



# Switzerland's European policy

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Switzerland is located in the heart of Europe and is surrounded almost entirely by member states of the European Union (EU). In view of its geographic and cultural proximity and particularly due to its political and economic importance, the EU with its 28 member states is by far Switzerland's most important partner. Switzerland is also one of the EU's major partners, which is why a concerted, target-oriented policy with regard to the country's interests in the EU is essential for Switzerland's prosperity. Switzerland is not a member state of the EU; instead, it conducts its relations with the EU on the basis of bilateral sectoral agreements. Since the Free Trade Agreement of 1972, an increasingly dense network of agreements has been developed in several steps. The bilateral approach allows Switzerland to pursue tailor-made policies with regard to its European neighbours. The approach has been endorsed by the Swiss electorate in various referendums. Strengthening and further developing this bilateral approach and the possible conclusion of new market access agreements with the EU is vital for Switzerland. To continue to develop the bilateral approach in this way, clarification of Switzerland's institutional relationship with the EU is necessary. Until November 2018, Switzerland and the EU negotiated an institutional agreement. In the spring of 2019, the Federal Council held consultations with major stakeholder on the draft document. At its meeting of 7 June 2019, the Federal Council approved the report on these consultations and decided to demand clarifications.

## Chronology

- 2019 Signing of the Agreement on the participation in the area of police cooperation (Prüm Decision)
- 2017 Signing of the Agreement between Switzerland and the EU on the linking of their emissions trading systems
- 2017 Full association of Switzerland in «Horizon 2020»
- 2016 Decision by Parliament on the implementation of Art. 121a Cst
- 2016 Signing of Protocol III extending the free movement of persons to Croatia
- 2015 Signing of the Agreement on the Automatic Exchange of Information in Tax Matters
- 2014 Signing of the EASO participation agreement (European Asylum Support Office)
- 2014 Adoption of the federal popular initiative «Stop Mass Immigration»
- 2013 Adoption by the Federal Council of a mandate to negotiate an Agreement on institutional matters
- 2013 Signing of the Satellite Navigation Cooperation Agreement
- 2013 Signing of the Agreement on Competition
- 2012 Signing of the Agreement on the European Defence Agency
- 2010 Signing of the Agreement on Education, Training and Youth
- 2009 Continuation of the free movement of persons and extension to Romania and Bulgaria
- 2008 Signing of the Agreement with Eurojust
- 2006 Adoption by the Swiss electorate of the Federal Act on Cooperation with the Countries of Eastern Europe
- 2005 Extension of the free movement of persons to the EU10
- 2004 Signing of the Agreement with Europol
- 2004 Signing of Bilateral Agreements II (Schengen/Dublin, taxation of savings income, combating fraud, processed agricultural products, environment, statistics, MEDIA programme, pensions)
- 1999 Signing of Bilateral Agreements I (free movement of persons, technical barriers to trade, public procurement, agriculture, overland transport, civil aviation, research)
- 1992 Rejection of EEA membership by the Swiss electorate
- 1990 Signing of the Agreement on Customs Facilitation and Security
- 1989 Signing of the Insurance Agreement
- 1972 Signing of the Switzerland–EU Free Trade Agreement

## Context

In view of its close and wide-ranging ties with the European Union, Switzerland has adopted an approach based on an array of bilateral agreements in clearly defined areas: the bilateral approach. This pragmatic step-by-step approach has made it possible to devise tailor-made, contractual solutions to a wide range of economic and political questions. The agreements not only provide both parties with extensive market access, they are also a basis for close cooperation in key policy areas. The bilateral approach enables Switzerland to adopt a policy based on openness and close cooperation with its European neighbours.

The objective of Switzerland's EU policy is to create the best possible basis for relations with the EU. It is with this in mind that Switzerland and the EU (and predecessor organisations) have continuously developed and consolidated their network of bilateral agreements over the decades. Altogether around 20 main agreements plus a large number of secondary agreements have been concluded in various stages. This bilateral approach has been approved at regular intervals by the Swiss electorate in a series of referendums.

### **Origins of the bilateral approach**

The basis for economic relations was laid in 1972 with the Free Trade Agreement, which was approved by 72.5% of the Swiss electorate as well as by a majority of the Swiss cantons. This was followed by the Insurance Agreement in 1989 and the Agreement on the Carriage of Goods in 1990, which was replaced by the expanded Agreement on Customs Facilitation and Security signed in 2009.

