral agreements, February 2017
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The first bilateral agreements – mutual market access

1972 Free trade of industrial products Abolition of obstacles to trade (duties, quotas) for industrial products

1989 Insurance Equal rights of establishment for insurance companies (excluding life insurances)

1990 (revised, 2009) Customs facilitation and security Regulation of controls and formalities in goods transport (24-hour rule)

Bilaterals I (1999)- Easier access to labour, goods and services markets

1. **Free movement of persons (AFMP)** – opening the labour markets
2. **Technical obstacles to trade** – easier approval of products
3. **Public procurement market** – extended access to the European procurement market
4. **Agriculture** – easier trade with specific products
5. **Research** – participation of Swiss research in EU research framework programmes
6. **Civil aviation** – reciprocal access to the air transport market
7. **Overland transport** – opening the markets for road/rail transport, securing road-to-rail transfer policy.

Bilaterals II (2004) – enhanced cooperation in other areas, improved economic environment

1. **Schengen/Dublin** – easier travel, improved cooperation in security matters, coordinated asylum policy. Schengen/Dublin approved by the electorate in 2005 (55%), implementation of the agreements in stages
2. **Taxation of savings** – cross-border taxation of savings income
3. **Fight against fraud** – combating crimes such as smuggling
4. **Processed agricultural products** – removal of custom duties/export subsidies for food industry products
5. **MEDIA (Creative Europe)** – access to EU subsidies for filmmakers
6. **Environment** – participation in the EU Environment Agency
7. **Statistics** – harmonisation and exchange of statistical data
8. **Pensions** – removal of double taxation
9. **Education, vocational training, youth**: participation in EU education programmes

Agreements likely to be most relevant to FRPS

Free trade

Content

- Establishes a Switzerland–EU free trade zone for exclusively industrial products
- Prohibits customs duty and similar measures for industrial goods originating in the territories of the two contracting parties as well as quantitative trade restrictions (quotas)

Relevance

- Crucial for the Swiss economy: In 2016, 54% of Swiss exports (c. CHF 113bn) went to the EU-area; vice versa, 72% of Swiss imports (c. CHF 124bn) came from the EU

Entry into force: 1973

Insurance

Content

- Grants mutual and equal freedom of establishment to companies in the field of direct insurance for damage (household, motor vehicle, travel and liability insurance, etc.)

Relevance

- Crucial for internationally operating insurance companies
- Important for the Swiss economy: in 2014, the Swiss insurance sector provided jobs for 47,832 people in Switzerland and 69,236 abroad.
- Vice-versa, there currently are 18 UK-based legal entities operating Non-Life Direct Insurance activities in or from Switzerland through a Swiss branch, established on the basis of the Non-Life Direct Insurance treaty.

Entry into force: 1993

Free movement of persons (AFMP)

Content

- Entitles Swiss and EU citizens under certain conditions to choose their workplace and residence freely within the territories of the Contracting Parties
- Leads to mutual, gradual and controlled opening up of labour markets through transitional arrangements
- **Accompanying measures**» to protect employees (ensuring compliance with pay and working conditions in Switzerland)

Relevance

- Important growth-effect: Swiss economy is dependent on foreign workers
- Better opportunities for Swiss nationals in the EU

Entry into force: 2002

Civil Aviation

Content

- Regulates the access of Swiss airline companies to Europe's liberalised civil aviation market.

Relevance

- Granting of Swiss commercial flying rights together with a ban on discrimination: e.g. freedom of choice of destination and aircraft and of setting fares.
- There are 150 direct flights from Switzerland to the UK every day based on this agreement.

