The U.K.-Switzerland financial services mutual recognition agreement: A model for a future U.K.-EU relationship?

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The United Kingdom and Switzerland announced, in December 2023, the signing of a ground-breaking mutual recognition agreement in the financial services sector. The Berne Financial Services Agreement, its proponents promise, opens doors hitherto closed, vistas so far unexplored, and markets yet unexploited. This kind of an agreement — or something like it, or something in the ballpark, or something notionally similar — had eluded U.K. officials in the course of Brexit negotiations. Switzerland is not, of course, as big a prize as the EU, but at least there was an agreement. And, it must be admitted, the Berne Financial Services Agreement is a first.

The one-year anniversary of the signing of the Agreement is fast approaching; it has yet to enter into force, much less be operationalized. Even so, can it not serve as a model for a U.K.-EU agreed framework?

What's it all about (Alfie?)

The Berne Financial Services Agreement is a classic substantive mutual recognition agreement.[1] Its object is to enhance the cross-border market access of financial services in certain "covered sectors" between the U.K. and Switzerland.[2] Covered sectors include asset management, banking, financial market infrastructures, insurance services and investment services.[3]

Under the Agreement, mutual recognition is accomplished through:

- **deference**, where one country defers to the domestic authorization and prudential measures of the other;
- **domestic law,** where one country affirms compliance with the domestic laws of the jurisdiction into which the covered services are provided; or
- "**other arrangements**", where one country "commits to arrangements other than deference to reduce frictions affecting the cross-border provision of covered services."[4]

In respect of most of the sectors covered,[5] the Agreement largely affirms what is already permitted by each Party's existing domestic laws.[6] The newly introduced deference regimes are limited to specific sectors agreed to by each Party.

For instance, for clearing services related to trading in financial instruments, the U.K. and Switzerland agree to defer to each other's domestic authorization and prudential measures, and thereby relieve the covered financial service providers from the obligation to comply with specific authorization and prudential measures under the law of the country into which the services are provided. Similarly, each Party relies on deference arrangements for certain investment client advisors who are relieved of individual registration.[7] The relief, however, is conditional, and "covered clients" is limited to institutional clients, professional clients, and high-net worth clients.[8]

The only other use of a deference arrangement in the Agreement is for the insurance sector *from the U.K. into Switzerland* (and not the other way around). Subject to disclosure and reporting requirements,[9] insurance service providers[10] are relieved from conformity with Swiss authorization and prudential measures[11] in respect of "covered clients." Although covered services and service suppliers are broadly defined, "covered clients"[12] in this instance is limited to Swiss-incorporated clients that meet at least two out of the three following requirements: (1) net turnover in excess of CHF40 million; (2) balance sheet total in excess of CHF20 million; and (3) in excess of 250 employees.

The Agreement leaves room for both the U.K. and Switzerland to rely on this type of arrangement in respect of certain financial market infrastructures such as over-the-counter derivatives.[13]

U.K. and Swiss government officials aim to complete domestic implementation procedures by the end of 2025 and allow the Agreement to enter into force shortly thereafter.

When you sort it out (Alfie?)

The Berne Financial Services Agreement is likely the kind of arrangement the U.K. would have preferred to have with the EU coming out of Brexit; at 88 pages, it is not the kind of arrangement the U.K. could have negotiated with the EU within the Brexit timelines.

Perhaps more important, in the light of its scope, it is not the type of agreement that the EU is likely to ever agree to.

So far, the only agreed framework for the U.K.-EU financial services sector is the Trade and Cooperation Agreement (TCA), which entered into force on May 1, 2021.[15] The TCA has a "short section"[16] on financial services, which includes a "best endeavours" commitment to implement and apply international agreed standards for the regulation and supervision of financial services; as well as provisions concerning the introduction of new financial services products, non-discrimination by self-regulatory organizations, and access to clearing and payment systems.[17] The U.K. and Switzerland further concluded a memorandum of understanding (MOU) on June 27, 2023,[18] under which the U.K. and the EU "jointly endeavour to pursue a robust and ambitious bilateral regulatory cooperation in the area of financial services."

(Alfie) I know there's something much more

The U.K.-Switzerland mutual recognition agreement took two years to negotiate and ultimately delivered on “deference” in only a few areas subject to considerable limitations. This would have been perfectly predictable, as would be the fact that negotiations with the EU were always going to be more complex than with the Swiss.

