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Crossborder Financial Services – Is this the End?

Technical Conference Report

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Zürich, 5 May 2025

Introduction

The entry into force of the General Agreement on Trade in Services (GATS) and its Annex on Financial Services in 1997 raised high hopes for a progressive liberalisation of the crossborder trade in financial services. A quarter of a century later, one must admit that progress has not only stalled but is now being reversed. This trend, emerging long before the Trump administration's war on trade, has reached a new peak with the Regulation on Markets for Crypto-Assets (MiCAR) and the new EU Capital Requirements Directive (CRD VI) which have been effectively shutting down certain modes of crossborder services. On the other hand, the Berne Financial Services Agreement (BFSA) between Switzerland and the United Kingdom, expected to enter into force at the beginning of 2026, is an example of a new type of bilateral agreements that tries to facilitate market access while providing safeguards for consumers and financial stability.

These trends were discussed in a seminar with the slightly provocative title "Crossborder Financial Services – Is this the End?" that took place on 5 May 2025 at the University of Zurich. It was organized by the Center for Financial Market Regulation at the University of Zurich and the European Banking Institute (EBI). The purpose of the seminar was to first take stock of the trends in EU financial market law, a task undertaken by Prof. Rolf Sethe (University of Zurich) and Prof. Matthias Lehmann (University of Vienna/Radboud University, Nijmegen). Juan Marchetti (World Trade Organization) then provided an overview of the international legal framework for the trade in financial services. Stephanie Lorenz (Swiss State Secretariat for International Finance SIF) presented the Berne Financial Services Agreement (BFSA) as a "ray of hope" in an otherwise gloomy environment. The author Chris Skinner delivered a compelling "Call to Action," urging a critical reassessment of the prevailing trends in crossborder financial services regulation. A panel chaired by Eva Selamilar-Leuthold (Swiss Financial Innovation Desk (FIND)) discussed options and conclusions.

EU Law: From MiFID to MiCAR and CRD VI

Prof. Sethe first drew a timeline from the turn of the century – where crossborder financial services were no real topic causing regulatory issues – to the present. At around 2005 supervisory authorities of member states started to restrict crossborder services, e.g. the German Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) which issued Guidance in 2005.¹ The reason for this change of policy was the advent of digital services made possible by the World Wide Web. The first Markets in Financial Instruments Directive² (MiFID I) did not deal with this topic, which was thus left to member states. The second Markets in Financial Instruments Directive (MiFID II) and the corresponding Regulation³ (MiFIR) introduced for the first time a third-country regime. The new (sixth) Capital Requirements Directive⁴ (CRD VI) and the Markets in Crypto-Assets Regulation⁵ (MiCAR) are building and expanding on MiFID II.

The third-country regime MiFID/MiFIR is a complex compromise which was the result of intensive discussions among member states. It combines a minimum harmonization with the requirement to establish a branch or a subsidiary in the EU and can be summarized as follows:

¹ BaFin «Merkblatt zur Erlaubnispflicht von grenzüberschreitend betriebenen Geschäften», 01.04.2005, amended as of 11.03.2019, accessible under https://www.bafin.de/SharedDocs/Veroeffentlichungen/DE/Merkblatt/mb_050401_grenzueberschreitend.html (accessed 7 May 2025).

² Directive 2004/39/EC of 21 April 2004 on markets in financial instruments, OJ L 145, 30.4.2004, p. 1–44.

³ Regulation (EU) No 600/2014 on markets in financial instruments, OJ L 173, 12.6.2014, p. 84–148.

⁴ Directive (EU) 2024/1619 of 31 May 2024 amending Directive 2013/36/EU as regards supervisory powers, sanctions, third-country branches, and environmental, social and governance risks, OJ L, 2024/1619, 19.6.2024.

⁵ Regulation (EU) 2023/1114 of 31 May 2023 on markets in crypto-assets, OJ L 150, 9.6.2023, p. 40–205.

