
The Directive and Regulation are not directly applicable to non-EU countries. However, MiFID 2 has introduced a specific regime for non-EU investment firms which provide cross-border services to clients in the EU (see MiFID 2 – Early Considerations for Non-EU Investment Managers). Among non-EU countries indirectly impacted by MiFID 2, this Directive is likely to have significant consequences in Switzerland, in particular amongst Swiss banks, securities dealers, independent asset managers and other Swiss financial intermediaries.

### MiFID 2 – What impact will MiFID 2 and MiFIR have on Switzerland?

1. Switzerland will have to amend its current legislation in order to ensure that Swiss financial institutions, including asset managers, will have unfettered access to the EU market (see below on the *Swiss Financial Services Act*). In particular, in order to provide services to EU clients – and in contrast to the present partial supervision as mainly concerns anti-money laundering – independent asset managers in Switzerland would be required to be subject to global supervision. Overall, Swiss regulations will have to guarantee that the level of protection for investors is equivalent to the EU provisions, and the Swiss regulatory and supervisory framework will need to comply with EU standards. Failure to comply with these requirements will result in a refusal by the EUROPEAN SECURITIES AND MARKETS AUTHORITY ("ESMA") to issue its so-called “equivalence decision” to enable Swiss financial institutions to be registered with ESMA and provide services to EU-based *Eligible Counterparties and Per Se Professional Clients*. 
2. The relevant Swiss authorities will also have to conclude appropriate cooperation arrangements with ESMA. FINMA and ESMA have already entered into similar cooperation arrangements for the supervision of alternative investment fund managers within the context of the Alternative Investment Fund Managers Directive ("AIFMD").

3. As concerns Swiss financial institutions, the provision of cross-border services to EU-based Eligible Counterparties and Per Se Professional Clients will require these institutions to comply with MiFIR. Swiss financial institutions will also have to agree to be submitted to the jurisdiction of an EU Member State.

4. In addition to the above changes required by MiFID 2 and MiFIR, Switzerland will need to consider its legislation concerning access to the EU Retail Clients market. In particular, Swiss authorities will need to address with each EU Member State the possible “branch requirements” that the EU Member States may implement. Adopting bilateral conventions with each EU Member State may be prevented by the possible preclusion for EU Members States to grant special treatment to specific non-EU Member States. Such “branch requirements” will concern in particular small Swiss financial institutions which do not already have a presence in the EU. It is however still too soon to tell which EU Member States will implement such branch requirements.

5. If an EU Member State requires Swiss institutions to establish an authorised branch to provide services to EU-based Elective Professional Clients and Retail Clients, compliance with national rules and the establishment of a branch will, however, not be sufficient. In addition, Switzerland will have to meet MiFID 2’s further requirements, which include the following:
   - Cooperation mechanisms in relation to the exchange of information between Switzerland and each EU Member State where the branch is to be established. FINMA has already signed arrangements regulating the cooperation and exchange of information for the supervision of Alternative Investment Fund Managers. These arrangements may not, however, be sufficient for the purpose of MiFID 2. Switzerland may therefore be required to draw up additional cooperation arrangements.
   - Agreement between Switzerland and each EU Member State where the branch is to be established, complying with Article 26 of the OECD’s Standards and ensuring the effective exchange of information in tax matters between Switzerland and the relevant EU Member States. MiFID 2 accordingly increases the requirement for Switzerland to exchange information in tax matters, as Switzerland has not yet entered into such agreement meeting OECD’s Standards with every EU Member States (e.g. Italy and some of the new EU Member States).
Investor Compensation Scheme in compliance with EU Directive 97/9/EC, which will require the Swiss financial institutions to guarantee investments up to a prescribed limit and to pay a levy. This scheme will be new to the Swiss financial industry.

Beyond these legal considerations, Switzerland may also have to address political issues before being granted access to the EU financial markets.

Swiss Financial Services Act – the future “passport” for the EU market?

1. Swiss authorities are currently drafting a new Federal Act on financial services (the Federal Financial Services Act (“FFSA”)), which will in particular intend to address the requirements under MiFID 2. The FFSA will also aim to fill in the gaps between Swiss and international legislation in relation to investors’ protection and the regulation of financial services providers, including independent asset managers. The extent to which MiFID 2 and related EU legislation will be incorporated into Swiss law is still, however, under discussion. The initial report of the Swiss authorities in relation to the FFSA was issued in February 2013, when MiFID 2 was not yet adopted. The consultation process has been delayed in order to await the adoption of MiFID 2 in the EU. The FFSA is currently expected to enter into force in 2016.

2. Using MiFID 2 as a guide, the FFSA may, for example:
   - Require the publication of a prospectus for any public offering of securities and of a Key Investor Document for complex financial products (with possible exceptions, e.g. for certain categories of investors);
   - Provide rules of conduct (e.g. as regards the provision of information to clients in relation to costs, risks and product characteristics) that are likely to be largely derived from the EU legislation (including clients’ segmentation for all financial products);
   - Implement the EU appropriateness and suitability tests (still subject to debate);
   and
   - Prohibit third party remuneration (such as financial incentives or retrocessions for referring clients) for independent asset managers.

3. The FFSA is also likely to regulate the provision of services to Swiss-based clients by foreign institutions, including compliance with Swiss rules of conduct and registration of a physical presence in Switzerland.
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