Why would U.K. policymakers expect they can conclude a similar deference framework with the EU?

Lack of coherence in the underlying objectives, coupled with the essentially political nature of the “autonomy” debate, goes a long way in explaining the meagre results of the TCA for one of the largest sectors of the U.K. economy. The financial services sector also bears part of the blame: an elevated sense of the EU’s dependence on the U.K. and the City of London[19], coupled with a concomitant unbridled exuberance about the possibilities of bilateralism,[20] inapposite use of other models or comparisons to other countries, and failure to pay heed to the experience of other countries, were among the more difficult challenges of the entire debate.

It is entirely possible that the TCA is the high watermark of achievable deference and convergence between the EU and the U.K. in financial services.

Footnotes

[1] A paper providing the first analytical review of the Agreement, written by the authors of this Insight, will be published in Volume 59, Issue 3 of the Journal of World Trade in June 2025.

[2] “International treaty: The Berne Financial Services Agreement” (December 21, 2023). See also City of London, “The Berne Financial Services Agreement: Explaining the U.K.-Switzerland Agreement on Mutual Recognition in Financial Services” (March 2024).

[3] The list of covered service is extensive: See *Agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on Mutual Recognition in Financial Services*, December 21, 2023 (not in force.

[4] City of London, *supra* note 2 at 7.

[5] *Ibid*.

[6] A typical provision is Annex 1, Article VII.B.2: Switzerland permits the supply of Covered Services into Switzerland by Covered Financial Services Suppliers to Covered Clients in accordance with its domestic law. See U.K.-Swiss MRA, *supra* note 3.

[7] *Ibid*, Annex 5, Article VIII.A.2.c.

[8] *Ibid*, Annex 5, Article V.B.

[9] *Ibid,* Annex 5, Article IX.

[10] The definition of covered service provider is broad. See *Ibid*, Annex 4, Article IV.B

[11] The Agreement provides a rule of *deference*: Switzerland shall defer to the domestic authorisation and prudential measures of the United Kingdom that apply solely to financial services suppliers, in respect of the supply of Covered Services into Switzerland by Covered Financial Services Suppliers to Covered Clients to the extent specified in this Sectoral Annex. See *Ibid*, Annex 4, Article VI.A.a.

[12] *Ibid*, Annex 4, Article V.B.

[13] *Ibid*, Annexes 3B. From the U.K. into Switzerland, Swiss suppliers complying with U.K. risk mitigation rules are deemed to comply with Swiss risk mitigation rules. From Switzerland into the U.K., counterparties complying with Swiss risk mitigation rules are deemed to comply with U.K. risk mitigation rules (subject to certain exceptions).

[14] "U.K.-Switzerland Financial Dialogue 2024 Joint Statement" (October 15, 2024).

[15] *Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part,* December 21, 2023, L 149/10 (entered into force May 1, 2021) [TCA], art 182–89.

[16] U.K. House of Lords European Union Committee, "Beyond Brexit: trade in services" (March 24, 2021) at para 14, [Beyond Brexit Report].

[17] TCA, *supra* note 15, art 182–89. This is similar to the CUSMA. "The USMCA – Impact on the financial services section" (October 2018).

[18] "U.K.-EU Memorandum of Understanding on Financial Services Cooperation" (June 27, 2023).

[19] Barnabas Reynolds, "EU-U.K. Financial Services After Brexit: Enhanced Equivalence – A Win-Win Proposition" (March 14, 2018) at 11: "Why should the EU agree to a mutual access deal that is two-way and binding for financial services, rather than relying upon its unilateral discretions as the European Commission has suggested? The answer is that without sufficient certainty there will still be business fragmentation and less investment in financial services in the EU timezones, because of the potential for access withdrawal [footnote omitted].

[20] See e.g. Shanker A Singham & Radomir Tylecote, "IEA Discussion Paper No.95+: PLAN A+ Creating a prosperous post-Brexit U.K." (September 2019) at 42: "It is because the U.K. is a heavily services-based economy, and the barriers to exports of services are predominantly related to regulatory issues, that it requires as much leverage as possible to secure reductions in these barriers around the world by having flexibility over its own regulatory system."

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