- Eligible counterparties and per se professional clients (Section I of Annex II to MiFID II) can be served by third-country firms on a crossborder basis (i.e. without establishment of a branch or a subsidiary within the Union) if the third-country supervisory law is deemed to be equivalent to EU law (Art. 46 seq. MiFIR).
- For retail clients (private and elective professional clients) the member states have two options: they can either require the establishment of a branch which must meet the requirements of Art. 39 seq. MiFID II or it can waive the branch-requirement, in which case they may not impose stricter rules for third-country firms than for EU firms.
- MiFID II also codified, for the first time, the concept of reverse solicitation, defined to mean where a retail client or an elective professional client in the Union “initiates at its own exclusive initiative the provision of an investment service or activity by a third-country firm” (Art. 42 MiFID II). The branch-requirement under Art. 39 does not apply in this case.

MiFIR/MiFID II follow the principle of proportionality by classifying client groups according to the need of investor protection and in particular by allowing crossborder financial services to professional investors who do not need particular investor protection. At the same time the third-country regime guarantees third-country firms a level playing field in the EU, as member states are no longer allowed to impose stricter rules than for domestic firms.

However, so far, no third country has been considered equivalent by the Commission because the equivalence decision (which is taken by ESMA and the EU Commission) is not merely a technical assessment but a political decision which can be used to discipline third countries. Therefore, crossborder financial services to *professional clients* are still governed by national laws. Only a few member states have waived the requirement to establish a branch, e.g. the Netherlands in relation to Australia, the USA and Switzerland⁶, Luxembourg if the Commission de Surveillance du Secteur Financier (CSSF) deems the third country supervisory law equivalent⁷ and Germany, as long as the undertaking, due to the nature of business it conducts, does not require supervision in this regard (§ 2(5) KWG).

For retail clients the branch requirement applies, but so far only around 50 third-country firms, most of which are banks, have established a branch in the EU to provide services to retail clients. The requirements of MiFIR/MiFID II are quite demanding and therefore favour large banks that can afford to set up a branch in the EU and disadvantage small investment firms. Importantly, passporting rules do not apply to branches of third countries, meaning that a branch needs to be set-up in each member state where a third-country firm wants to service retail clients.

Prof. Sethe concluded that, in practice, the third-country regime of MiFID/MiFIR has failed. Crossborder financial services face major obstacles under MiFIR/MiFID II which cannot be justified by the objectives of investor protection or financial stability.

Banking Services

Prof. Lehmann then discussed the third-country approach adopted by the new (sixth) Capital Requirements Directive (CRD VI). While under current law the matter of market access for banks from third countries has been left to member states (which have adopted widely

⁶ See AFM, Third country policy, accessible under <https://www.afm.nl/en/sector/themas/belangrijke-europese-wet--en-regelgeving/mifid-ii/vergunningen/derdelandenbeleid-beleggingsondernemingen> (last accessed 7 May 2025).

⁷ See CSSF, Circular letter 20/743 amending circular letter 19/716 on the provision in Luxembourg of investment services or performance of investment activities and ancillary services in accordance with Article 32-1 of the law of 5 April 1993 on the financial sector.; see also CSSF Regulation n°20-02 (“Regulation”) on the equivalence of some third countries for the purposes of the national third country regime <https://www.cssf.lu/wp-content/uploads/RCSSF-20_02-equivalence-third-country-firms.pdf>. The list of countries with an equivalence decision include Canada, Switzerland, the US, Japan, Hong Kong, Singapore, China and Australia.

diverging policies in this respect), CRD VI will introduce a new and harmonised regime for third-country firms providing certain banking services to clients within the European Union (see Art. 21c(1), Art. 47 CRD VI). This harmonisation of rules across the EU under CRD VI will mean that the existing exemptions for banking activities in individual EU member states will be replaced with the new EU-wide licencing regime. CRD VI will become fully effective on 11 January 2027.

Subject to certain limited exemptions, third-country firms wishing to provide “core banking activities” will have to establish a branch within the European Union and seek authorization from the relevant national competent authority. Core banking services are defined by reference to the list in CRD Annex I and include the following (Art. 47(1) CRD VI):

- Taking deposits and other repayable funds.
- Lending including, inter alia: consumer credit, credit agreements relating to immovable property, factoring, with or without recourse, financing of commercial transactions (including forfeiting).
- Guarantees and commitments.

