

TaPP Workshop: UK-Switzerland Financial Services Agreement

Summary

This insight summarises the discussions of the Trade & Public Policy (TaPP) Network workshop on the topic of the [UK-Switzerland Financial Services Agreement](#) (Berne FSA), held online on 5 June 2024.

The Berne FSA, concluded between the UK and Switzerland in December 2023, is hailed as a new model of cross-border cooperation in the sphere of financial services, that exemplifies a strategic approach to facilitating reciprocal enhanced market access while maintaining regulatory autonomy, on the basis of mutual recognition.

The workshop heard from officials involved in the negotiation of this agreement, and their reflections on the drafting process, as well as academic views on the context, originality, and concerns. Introductory remarks were from: Marie Miauton (HM Treasury); Anne Corrigan (Bank of England); Prof Kern Alexander (University of Zurich); and Prof Andrew Lang (University of Edinburgh).

Looking ahead, the FSA sets a potential new precedent for outcomes-based cooperation, focusing on the effects of recognition rather than strict regulatory alignment. The agreement's implementation and ongoing evolution will undoubtedly serve as a test case for balancing regulatory divergence while fostering deeper international financial integration. It also serves as an important case-study for more narrow, technical, sectoral agreements that can be concluded with partners to improve international trade.

Negotiations

The UK-Switzerland Financial Services Agreement, essentially a Mutual Recognition Agreement (MRA) grounded in Article VII of [GATS](#), spans a wide array of wholesale services. Its primary aim is to establish stable access and foster a robust relationship between the two jurisdictions. The breadth of regulated services in scope meant that it was an ambitious and challenging negotiation – especially because of the absence of clear precedents, a situation both parties acknowledged, meaning that the text of the agreement had to be developed concurrently during negotiations.

Some things were clear from beginning of negotiations; for example, that this would be an agreement based on **outcomes-based recognition**, and that a strong institutional framework was needed to ensure the stability of the agreement and manage regulatory risk. Key objectives were delineated from early on: Swiss investment firms sought access to the UK, while UK insurers sought access to Switzerland.

When referencing Article 7 GATS and paragraph 3 of the [GATS Annex on Financial Services](#), reliance on the concept of a MRA might initially lead to misconceptions about symmetry across sectors, which could prove misleading. Through surveying one another's jurisdictions, it became evident that while both countries had liberalized, this had occurred asymmetrically, meaning negotiations had a heterogeneous starting point. There were essentially two options: either a blanket commitment to recognition or focusing on the effects of recognition – but this raised concerns about potentially escalating commitments akin to an FTA, which was beyond the negotiation mandate; or a patching-up-the-gaps approach, requiring a lot of back and forth between parties.

Just days before the summit in Berne, a pivotal suggestion was made not to commit explicitly to recognition, but rather to focus on the effects of recognition – that is, to pursue **outcomes-based recognition**. This nuanced approach suggested a statement of recognition as a factual basis while structuring commitments around its practical implications, such as access and regulatory cooperation in each sector.

Overall, the negotiation process was intricate and challenging, requiring meticulous attention to detail and legal nuance. Despite the sometimes-tortuous path, the eventual agreement sought to establish a framework that balances access with regulatory integrity, setting a precedent for bilateral financial service agreements in the future.

Regulators

The UK-Switzerland Financial Services Agreement marked a departure from typical negotiations, as regulators were closely involved throughout the process. This involvement was invaluable for regulators, creating an opportunity to contribute to an effective regulatory framework and build relationships with counterparts.

As described above, a key feature of the MRA is that rather than seeking strict alignment, the agreement emphasizes mutual respect, mutual recognition of consistent outcomes in some sectors, to remove the obstacles to the provision of financial services, and to reduce regulatory friction. Central to the agreement is the preservation of regulatory autonomy, as outlined in Article 5, granting each jurisdiction the authority to amend its regulations independently. Within the regulatory perimeter, FTAs often facilitate market access under Mode 3 (establishment of firms within the host jurisdiction's territory), but the commitments sit within the regulatory sphere and are tempered by this. FTAs do not extend market access commitments to Mode 1 (cross-border supply). The MRA changed that paradigm for certain activities in scope, i.e. Mode 1 cross-border access with state supervision, thus in order to retain an appropriate balance between safety and openness, the agreement also contains safeguards, broadly in the form of enhanced supervisory cooperation, but also certain host state powers to ensure that host state regulators can act to mitigate financial stability, prudential and consumer risks. The agreement includes safeguards across three key sectors:

