

Basic Facts on the Framework of EU-Switzerland Relations



May 2021

Switzerland and the EU in a few figures

Switzerland and the EU are key economic partners:

- Trade exchanges amount to about €1 billion every working day.
- Switzerland is the EU's 4th largest trading partner after the China, U.S. and the UK. Switzerland accounts for 6.9% of the EU's exports and 5.7% of its imports.
- The EU is Switzerland's largest trading partner by far. The EU accounts for around 42% of Switzerland's exports in goods and for 50% of its imports (2020 figures).

A long relationship with Switzerland

1972

Free trade agreement

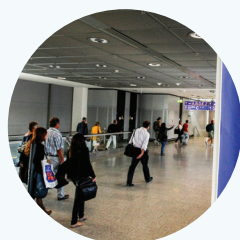
The foundation of EU-Swiss relations can be traced back to the Free Trade Agreement of 1972, which is still in force.

1999

Bilaterals I packages

Switzerland and the EU agreed on a package of seven sectoral agreements signed in 1999 (known in Switzerland as the "Bilaterals I" package).

These agreements notably cover:



Free movement of persons



Recognition of technical certificates



Public procurement



Trade in agricultural products



Civil aviation



Overland transport



Research

The seven agreements are legally linked by the so-called "**guillotine clause**", which stipulates that if one agreement is terminated, all the others will also cease to apply six months later.

“Bilaterals II” package

Further set of sectoral agreements signed, covering:



Switzerland’s participation in the Schengen and Dublin Agreements



Taxation of savings



Processed agricultural products



Education



Statistical cooperation



Participation in the EU Media Programme, the EU Environment Agency



The fight against fraud



Pension

In addition to these two “Bilaterals I & II” packages, a number of other agreements have been concluded since 2004, among which:

- 2004 Europol
- 2008 Eurojust
- 2012 Cooperation with the European Defence Agency EDA
- 2013 Cooperation between competition authorities (2013), Satellite navigation
- 2014 European Asylum Support Office EASO
- 2019 Police cooperation Prüm (2019)

Contribution to the cohesion policy

In February 2006, the EU signed a Memorandum of Understanding (MoU) with Switzerland concerning a financial contribution of 1 billion CHF over a period of five years to cohesion within the EU as a counterpart of Switzerland participating in the world’s largest market in the world, the EU single market. The implementation of the contribution should have started in 2006. However, due to the length of the approval process, it started only in June 2007. The contribution (deadline for commitments) expired in June 2012. The extension of the financial contribution to Bulgaria and Romania was agreed by an addendum to the MoU of 2008. In the case of these two Member States, the contribution expired in December 2014. In December 2014, Parliament approved the contribution of CHF 45 million to Croatia, which is the only country where projects will continue until 2024.

First in 2013 and again in 2019, Switzerland conditioned a future contribution to cohesion policy to the development of overall relations with the EU. This is unacceptable for the EU as the Swiss financial contribution is the counterpart of Switzerland’s access to the single market, which has continued since the last general contribution in 2012.



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Focus on some key agreements

Governance & Justice

In recent years, the EU and Switzerland have cooperated in pursuing **international standards of tax transparency and fair tax competition**.

In May 2015, they signed an [agreement](#) on the automatic exchange of information, which will significantly improve the fight against tax evasion.

Free movement of people

As part of the Bilateral I agreement, Switzerland and the EU concluded a deal on the [free movement of people](#). This gives citizens on each side the right to live and work in the EU or Switzerland, provided they have a job or other source of income.

- About 1.4 million EU citizens lived in Switzerland and around 400,000 Swiss lived in the EU in 2020.
- Another 343,809 EU citizens cross the border daily to work in Switzerland. The free movement of people is a centrepiece of EU-Swiss relations.
- Out of a total workforce of 5.1 million persons, some 25% - amounting to more than 1.28 million persons - are EU citizens (of which 343,809 are cross-border workers). (2020 figures)



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Research and Innovation (R&I)

Switzerland and the EU have a long tradition of successful cooperation in the field of R&I. Switzerland was fully associated with the EU's 7th Framework Programme for Research and Development. It is currently associated with the EU's:

- [Horizon 2020](#) research programme, and
- The [Fusion and Euratom programmes](#).