Switzerland, together with the other members of EFTA, negotiated the creation of the European Economic Area (EEA) with the forerunner of the EU, the European Community (EC), on the basis of the following four fundamental freedoms: freedom of movement of persons, goods, capital and services. Switzerland signed the corresponding EEA Agreement in May 1992 and in the same month submitted a request in Brussels to begin negotiations for membership of the EC. However, following the rejection of the EEA Agreement by the Swiss electorate and cantons on 6 December 1992, this application was put on hold. In January 1993, the Federal Council announced that Switzerland would not start negotiations on membership of the EC and wished instead to pursue its relations with the Community on a bilateral basis. This led to the negotiation and conclusion of the two packages of bilateral agreements (Bilateral Agreements I and II) as well as further agreements.

#### **Bilateral agreements until 1999**

- Free Trade Agreement (FTA), 1972
- Insurance Agreement, 1989
- Agreement on Customs Facilitation and Security, 1990

### **Bilateral Agreements I**

Participation in the EEA would have put Switzerland on the road to full economic integration and thus given it access to the European internal market on an equal footing with EU member states. When the electorate rejected EEA membership, the Federal Council decided to launch negotiations with the EU on a sector-by-sector basis to ensure that Swiss companies would not be at a disadvantage in key economic sectors. At the end of 1993, the EU declared itself ready for negotiations in seven sectors on condition that the negotiations be conducted in parallel and that they be signed and take effect together (parallelism). The EU set this condition because it considered that the different dossiers would only be in the interest of both partners if they were adopted as a single package. The agreements were therefore linked in legal terms by a 'guillotine clause', stipulating that they could only take effect together. If one of the agreements were not to be renewed or if it were terminated, the others would also cease to have effect.

On 21 June 1999, Bern and Brussels signed the seven bilateral (sectoral) agreements. This package of agreements known as Bilateral Agreements I was approved by 67.2% of the Swiss electorate on 21 May 2000 and came into force on 1 June 2002. Together with the Free Trade Agreement, they make it possible for the Swiss private sector to have extensive access to the single European market of more than 507 million potential consumers.

The **Bilateral Agreements I (1999)** are – with the exception of the Research Agreement – conventional market access agreements:

- Free movement of persons
- Technical barriers to trade (Mutual Recognition Agreement–MRA)
- Public procurement markets
- Agriculture
- Overland transport
- Civil aviation
- Research

### **Bilateral Agreements II**

The second round of agreements, Bilateral Agreements II, considered further economic interests, such as the food industry, tourism, and the financial centre. It extended cooperation between Switzerland and the EU

beyond economic affairs to important new political areas including internal security, asylum, the environment and cultural affairs.

Although the final acts of the first package of bilateral agreements of 1999 stated both parties' intent to continue negotiations, the European Commission was at first sceptical about further negotiations of this kind. Two new matters of particular concern to the EU provided Brussels with the impetus for a new round of negotiations with Switzerland. The first was that the EU hoped to include Switzerland in a planned system of cross-border taxation of savings income. Secondly, Brussels wished to cooperate with Switzerland in stepped-up efforts to combat fraud in relation to indirect taxes, notably with regard to tobacco smuggling.

Switzerland agreed to negotiate on these issues under the condition that the negotiations would also include areas of special interest to Switzerland in addition to the two requested by Brussels. These included cooperation in the areas of security and asylum, with Swiss participation in Schengen/Dublin (cooperation in police and justice, asylum and migration matters), and areas mentioned in the joint declaration of intent in the Bilateral Agreements I (processed agricultural products, statistics, the environment, the MEDIA programme, education, pensions and services).

Negotiations between Switzerland and the EU began in June 2002 in the ten dossiers that make up the Bilateral Agreements II. In March 2003, both parties agreed to suspend negotiations on the liberalisation of services, due to a large number of questions that remained unresolved. Agreement at the political level in June 2003 on the taxation of savings income was a major milestone in the negotiations. On 19 May 2004 at a Switzerland-EU summit meeting, agreement was announced on the remaining politically sensitive areas concerned with the question of exchanging information on tax-related offences in the framework of judicial and administrative cooperation.

- With regard to Schengen/Dublin, Switzerland received an open-ended opt-out for the event that a future Schengen regulation should give rise to an obligation on Switzerland to provide legal assistance also in cases of tax evasion.
- Insofar as efforts to combat fraud are concerned, Switzerland extended cooperation in the area of indirect taxes to tax evasion offences (national treatment).

Throughout the entire period of the negotiations, Switzerland observed the principle of parallelism: as far as Bern was concerned, the package of agreements had to be accepted as a whole. Among other things this approach ensured that a balanced overall result would be achieved that would take into account both the essential

interests of Switzerland and the concerns of the EU. As Switzerland desired, all the agreements including Schengen/Dublin were approved as a package. Switzerland also agreed to cooperate with the EU in the area of cross-border taxation of savings and extended cooperation to efforts to combat fraud in relation to indirect taxes.