The minimum requirements for a third-country bank setting up a branch in a member state include capital and liquidity requirements, internal governance, risk management and booking requirements. Capital requirements CRD VI between EUR 5 m. or 0.5% of branch's liabilities for class-2-branches with less than EUR 5 bn. of assets and EUR 10 m. or 2.5% of branch's liabilities for class-1-branches with more than EUR 5 bn. of assets. Branches with more than EUR 40 bn. of assets are deemed to be of systemic importance; they can be subject to additional prudential requirements, or the regulator can even require a restructuring of assets, effectively imposing a hard cap on the size of branch. Importantly, CRD VI (unlike MiFID II and MiFIR) is not harmonising EU law but only imposed minimum requirements which can be gold-plated by member states. Also, branches set up under CRD VI do not benefit from passporting rights, meaning that third-country banks must set up a branch for each member state where clients to be served are located.

Unlike the third-country regime for investment services, CRD VI does not make any distinction between retail, professional and institutional clients, but it exempts bank-to-bank lending and intra-group transactions from the branch requirement (Art. 21c(2)(b) and (c) CRD VI). CRD VI further provides an exception if the client relationship is established “at [the client’s] own exclusive initiative” (reverse solicitation). Art. 21c(2)(a) CRD VI makes it clear that this applies to all types of clients, including retail clients, professional clients and eligible counterparty within the meaning of MiFID II (see MiFID Annex II, Sections I and II). The concept of reverse solicitation is very narrowly defined, similar to the Markets in Crypto-Assets Regulation (MiCAR). For this exemption to apply, the non-EU credit institution cannot market or solicit its core banking activities, nor can it instruct another person or entity (acting on its behalf) to market or solicit its core banking activities. The non-EU credit institution is only permitted to market and solicit “any services, activities or products necessary for, or closely related to the provision of the service, product or activity originally solicited by the client”.

Prof. Lehman concluded that the EU has been “pulling up the drawbridge for foreign banks” and that CRD VI will make it much harder for foreign banks to access the EU market. Both the demanding prudential requirements for third-country branches (which are in effect very similar to a full-fledged banking licence) as well as the limited scope of such a branch will make the CRD VI branch impractical to access the EU market.

Crypto Asset Services

Shifting the focus to MiCAR, Prof. Lehmann discussed the regulation's overarching goals, which include promoting innovation in crossborder technologies, ensuring investor protection, promoting market integrity, facilitating smooth payment systems, safeguarding monetary sovereignty and financial stability. He provided a comprehensive overview of MiCAR's scope and content, with a particular emphasis on its treatment of asset-referenced tokens (ARTs) and e-money tokens (EMTs), often referred to as stablecoins. The offering or listing of ARTs is limited to legal persons or other undertakings established in the Union and authorised in accordance with Art. 21 MiCAR, or to EU credit institutions (Art. 16(1) MiCAR). EMTs can be offered to the public or admitted to trading in the Union only by credit institutions or e-money institutions authorized in the EU (Art. 48(1) MiCAR). An EMT that references an official currency of a Member State is deemed to be offered to the public in the Union (Art. 48(2) MiCAR); i.e. MiCAR is supposed to apply even if the issuer is not an entity active in the EU and if effectively no persons resident within the Union are targeted. MiCAR does not provide any avenue for third-country issuers to legally offer their stablecoins to EU residents, not even by way of reverse solicitation.

The second main part of MiCAR covers Crossborder Service Providers (CASPs). Only legal persons or other undertakings that have been authorised as crossborder service providers in accordance with Art. 63 MiCAR or financial institutions (credit institution, central securities depository, investment firm, market operator, electronic money institution, UCITS management company, or an alternative investment fund manager) that are allowed to provide crossborder services pursuant to Art. 60 MiCAR are permitted to provide crossborder services within the Union (Art. 59(1) MiCAR). In order to obtain an authorization, CASPs must have a registered office in a member state where they carry out at least part of their crossborder services. Moreover, their place of effective management must be in the Union and at least one of the directors must be resident in the Union (Art. 59(2) MiCAR). Again, MiCAR does not provide any avenue for third-country firms to provide crossborder services on a crossborder basis. An exception applies if crossborder services by third-country firms are provided at the "own exclusive initiative" of the client (Art. 61 MiCAR, reverse solicitation), but the conditions for reliance on reverse solicitation are defined extremely narrow by MiCAR and ESMA⁸. One of the more notable features of the ESMA guidelines is the introduction of a time limit on the validity of a reverse solicitation request. According to the guidelines such requests are only valid for one month, after which service providers would need to re-establish that the initiative is still coming exclusively from the client.