1. **Central Counterparties (CCPs):** The MRA aligns with the roles of the Bank of England (BoE) and the Swiss National Bank (SNB). It addresses scenarios where a central counterparty is deemed systemically significant by carving out of scope of the MRA commitments the protocols and responsibilities of the regulators meaning that regulators powers to act, including to grant market access, on a firm specific basis are preserved in their entirety.
2. **Investment Services:** The UK recognizes Swiss authorization and prudential measures reducing friction in market access. Firms seeking cross-border services must notify FINMA and upon verification, the FCA adds them to the register under specified conditions. But to ensure transparency and protection for investors affected, firms are required to inform clients of the implications, such as the absence of UK compensation schemes and dispute resolution mechanisms. Enhanced supervisory co-operation is a key tool to mitigate regulatory risks of cross-border supply including, commitments for regulatory bodies – the Swiss Financial Market Supervisory Authority (FINMA) and the Financial Conduct Authority (FCA) to inform each other regarding issues related to firms' eligibility under the MRA and other relevant concerns. Finally, the MRA includes provisions for UK host state regulators to take action, such as firm specific powers to request information or restrict services (UK authorities would be required to first notify FINMA, unless urgent) and the MRA retains the familiar international law safeguards of the central bank exemption, the prudential carve out and the general security exemption.
3. **Insurance:** Broadly similar powers exist in the insurance sphere, mirroring those in the investment annex, but in favour of FINMA as the host state supervisor.

Given robust supervisory cooperation commitments, regulators see the host state powers as creating a safety net in both the UK and Switzerland to foster secure openness within regulatory frameworks.

Some words of caution

Bilateral initiatives like these are crucial for advancing liberalisation, drawing on precedents set by the Basel framework regarding Banking Supervision based on home country control and local state oversight on conduct of business issues. Switzerland has engaged in various Memoranda of Understanding (MoUs),

though these agreements lack enforceability under international frameworks like International Dispute Settlement (IDS), reflecting reluctance among most countries to relinquish sovereign prerogatives. Dispute resolution, covered in Article 8, remains non-binding, potentially posing challenges in future scenarios.

However, there might be concerns about mis-selling by Swiss banks to UK high-net-worth individuals through informal, indirect marketing, as may have occurred prior to the financial crisis. UK investors faced significant losses without recourse under UK law, relying solely on Switzerland's ombudsman system funded by the banking sector, where 88% of claims favour banks. The requirement for a depositor to initiate legal action acts as a deterrent, severely limiting legal redress in Switzerland.

FINMA operates as a principled financial regulator with a light-touch regime that focuses on corrective measures rather than monetary penalties. The regulatory frameworks between the UK and Switzerland differ significantly, cautioning against excessive harmonization that could pose risks for the UK. Switzerland's "buyer beware" approach contrasts sharply with UK consumer protections, underscoring the public perception of investment risks.

Looking ahead, any future treaty arrangements should carefully consider the risks British individuals may face when engaging with Swiss counterparts, emphasizing the need for robust protections and effective dispute resolution mechanisms to safeguard against potential financial misconduct and ensure equitable outcomes for all parties involved.

Discussion

- (1) The agreement's key characteristic - a **recognition of equivalence of regulatory outcomes** - could have implications for integration with other trade agreements. Unlike typical trade deals, which often involve harmonizing regulations, this agreement focuses on comparing and acknowledging the effectiveness of each jurisdiction's regulatory systems in achieving similar objectives, such as financial stability and investor protection.

Approaches based on **mutual recognition of regulatory frameworks** are more familiar to financial services experts as compared to trade experts, but this is still a novel model, even within financial services. What are the **benefits and disadvantages** of this model as compared to other models of market access?

Defining clear conditions for success in this style of arrangement is an essential task, enabled by the foundation of trust and familiarity between the UK and Switzerland. This includes establishing robust mechanisms for supervisory cooperation, ensuring regulatory autonomy while promoting convergence in practices, and maintaining market stability and consumer protection across borders. Long-term challenges include managing regulatory divergence over time, ensuring sustainable resource allocation for effective oversight, and ensuring that the available mechanisms for resolving disputes work well. While the agreement outlines principles for resolving disputes, its non-binding nature relies heavily on trust and ongoing dialogue between regulators.

- (2) **Negotiating dynamics** differed notably from those in traditional Free Trade Agreements (FTAs), where broader political and economic considerations often dominate. The focused approach used in the Berne FSA negotiations allowed for deeper technical discussions on regulatory frameworks and operational mechanisms, potentially resulting in more precise and tailored agreements. The role of regulators in the negotiation process was pivotal, providing direct input on operational mechanisms and regulatory oversight. Their involvement can ensure practical implementation of the agreement's provisions, and enhanced mutual understanding of regulatory practices and challenges. A potential lesson from the negotiation process is the importance of clear and sequential discussions on institutional frameworks and sectoral issues.

The agreement's development benefited from stable, consistent teams and a conducive political environment, which facilitated thorough exploration of technical details and potential implications.

- (3) **Looking forward, key next steps** involve implementing the agreement effectively, monitoring its impact on financial services, and considering expansion into other sectors while maintaining operational efficiency and regulatory coherence. This requires periodic reviews to address evolving challenges and opportunities, ensuring the agreement continues to serve as a robust framework for bilateral cooperation in financial services between the UK and Switzerland.