

FACT SHEET: INSTITUTIONAL FRAMEWORK AGREEMENT

**→ INSTITUTIONAL
FRAMEWORK AGREEMENT
SWITZERLAND-EU:
Supported by Swiss business
– further clarifications and
roadmap needed**

Executive Summary

Since 2014, Switzerland and the EU have been negotiating an agreement on institutional matters, aimed at ensuring a more uniform and efficient application of existing and future market access agreements. On 7 December 2018 the Federal Council decided to launch a broad consultation on the negotiated text at national level.

The proposal for the Institutional Framework Agreement (InstA, hereafter institutional agreement) between the EU and Switzerland encompasses the current five market access agreements on the free movement of persons, civil aviation, overland transport, agriculture and technical barriers to trade. Additionally, all future market access agreements would fall within the framework. Therefore, as important the institutional agreement is for business, it is however still limited in its scope to a small amount of the overall 140 bilateral agreements.

The draft institutional agreement consists of the following parts:

- The actual agreement (Article 1 to 22)
- **Annex X** with sector-specific provisions on state subsidies concerning the Agreement on Air Transport
- **Protocol 1** with provisions to account for the specificities of the Swiss labour market (accompanying measures)
- **Protocol 2** with exceptions to account for existing special arrangements for the free movement of persons (including social security), overland transport and trade in agricultural products
- **Protocol 3** on the composition, competence and operation of the arbitration panel
- Three **declarations** on the modernisation of the Free Trade Agreement of 1972, the Swiss enlargement contribution and the provisions on state subsidies concerning the Agreement on Air Transport.

Annex X as well as the protocols are an integral part of the institutional agreement. The declarations on the other hand are mainly politically relevant.

Under the institutional agreement, Switzerland is obliged to adopt developments in EU law that concern the market access agreements into Swiss national law. Furthermore, the institutional agreement establishes an arbitration panel to whom disagreements over interpretation or the adoption of EU law can be referred.

The EU continues to guarantee Switzerland certain exemptions from EU law that are already part of the existing agreements.

The parties were unable to agree on the adoption of the EU's Citizens' Rights Directive (CRD). The EU wants Switzerland to adopt the directive, Switzerland wants it to be exempt from the duty of dynamic adoption. Furthermore, the effect of the European directives on the posting of workers worries Switzerland, especially regarding the social partners' autonomy of collective bargaining.

The EU has already announced that without this institutional agreement, no new agreements with Switzerland would be concluded nor any existing agreements updated. As a result, Swiss companies could lose their access to the European internal market.

According to *economiesuisse* the institutional agreement should achieve three main goals:

1. The current degree of economic integration in the European single market must be secured.
2. The option for future advancement of the bilateral approach with new agreements must remain open.
3. Legal certainty must be improved.

As in any negotiation process, compromise is needed. Therefore, an evaluation of the present proposal should not only address the achievement of the objectives but also be transparent about the concessions Switzerland would have to make.

The consultation in Switzerland is happening at an exceptional time. Brexit is not only creating uncertainty but is also a historical break in the history of European integration.

Position *economiesuisse* regarding consultation

In this consultation the following points are essential for *economiesuisse*:

- Considering the substantial economic importance of the bilateral agreements for Switzerland, the domestic discourse should focus on the holistic national and economic interests.
- The following issues are central: The degree of achievement of our goals, the concessions in the negotiations as well as the development of the European internal market need to be included.
- There needs to be a fact-based discussion based on the present proposal. The time for “phantom discussions” is over.

Preliminary conclusions

Overall, the outcome of the negotiations corresponds with the negotiating mandate - except regarding the Agreement on the Free Movement of Persons (AFMP). However, the impact of the Citizens' Rights Directive on current Swiss law may be overestimated. On closer inspection, the differences between the European directives on the posting of workers and Swiss legislation are smaller than previously assumed. Considering the limited importance of posted workers in Switzerland and based on a multitude of studies, a slump of the Swiss wage level is unlikely.