Education

Since 1992, more than 45,000 Swiss students have participated in the Erasmus mobility programme. Almost as many young Europeans have completed part of their studies at a Swiss university. To a lesser extent, apprentices and teachers also benefit from these exchange programmes.

| The negotiations on an Institutional Framework Agreement

Current situation

Despite deep economic and social integration, there are no overarching rules governing the Swiss participation in the EU's internal market.

There are currently more than 120 agreements between Switzerland and the European Union.

And yet, there are no common provisions ensuring a level playing field and proper dispute settlement, in this extraordinarily deep relationship. This gradually leads to a lack of legal homogeneity and uncertainty and ultimately to an unequal treatment of economic operators.

Ensuring a level playing field between the EU and Switzerland, with common rules and a referee, is the only way to protect and develop this mutually beneficial EU-Swiss relationship.

| Objectives of the Institutional Framework Agreement

- **Ensure a level playing field where Switzerland has access to the Single Market, in order to ensure the integrity and functioning of the EU's internal market and other activities.**
- Increase **legal certainty** and create **equal conditions** for the parties, their citizens and economic operators in the sectors of the internal market in which Switzerland participates, through:
 - A **level playing field, including on state aid,**
 - An effective **dispute settlement mechanism.**



Scope of the agreement

Five existing agreements providing Switzerland with participation in the EU internal market:

- Free Movement of Persons;
- Mutual Recognition Agreement;
- Air transport;
- Road and rail transport;
- Agricultural products.

as well as future market access agreements.



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Long negotiations

- The negotiations for an Institutional Framework Agreement started in 2014.
- The successive Presidents of the Commission spoke more than 20 times to four Swiss Confederation Presidents.
- A full draft text was agreed in November 2018 at political level.
- Yet, on 7 June 2019, the Federal Council informed the Commission that it could not agree on that draft text and required further “clarifications” on three issues: State aid, protection of the Swiss wages - the so-called “flanking measures”, and Freedom of movement of persons.
- The EU immediately offered to look at the **necessary clarifications**.
- After two years without progress, the discussions resumed in January 2021.

Provided that both sides show flexibility, the EU remains convinced that compromises can be found, paving the way to the conclusion of the Institutional Framework Agreement for the benefit of citizens in the EU and in Switzerland.

The EU’s door remains open for further discussion with a view to identify solutions to the three contentious points. It has formulated compromises, which go a long way towards the Swiss concerns.

In particular, the EU proposed:

On State aid: The Commission proposed to delete the contentious reference stipulating that the State aid rules defined by the Institutional Framework Agreement would be relevant to interpret the State aid provisions enshrined in the Free Trade Agreement. This is obviously without prejudice to its legal analysis based on the Vienna Convention, article 31, which allows a subsequent agreement to be used to interpret an existing agreement.

On the Swiss “flanking measures”: Protocol 1 annexed to the draft Institutional Framework Agreement explicitly allows to take account of the specificities of the Swiss labour market, and in particular **allows the Swiss flanking measures to remain in place**, as long as they are applied in a **proportionate and non-discriminatory manner**.

In particular, the draft Protocol:

- Limits the provision of services to 90 days (in line with the current agreement on the freedom of movement of people) - a rule which does not exist in the EU;
- Sets-up a pre-notification regime of 4 days, which does not exist in the EU;
- Sets-up a system of financial guarantees (in case of past breach), which does not exist in the EU either.

Beyond that, the Commission proposed to:

- Further adapt the **draft Protocol to the latest developments of the EU acquis in the field of posting of workers**, with the **inclusion**, among others, of the principle of “**equal pay for equal work in the same workplace**” as an essential element of the Institutional Framework Agreement.

- **Clarify the possibility for Switzerland to establish additional administrative and control measures** provided they are justified and proportionate and the freedom for Switzerland to determine the frequency and the organisation of controls, while respecting the principles of non-discrimination and proportionality.
- **Explicitly acknowledge the key role of social partners** in the determination of workers' remuneration.
- Make clear that Switzerland would **participate fully in the work of the European Labour Authority**.

Other amendments were proposed. What cannot be considered though, is a full “**immunization**” of the current – and future – Swiss system from future developments of EU law and European Court of Justice Jurisdiction. This would defeat the very purpose of the Institutional Framework Agreement - establishing homogenous and non-discriminatory legal frameworks.

On Freedom of movement of persons: There appear to be a number of misconceptions, too. The Institutional Framework Agreement does not foresee that Switzerland would have to take over the “EU citizenship” concept.