The **Bilateral Agreements II (2004)** extended Switzerland's cooperation with the EU to other key policy areas:

- Schengen/Dublin
- Automatic exchange of information (AEOI)
- Combating fraud
- Processed agricultural products
- Environment
- Statistics
- MEDIA programme (Creative Europe)
- Pensions
- Education

The Bilateral Agreements II were signed on 26 October 2004 and approved by the Swiss Parliament on 17 December 2004 in the form of individual federal decrees. Although seven of the agreements were subject to an optional referendum, only one was held – on the Schengen/Dublin Association Agreement. This was approved by 54.6% of the Swiss electorate on 5 June 2005. In contrast to the Bilateral Agreements I, the second package of agreements are not legally tied to each other; each can take effect independently in accordance with the relevant provisions. All but the Agreement on Combating Fraud are now in force. On 1 March 2008, the Schengen/Dublin Association Agreements formally came into effect. Participation at the operational level began on 12 December 2008 following completion of an evaluation process by teams of Schengen experts to ensure that Swiss standards met Schengen criteria in the areas of external border protection, connection with the Europe-wide electronic database (Schengen Information System, SIS), data protection, visas and police cooperation. The association process was completed on 29 March 2009, enabling Swiss airports to implement the Schengen regulations alongside the new summer timetable.

#### **Bilateral agreements from 2004 onwards**

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

#### **Economic importance**

The Bilateral Agreements I (1999) complemented the Free Trade Agreement of 1972 by means of a gradual controlled mutual opening of markets. This put the relations between these two important trading partners on a broader footing. Both partners benefited from the dismantling of barriers to trade. Eased trade conditions

and stronger competition resulted in increased growth, leading to greater job security as well as job creation.

The positive economic impact of these sector agreements is recognised today. Various studies on the bilateral agreements (incl. the 2015 SECO report on the economic consequences of the discontinuation of Bilateral Agreements I) show that a discontinuation of these agreements would result in much weaker economic growth in Switzerland. There would also be other drawbacks, such as a loss of legal certainty, and Switzerland would be less able to attract investment and skills. Particularly important for the economy are the free movement of persons, the removal of technical barriers to trade and public procurement.

The importance of the bilateral agreements has further increased as a result of their extension to the Eastern European growth markets of the new EU states.

The economic advantages can be summed up as follows:

- Swiss companies now find new business opportunities in markets that were formerly closed to them, notably with regard to certain agricultural products, civil aviation, overland transport and public procurement. It is now easier for Swiss companies active in these sectors to penetrate the European markets and to benefit from the potential economies of scale. For example, Swiss suppliers are able to compete under the same conditions as their European competitors in public procurement markets, including for municipal utility services, waste disposal and transport infrastructure – sectors where Central and Eastern Europe has a great need to modernise and in which the EU will continue to provide substantial financial assistance in the years to come.
- Foreign suppliers have also gained free access to the Swiss market, which has tended to increase competition in the sectors concerned, providing incentives for increased productivity.
- Direct savings have been possible in relation to the already liberalised trade in goods due to the simplification of rules for product approval (dismantling technical barriers to trade). Testing whether products destined for the entire European market comply with the regulations in force (conformity assessment) is now carried out by only one certification body, either in Switzerland or in the EU.
- The free movement of persons has had the biggest economic impact, making it easier to transfer Swiss staff to positions in the EU states, and also to recruit workers for the Swiss labour market. Thanks to the Agreement on the Free Movement of Persons, the Swiss labour market effectively includes the entire area of the EU and EFTA. Conditions that simplify the international mobility of labour have resulted in a

more efficient use of resources, making it easier for Swiss businesses to hire suitably qualified staff. This reduces the risk of staff shortages and excessive wage levels. This is all the more important since, for demographic reasons, the Swiss work force is likely to diminish in the medium term. The new arrangement will help raise productivity and gross domestic product (GDP), keeping the Swiss labour market attractive over the long term.

The second series of bilateral agreements, Bilateral Agreements II (2004), extended cooperation to important policy areas such as internal security, asylum, the environment and cultural affairs. Only the Agreement on Processed Agricultural Products, which facilitates

#### Switzerland-EU: key economic data

With the accession of Bulgaria, Romania and Croatia to the EU, the population of the single European market increased to over 512 million people, making it an even more important economic partner for Switzerland. Two thirds of Switzerland's foreign trade is with the EU.