Regarding the dynamic adoption of EU legislation, it is important to ensure that Switzerland must only adopt legislation that falls under the covered market access agreements and not legislation that has nothing to do with the core content of the agreements. In addition, Switzerland must be careful only to adopt legislation that is relevant for the participation in the EU internal market and exclude legislation outside of this realm (e.g. police and justice matters and legislation that concerns the relationship between Switzerland and a third country).

Position of economiesuisse regarding the draft institutional agreement

economiesuisse, in principle, supports the conclusion of an institutional agreement with the EU based on the existing draft text.

However, economiesuisse also requests certain clarifications by the Federal Council prior to a final decision. These clarifications will also contribute to a more objective domestic debate:

- A clarification, that only EU-acquis with specific reference to the internal market, lying within the scope of the covered market access agreements, falls under the duty of dynamic adoption by Switzerland. This is particularly important in reference to a future Swiss adoption of the Citizens' Rights Directive.
- A detailed analysis of the impact of the principles on state aid embedded in the institutional agreement on Swiss subsidy law and the Swiss federal system, particularly considering a possible future affiliation of the FTA in the framework.
- A clarification, that the system of parity control (supervision and enforcement authority) of the Swiss social partners can be retained, respectively, will not be restricted by the European Posted Workers Directive nor the Enforcement Directive.
- A roadmap allowing both parties to proceed with negotiations on future market access agreements such as the electricity agreement between Switzerland and the EU, unlimited adequacy recognition of the Swiss stock market regulation or Horizon Europe and thereby strengthening the bilateral path.

Additional Information

- [economiesuisse publication on the Institutional Framework Agreement Switzerland-EU \(full version only available in German and French\)](https://www.economiesuisse.ch/de/dossier-politik/institutionelles-abkommen-schweiz-eu-fragestellungen-und-einordnung)
<https://www.economiesuisse.ch/de/dossier-politik/institutionelles-abkommen-schweiz-eu-fragestellungen-und-einordnung>
<https://www.economiesuisse.ch/fr/dossier-politique/accord-institutionnel-suisse-ue-questions-et-clarifications>
- [Articles and publications regarding Switzerland's policy on Europe \(full version only available in German and French\)](https://www.economiesuisse.ch/de/schwerpunkte/europapolitik)
<https://www.economiesuisse.ch/de/schwerpunkte/europapolitik>
<https://www.economiesuisse.ch/fr/focus/politique-europeenne>
- [Draft text of the institutional agreement \(only available in German, French and Italian\)](https://www.eda.admin.ch/dea/de/home/verhandlungen-offene-themen/verhandlungen/institutionelle-fragen.html)
<https://www.eda.admin.ch/dea/de/home/verhandlungen-offene-themen/verhandlungen/institutionelle-fragen.html>
- [Fact sheet on the Institutional Framework Agreement Switzerland-EU by the Federal Department of Foreign Affairs, Directorate of European Affairs](https://www.eda.admin.ch/dam/dea/en/documents/fs/11-FS-Institutionelle-Fragen_en.pdf)
https://www.eda.admin.ch/dam/dea/en/documents/fs/11-FS-Institutionelle-Fragen_en.pdf
- [full list of relevant literature and studies concerning immigration to Switzerland with regard to the labour market, published by the State Secretary of Economic Affairs \(Seco\) \(only available in German\):](https://www.seco.admin.ch/dam/seco/de/dokumente/Arbeit/Personenfreizuegigkeit/Observatorium/literaturliste_observatoire.pdf.download.pdf/Literatur%20Observatoire%20d.pdf)
https://www.seco.admin.ch/dam/seco/de/dokumente/Arbeit/Personenfreizuegigkeit/Observatorium/literaturliste_observatoire.pdf.download.pdf/Literatur%20Observatoire%20d.pdf

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