As Switzerland is not a Member State of the Union, the Commission:

- Proposed to **clarify that the concept of EU citizenship was not to be taken over by Switzerland**, as EU citizenship goes beyond free movement of persons.
- Clarified that the Free Movement of Persons Agreement is indeed about “**people**” at large and not limited to free movement of “**workers and their families**”. It is nothing new as this is already the case in current agreement between the EU and Switzerland on freedom of movement of people.
- Proposed to **go through the text line by line and build on the suis generis nature of the existing free movement** of people agreement to investigate whether some specificities can be taken into account in the Institutional Framework Agreement.

| Annex

Content of the Institutional Framework Agreement

Provisions contained in the agreement

ART. /TITLE	DESCRIPTION
1. Objectives	Legal certainty and uniform conditions on internal market, in which Switzerland participates
2. Scope	Five bilateral agreements: free movement of persons, air/land transport, mutual recognition, trade in agricultural products
3. Definitions	
4. Principle of uniform interpretation	Bilateral agreements and EU law mentioned need to be uniformly interpreted and applied, in line with jurisprudence of ECJ prior or posterior to signature of agreements
5. Integration of law	Dynamic updating of agreements within scope of Institutional Framework Agreement
6. Cooperation	Between EU institutions and Swiss authorities
7. Effective application of agreements	Both parties take measures to apply agreements in their territory, surveillance will be by both parties through sector committees
8. State aid	Framework of State aid rules to apply to existing agreement on air transport and future agreements
9. Exclusivity principle	Unique dispute settlement mode (of Art. 10)
10. Dispute settlement procedures	Dispute settlement through arbitration tribunal, which will refer cases to ECJ in cases involving concepts of EU Law for a preliminary binding ruling. Both parties can inform the AT if in their view ECJ should be involved, and the AT would have to motivate if deciding otherwise. If the losing party does not implement arbitration ruling, the winning party can impose compensation measures. These can be reviewed by the AT for their proportionality

ART. /TITLE	DESCRIPTION
11. Cooperation between jurisdictions	Dialogue between ECJ and Swiss Federal Court
12. Preparation of a legal act	Modalities of Involvement of Swiss experts in upstream preparatory work of legal acts by COM (decision-shaping)
13. Incorporation of a legal act	Procedure to include legal act in EU-Swiss agreement by sectoral Joint committee and entry into force date
14. Respect of Swiss constitutional obligations	Procedure in case of constitutional obligations (referendum) in Switzerland and (1 year) postponement of entry into force date
15. Horizontal Joint Committee	Objectives and mandate of the Horizontal Joint Committee
16. Joint Parliamentary Committee	Objective and set up of the Joint Parliamentary Committee
17. Primacy of the Agreement	The Institutional Framework Agreement prevails over sector agreements in case of conflict; however the Institutional Framework Agreement not intended to change scope, objective or material contents of the sector agreements
18. Implementation of the agreement	Parties need to ensure implementation of the agreement
19. Protocols	Protocols are integral part of Agreement
20. Territorial application	Territory of EU and Switzerland (Standard clause)
21. Revision	Procedures for revision (Standard clause)
22. Entry into force and denunciation	Dates and procedures if the Institutional Framework Agreement is terminated
Annex on State aid	Horizontal State aid control guidelines applicable to the Aviation agreement
Protocol 1	Rules (adaptations) to take account of Swiss specificities regarding flanking measures
Protocol 2	Rules (adaptations) to take account of Swiss specificities on social security, transport and food safety
Protocol on arbitration	This protocol outlines the procedures to be followed in case of dispute
Joint Declaration on the modernization of the trading relationship	Political agreement to start negotiations on the new trade relationship, including definition of the areas concerned and the relationship of the future agreement with the Institutional Framework Agreement
Joint Declaration on cohesion	Political agreement to have an autonomously decided, regular Swiss contribution, in coherence with EU programmes – which follow a multiannual programming cycle, recognizing the link with the Swiss access to the internal market
Free Trade Agreement Joint Committee decision	Decision of the Free Trade Agreement Joint committee to agree on the possible interpretation of the State aid provisions included in the Free Trade Agreement in the light of the Institutional Framework Agreement, if both parties agree, and enable the use of the Institutional Framework Agreement dispute resolution mechanism

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