Prof. Lehmann concluded that increasing use of location requirements, the lack of foreseen equivalence principle coupled with the narrow interpretation of the reverse solicitation exemption, reflect a broader trend of isolationism within EU financial regulation, potentially hindering innovation and fragmenting the borderless global crossborder market. The imposition of the "physical location requirement in the EU [...] fragments the market and goes against the spirit of the whole market".

⁸ See ESMA, Guidelines On situations in which a third-country firm is deemed to solicit clients established or situated in the EU and the supervision practices to detect and prevent circumvention of the reverse solicitation exemption under the Markets in Crypto Assets Regulation (MiCA), ESMA35-1872330276-2030 (6/02/2025).

Financial Services – Status and Prospectus under WTO law

Juan Marchetti, Counsellor at the Trade in Services and Investment Division of the World Trade Organization (WTO),⁹ provided a global perspective by outlining the status and prospects of financial services under WTO law. The international legal framework for the crossborder trade in services is governed by the General Agreement on Trade in Services (GATS) with 29 Articles and its Annex on Financial Services¹⁰,

The GATS defines four "modes" of delivery by which services can be traded between states:

- Mode 1. Crossborder supply (a service supplied from the territory of one state into the territory of another).
- Mode 2. Consumption abroad (a service supplied in the territory of one state to a consumer who is a resident of another state).
- Mode 3. Commercial presence (a service supplied within the territory of one state through a permanent place of business maintained by a resident of another state).
- Mode 4. Movement of natural persons (a service supplied in the territory of one state through the presence of natural persons who are residents of another state).

For purposes of the GATS, financial services are defined very broadly, as “any service of a financial nature offered by a financial service supplier of a Member (Art. 5 (a) Annex on Financial Services). The Annex on Financial Services lists sixteen categories of activities that fall under the financial services rubric:

- Direct insurance (both life and non-life),
- Reinsurance and retrocession,
- Insurance intermediation, such as brokerage,
- "Auxiliary" insurance services (consultancy, actuarial services),
- Acceptance of bank deposits,
- Lending of all types,
- Financial leasing,
- Payment systems,
- Guarantees and commitments,
- Trading, either for one's own account or for others,
- Securities issues,
- Money brokering,
- Asset management,
- Settlement and clearing services,
- Provision of financial information or data,
- "Auxiliary" financial services (research and advice, corporate consulting).

The only sectoral exception relates to services supplied “in the exercise of governmental authority”, including exchange and monetary policies, statutory systems of social security and public retirement plans, and other activities conducted by a public entity (e.g., central bank or monetary authority). When asked whether crossborder services would qualify as financial services under the GATS, Marchetti replied that crypto is primarily an asset but that many services relating to crypto assets are “financial in nature” and therefore covered.

The structure of the GATS is as follows:

- General (‘unconditional’) Obligations which apply to all services, regardless of the existence of “specific commitments”. These include the Most-Favoured-Nation Treatment (MFN, Art. II GATS) and transparency obligations (Art. III GATS). Departures

⁹ Marchetti's views are personal. They do not necessarily reflect the positions of WTO Members and are without prejudice to their rights and obligations under the WTO agreements.

¹⁰ The text can be retrieved from < https://www.wto.org/english/docs_e/legal_e/gats_e.htm >.

from MFN are only allowed in two circumstances: through an MFN exemption (which can no longer be filed), and through Economic Integration Agreements (Art. V GATS).

