



Institutional issues

May 2018

Relations between Switzerland and the European Union (EU) are very close and are based on a network of agreements made up of some 20 main bilateral agreements and around 100 other agreements. Switzerland and the EU are currently negotiating an agreement to ensure that current and future agreements on market access are applied more consistently and efficiently. The Federal Council adopted a negotiating mandate on 18 December 2013; the Council of the EU adopted its mandate on 6 May 2014. Negotiations are still ongoing.

Chronology

- 22.5.2014 Start of the negotiations
- 6.5.2014 Adoption of the negotiating mandate by the Council of the EU
- 18.12.2013 Adoption of the negotiating mandate by the Federal Council

State of play

The Federal Council wants an agreement that ensures legal certainty in the area of market access and preserves Switzerland's independence and legal system. The negotiations have made good progress, but the agreement has not yet been concluded. The outstanding issues mainly relate to dispute settlement.

Context

Switzerland has pursued the bilateral approach since it rejected membership of the European Economic Area (EEA) in a vote by the people and the cantons on 6 December 1992. Switzerland and the EU have concluded about 20 main agreements and more than 100 other agreements ensuring access for Swiss companies to particular sectors of the EU single market and governing a number of areas of cooperation between Switzerland and the EU.

The Federal Council has stated on several occasions that the consolidation and renewal of the bilateral approach, while preserving Switzerland's independence and prosperity, was a key aspect of Swiss foreign policy. It considers the bilateral approach to be the most suitable instrument for safeguarding Switzerland's interests both within Europe and towards the EU – which is by far its biggest economic and trading partner. Today, almost 54% of all Switzerland's exports go to the EU and about 72% of all its imports come from the EU. The conclusion of an agreement on institutional issues is necessary to consolidate and further develop the bilateral approach.

In its conclusions on relations between the EU and Switzerland of February 2017, the Council of the EU

also stated that the conclusion of an agreement on institutional issues would be required for the further development of the bilateral approach. In its concluding remarks in 2012 and 2014 the Council of the EU had already stressed that an institutional framework would be required to continue mutual access for the EU and Switzerland to the markets in the sectors governed by the bilateral agreements.

Content

Institutional issues concern the following four areas:

- Legal developments: What procedure should be employed to adjust the agreements to new developments in the EU legislation that was integrated in the accords?
- Supervision: How can consistent supervision of the application of the bilateral agreements be ensured?
- Interpretation: How can the consistent interpretation of the bilateral agreements be ensured?
- Dispute settlement: What procedures should be used to settle disputes between Switzerland and the EU?

Negotiating mandate of the Federal Council

In December 2013, the Federal Council adopted a corresponding negotiating mandate on these institutional issues after consultations with the parliamentary foreign affairs committees and the cantons and informing the relevant social and economic partners. The negotiations started on 22 May 2014 after the EU had also adopted a negotiating mandate. Once concluded, the agreement will be submitted to Parliament for approval and the electorate in the event of a referendum.

The solution chosen by Switzerland does not entail the establishment of any new supranational institution. It is intended to ensure the consistent application of current legislation and also to maintain Switzerland's autonomy as non-member of the EU. The authorities of each party ensure the application of the agreements on their respective territory, while overall supervision is provided by the competent joint committee.

The consistent interpretation of EU law contained in these agreements will be ensured in compliance with the principles of public international law and the pertinent jurisprudence of the Court of Justice of the European Union (CJEU). The competence for resolving disputes will lie with the joint committees. If the competent joint committee is not able to resolve the dispute within the allotted timeframe, either party may request the institution of a special arbitration tribunal to regulate the dispute. Each party designates an arbitrator, and the two arbitrators jointly select a third, independent arbitrator. The tribunal may ask the CJEU for an interpretative decision on the EU legislation incorporated in the agreement. The decision of the arbitration tribunal will be final and binding on the two parties. If one of the parties fails to respect the outcome of the arbitration, the other party may take proportionate compensatory measures, including the suspension of all or part of the agreement concerned. The arbitration tribunal can also be called upon to rule on the proportionality of such compensatory measures.

The solution chosen will provide for a dynamic but not automatic adoption of EU law. As in the past, integra-

tion of any new EU law in a bilateral agreement will continue to be decided by Switzerland in full accordance with its domestic procedures (e.g. referendum). Switzerland will also receive certain rights of participation in the development of new EU legislation and will be included in this work at an early stage. Finally, the future agreement must not alter the aim, substance or scope of existing agreements between Switzerland and the EU.

In the interests of both sides

For the EU as well as for Switzerland, the renewal and consolidation of the bilateral approach is central. With respect to market access, it is in both sides' interests to find mechanisms to allow for a rapid adjustment to developments in the relevant EU legislation and the efficient settlement of disputes. The institutional agreement will guarantee legal security for both parties and their economic operators by ensuring homogeneous interpretation of the legislation in the Swiss-EU agreements. Indeed, problems with regard to the implementation of the agreements and delays in adjusting them to new developments in relevant EU law can create new obstacles to EU-market access and be discriminatory for economic operators.

Further information

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