Entry into force: 2002

Schengen

Content

- Facilitates travel by abolishing identity checks at the Schengen internal borders
- Guarantees security thanks to closer cross-border cooperation between the police and justice systems, i.e. through the Schengen Information System, SIS (as from 9 April 2013: SIS II)
- Switzerland takes part in the common visa policy for short stays of not more than 3 months (Schengen visa)

Relevance

- Access to instruments of the international fight against crime and economic advantages for tourism

Entry into force operationally: 12.12.2008; end of controls at Swiss airports for flights within the Schengen Area: 29 March 2009

Dublin

Content

- Coordinates national responsibilities for asylum procedures
- Access to the EURODAC fingerprint data bank allows the identification of multiple and abusive asylum applications

Relevance

- Prevents costly and inefficient secondary and multiple requests («asylum shopping» or «asylum tourism»)
- Relieves the national asylum systems through burden sharing

Entry into force operationally: 12 December 2008 (as with Schengen)

Automatic exchange of information

Content

- Replaces from 2017 the taxation of savings agreement with the EU which has been in force since 2005 and is applicable to all 28 EU member states
- Based on the OECD's global standard for the automatic exchange of information (AEOI)

Relevance

- CH makes an important contribution to the prevention of tax evasion
- The abolition of taxation at source on the payment of dividends, interest and licence fees between affiliated companies in CH and the EU increases the attractiveness of Switzerland for internationally active companies

Entry into force: 1 January 2017; Switzerland and EU-28 have been collecting account data and will exchange it as from 2018

Fighting against fraud

Content

- Improves cooperation in the fight against smuggling and other offences in relation to indirect taxes (customs, VAT, consumer taxes), subsidies and public procurement

Relevance

- Reduces the risk of Switzerland being exploited as a hub for illegal business

Entry into force: Has not entered into force yet; early implementation (as of 8 April 2009) by Switzerland in cooperation with those EU countries that have ratified it (all but Ireland); notification by Croatia still pending

Pensions

Content

- Abolishes double taxation on the pensions of former EU officials living in Switzerland

Relevance

- This applies only to former officials of EU institutions, such as the European Parliament, the European Commission, the Council of the EU, and the Court of Justice of the EU, who are now living in Switzerland

Entry into force: 31 May 2005

Cooperation of competition authorities

Content

- Agreement on cooperation between Switzerland and the EU to efficiently counter obstacles to cross-border competition
- Shall enable the exchange of confidential information and the cooperation of competition authorities in order to avoid redundancies

Relevance

- Crucial due to the close economic interconnections between CH and the EU
- Shall enable greater coherence in decisions that deal with the same issues
- Shall improve the vigour of the Swiss Competition Commission COMCO thanks to relevant information of the EU Commission

Entry into force: 1 December 2014

ANNEX 2

Swiss regulatory equivalence/adequacy decisions taken by the European Commission as of 09/01/2018:

Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts
(Statutory Audit)

- Art.46(2) - Equivalence of audit framework
- Art.47(3) - Adequacy of competent authorities

Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories
(EMIR)

- Art.1(6) - Exemption central banks and public bodies
- Art.25(6) – CCPs

Regulation (EU) N° 600/2014 on markets in financial instruments (MIFIR)

- Art.1(9) - Exemption central banks

Directive 2014/65 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (MiFID 2 - recast)

- Art.25(4)[a] - Trading venues for the purposes of trading obligation for shares

Regulation (EU)No 596/2014 on insider dealing and market manipulation
(MAR Market Abuse Regulation)

- Art.6(5) - Exemption public bodies and central banks

Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms
(CRR)

- Art.107(4) - Credit institutions
- Art.114(7) - Exposures-Credit institutions
- Art.115(4) - Exposures-Credit institutions
- Art.116(5) - Exposures-Credit institutions
- Art.142(2) - Credit institutions

Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance
(Solvency II) as amended by Directive 2014/51/EU (Omnibus II)

- Art.172 - Title I-for third country reinsurers in the EU: equivalent treatment of their activities
- Art.227 - Chapter VI of Title I-for EU insurers in third countries: solvency rules for calculation of Capital Requirements and Own Funds
- Art.260 - Title III-for third country insurers in the EU: equivalence of group supervision by third country supervisory authorities