- Specific commitments provide for the conditions of Market Access (Art. XVI GATS) and National Treatment (Art. XVII GATS) as well as Additional Commitments (Art. XVIII GATS) in specific sectors. Each member submits a schedule of specific commitments on market access and national treatment as well as MFN exemptions.¹¹ Commitments are made in relation to each mode of supply, and members are bound to grant market access and provide national treatment in relation to trade in services only to the extent allowed by their specific commitments. Various WTO members, including Switzerland, the United States and 17 EU member states, have made their commitments based on a liberalization template contained in the Understanding on Commitments in Financial Services¹¹ (the “Understanding”).
- In addition, General (‘conditional’) Obligations (e.g., on payments and transfers, Art. XI GATS) apply to services where specific commitments have been made.

Like other trade agreements, the GATS seeks to strike a *balance between trade liberalization and Members’ right to regulate*. The GATS provisions relating to domestic regulation, in particular Article VI (domestic regulation) and Article VII (recognition) are particularly relevant for the financial services sector. The GATS establishes that all measures of general application shall be “administered in a reasonable, objective, and impartial manner”. The Annex on Financial Services further qualifies Members’ obligations under the GATS through the Prudential Carve-out (Art. 2(a) Annex on Financial Services). The Annex also provides for the Recognition of Prudential Measures (Art. 3 Annex on Financial Services).

Art. 2(a) reads as follows:

“Notwithstanding any other provisions of the Agreement, a Member shall not be prevented from taking measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of the Agreement, they shall not be used as a means of avoiding the Member’s commitments or obligations under the Agreement.”

Unnecessary barriers to trade in services arising from domestic regulation may be dealt with through multilateral disciplines (yet to be negotiated), or “Additional Commitments” in the Schedules of Specific Commitments (Art. XVIII GATS; like the SDR negotiations concluded in 2021).

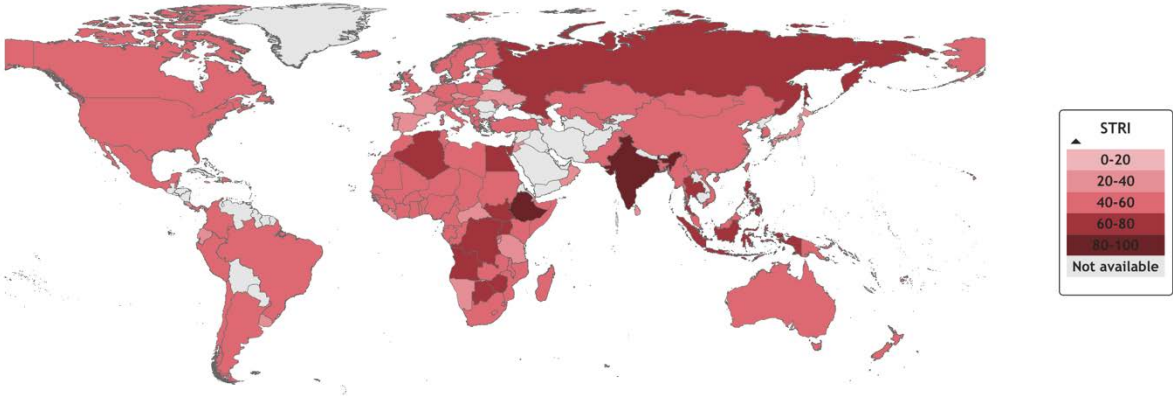
The GATS still largely reflects the result of the Uruguay Round and extended negotiations ending in 1997. *Market access negotiations* (provided for in Art XIX GATS) were resumed in 2000 and later incorporated into the Doha Development Agenda (launched in 2001) but *remain inconclusive*. Some progress has been made on domestic regulations of services where disciplines on Services Domestic Regulation (SDR Disciplines) were adopted in 2021 by 72 Members.¹² The SDR Disciplines try to enhance transparency and stakeholder engagement in relation to regulation by members, ensuring certainty and predictability of authorization procedures and promoting regulatory quality. The SDR Disciplines were incorporated into schedules of participating members as “Additional Commitments” (Art. XVIII GATS). Specific provisions on financial services were adopted by 62 of those members; and the SDR Disciplines have already entered into force for 53 of those Members.

Despite liberalisation over the last decades, trade in services is still subject to fairly high policy restrictiveness on average. Barriers to trade in services have historically been higher than for trade in goods, and restrictions to crossborder services (Mode 1) are particularly high. Most

¹¹ The schedule of commitments and MFN exceptions can be retrieved for each member from <https://www.wto.org/english/tratop_e/serv_e/serv_commitments_e.htm>.

¹² See WTO, Services Domestic Regulation, Good regulatory practice for services markets enters WTO rulebook (February 2024).

members (apart from Switzerland and a few other members) have made no commitments in relation to Mode 1 and are therefore free to restrict the provision of crossborder services. Marchetti emphasised that the actual policies of GATS members are often less restrictive than their commitments. The degree of restrictions to trade in services resulting from economy's regulatory and policy framework is measured by the World Bank-WTO Services Trade Restrictions Index (STRI) which measures restrictions of an economy's regulatory and policy framework with respect to trade in a broad range of services for the four modes of supply.¹³ The level of restrictedness in relation to financial services varies considerably across economies, as shown on the following graph:



Source: World Bank - WTO STRI/Financial Sector.

Marchetti concluded by elaborating on the objectives and role of the GATS, stressing its aim to improve international market access, to enhance policy transparency, and to provide predictability and certainty for businesses and markets. He argued that multilateral rules like GATS are essential for ensuring global market integration, preventing fragmentation, promoting trade creation, and avoiding the marginalization of countries from global trade. Finally, Marchetti offered a glimpse into the prospects for the WTO, highlighting its role not only as a forum for negotiations but also as a platform for discussion, cooperation, and experience-sharing among members. He raised the critical question of “how can members reinvigorate negotiations?” and adapt the GATS framework to the evolving realities of the global financial landscape.

Ray of Hope – The Berne Financial Services Agreement (UK-CH)

Stephanie Lorenz, Head Policy Issues and International Relations, Swiss State Secretariat for International Finance (SIF), provided a detailed presentation on the Berne Financial Services Agreement (BFSA) between the United Kingdom and Switzerland of 21 December 2023.¹⁴ The BFSA has already been approved by the UK Parliament and on 21 March 2025 by the Swiss Parliament¹⁵. It is expected to enter into force in early 2026.

¹³ The STRI Dashboard can be accessed here: < <https://itip-services-worldbank.wto.org/STRIDashboard.aspx>>. A score of 0 indicates that none of the restrictions underlying the index apply.

¹⁴ Agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on Mutual Recognition in Financial Services as of 21 December 2023.

¹⁵ Bundesbeschluss über die Genehmigung des Abkommens zwischen der Schweiz und dem Vereinigten Königreich über die gegenseitige Anerkennung im Bereich der Finanzdienstleistungen, BBl 2024, 2386; see also Botschaft zur Genehmigung des Abkommens zwischen der Schweiz und dem Vereinigten Königreich über die gegenseitige Anerkennung im Bereich der Finanzdienstleistungen vom 4. September 2024, BBl 2024, 2385.

Lorenz introduced the agreement as a significant development in a context where borders are increasingly being closed or questioned, emphasising its timely nature and unique character. Lorenz highlighted that the agreement was the result of three years of negotiations, underscoring its complexity and the commitment of both nations. She quoted Karin Keller-Sutter, Federal Councillor, stating that “This agreement helps to retain and boost the international competitiveness of the Swiss financial centre in the long term.” Lorenz then walked the audience through the history of the agreement, starting with the Brexit referendum and the subsequent need to address the resulting gap in financial services relations. She explained the "Mind the Gap" strategy, which aimed to maintain continuity as much as possible, and the evolution to the "Mind the Gap+" approach, involving active engagement and dialogue between Switzerland and the UK. Lorenz detailed the joint statement of intent between the two countries in 2020 and the overall journey leading to the final agreement which was negotiated in record time.

The presentation then focused on the core elements of the Berne Agreement. Lorenz emphasised its nature as an international treaty designed to provide market access based on mutual recognition of regulatory frameworks. She clarified that the agreement facilitates crossborder financial services to institutional, professional, and high-net-worth individual (HNWI) clients, while simultaneously ensuring market stability, integrity, and consumer protection, but explicitly ruling out deregulation. Lorenz also offered insights into the negotiation process itself, acknowledging the challenges of creating a new framework from scratch, particularly concerning supervisory cooperation and the need for trust between regulatory authorities.

Lorenz provided a comprehensive overview of the basic principles underpinning the Berne Agreement. She highlighted "recognition" as the cornerstone of the agreement, emphasising the importance of trust and enhanced cooperation between the two countries. She detailed the mechanisms for supervisory and regulatory cooperation, ensuring that both parties retain the freedom to regulate while establishing clear information duties and dispute settlement procedures. Lorenz also explained the prudential safeguard clause, allowing for temporary measures in cases of necessity, and the role of sectoral annexes in providing technical details for specific areas of financial services.

A key aspect of Lorenz's presentation was the explanation of how market access is achieved under the agreement. She introduced the concept of "deference," where one party relies on the regulatory framework of the other party. Lorenz provided specific examples, such as Swiss investment service providers offering services in the UK, to illustrate how provisions are "switched off" and how supervisory cooperation ensures compliance. Lorenz then outlined the specific sectors covered by the agreement, distinguishing between those with deference (investment services, insurance, financial market infrastructure for central counterparties) and those without deference where market access is based on domestic law (financial market infrastructure for trading venues and OTC derivatives, banking, asset management). She explained the rationale behind this distinction, emphasising the desire to maintain existing frameworks, for example in areas like portfolio management where substance requirements are crucial. Lorenz also mentioned future areas of cooperation, such as sustainable and digital finance.

Finally, Lorenz concluded by highlighting four key success factors of the agreement: “Brexit offered a window of opportunity to negotiate this agreement and the political will on both sides was strong. The interests of both parties were balanced and compatible. The two countries have a long history of partnership and cooperation also in the financial sector which helped to establish the mutual understanding and trust that is needed to cooperate on the basis of recognition. And lastly, the agreement does not lead to changes in Swiss regulation as it would be in the case of harmonisation.”

Conclusions

A call to action by the author Chris Skinner and a panel discussion with all speakers plus the author of this paper moderated by Eva Selamlar-Leuthold, Head of Swiss Financial Innovation Desk (FIND), concluded the session. Panellists emphasised the fact that free trade, including free trade in services, enhances welfare because it fosters competition and therefore innovation, and is also beneficial to consumers who in turn get access to better products at lower prices. There may be valid policy reasons for restrictions of free trade, but restrictions are always reducing overall welfare and are coming with a price tag that is measurable in percentage points of GDP. There are no reasons to assume that this foundational premise would not apply to financial services - on the contrary: since an efficient financial system plays a key role for the economy as a whole and the high entry-barriers resulting from financial market regulations pose limitations to competition and innovation, benefits of open borders for financial services might be even larger than for other types of services.

It is clear that free trade in services must not undermine the policy objectives underpinning financial market regulation: protecting clients and investors and safeguarding the integrity of financial markets and the stability of the financial system. As set out, the GATS and the Annex on Financial Services are trying to accommodate these policy objectives. However, the justification for certain restrictions is not always evident, and sometimes rather flimsy. For example, the purpose to protect retail investors is obviously not suitable to justify restrictions for the provision of services to professional or institutional clients. The panellists argued that academics as well as industry representatives should challenge much more forcefully justifications brought forward for restrictions. The panellists agreed that financial stability is best served by a competitive and innovative financial system. Finally, the critical role of the proportionality principle was highlighted in order to determine whether restrictions to trade in financial services are really appropriate. This also means that Switzerland – which has historically been very open to crossborder financial services – is on the right track and should by no means react to increased restrictions by other economies with building-up new obstacles.

The overall conclusion was that the current attacks on the multilateral trading systems and the trend to ever more restrictions does not mean that this is the end, as the seminar's title had suggested. The rationale for free trade, including free trade in financial services, is so strong that reason will prevail over time. The fact that the seminar tried to take stock of the current state of affairs and to highlight countervailing trends was already a first step in the right direction.