Some 52% of Swiss exports (2018: approx. CHF 121 billion) are destined for the EU, while 70% of Swiss imports come from the EU (2018: CHF 142 billion). The EU is therefore Switzerland's most important trading partner by far, while Switzerland is among the EU's top three trading partners, alongside the United States and China (2018).

The EU is also the most important partner when it comes to direct investment. About 78% of foreign direct investment in Switzerland originates in the EU (2017: approx. CHF 824 billion). Conversely, approximately 51% of Swiss direct investment abroad flows into the EU (2017: approx. CHF 626 billion).

Switzerland also has close ties with the EU when it comes to employment. At the end of 2018, more than 457,898 Swiss nationals were living and working in the EU, while 1.4 million EU 28/EFTA citizens were living in Switzerland. In addition, more than 315,000 people from EU/EFTA countries commute across the border daily.

(Sources: Federal Customs Administration (FCA), Federal Statistical Office (FSO) and Swiss National Bank (SNB))

exports for the food industry, is a market liberalisation measure comparable to those of Bilateral Agreements I. The Bilateral Agreements II do, however, cover economic interests in certain areas, such as:

- the interests of the financial sector (AEOL, efforts to combat fraud)
- strengthening of Switzerland's position as a tourist destination with the introduction of the Schengen visa
- facilitation of cross-border traffic by removing the need for systematic border controls (Schengen)
- tax advantages for internationally active Swiss companies, which receive tax relief through the adoption of the parent-subsidiary directive (AEOL)

### **Legal and institutional framework**

All of these agreements are based on a classic form of cooperation between governments, i.e. the conclusion of the agreements by the states parties did not involve the transfer of any legal or decision-making authority to a supranational body. Each of the parties is responsible for implementing the agreements on its own sovereign territory. An exception is observance of the competition rules in the area of civil aviation, the supervision and implementation of which is in the hands of the European Commission and the Court of Justice of the EU, except in the case of state subsidies.

The bilateral agreements are based either on the equivalence of legislation, as in the case of the agreement dismantling technical barriers to trade and the agreement on public procurement markets, or on the (literal) adoption of the «acquis communautaire», as in the case of the Civil Aviation Agreement and Schengen/Dublin. The cooperation agreements regulate cooperation in the framework of EU programmes and agencies.

The agreements and their further development are administered by joint committees in which both parties to the contract are represented with equal rights. They see to the proper functioning of the agreements and serve as platforms for information exchange, for advice, as well as for mutual consultations. The parties also can turn to these committees when there are differences of opinion. In the joint committees, the two parties must reach a unanimous decision. However, they have power of decision only where expressly stated in the agreements. On the Swiss side, it is the Federal Council which has the power of decision, based on a delegation of responsibilities by Parliament. For instance, the joint committees can decide on changes in appendices to the agreements insofar as these are of a technical nature (e.g. lists of laws or authorities or products). Changes in the provisions of the agreements themselves and in particular the introduction of new obligations on the parties must be approved via the appropriate internal procedures of the parties.

The joint committees for the Schengen/Dublin Association Agreement are of a special kind in that they perform two different tasks: overseeing the proper functioning of the agreements, and helping to further develop the existing Schengen/Dublin legislation. The joint committees meet at various levels to perform these two functions: at expert level, at the level of high-ranking officials, and finally at ministerial level.

The bilateral agreements can be amended only with the joint agreement of the parties and are not subject to automatic amendment. Since the agreements are based on the equivalence of the laws on both sides, it is in the

interest of both parties to maintain this equivalence when there are developments in the law. It is generally necessary to adopt developments of relevant EU law in order to guarantee equal competitive conditions (e.g. avoidance of technical barriers to trade). On top of this, there are other reasons such as an interest in equal standards in certain areas, e.g. security, health and the environment. Procedures for information exchange and consultation have been set up for cases where one of the parties plans to change certain legal requirements in the area of application of the agreements.

#### **Switzerland's contribution**

Since 2007, Switzerland has contributed CHF 1.302 billion to numerous projects to reduce the economic and social disparities within the enlarged EU. The partner states of the enlargement contribution are the thirteen countries that have acceded to the EU since 2004. All projects under the enlargement contribution for the EU10 (those countries that joined the EU in 2004) were successfully completed by the end of 2017 following a ten-year planning and implementation phase. In Romania and Bulgaria the implementation phase will continue until December 2019; in Croatia it will continue until the end of 2024.

Switzerland's contribution is not part of the EU's cohesion policy. Implementation is carried out bilaterally between Switzerland and the partner state in question. Switzerland's contribution is an investment in Europe's security, stability and prosperity and is thus in Switzerland's national interest. By focusing on vocational education and training and on migration, Switzerland can help to address challenges Europe is currently facing – challenges which also affect our country.

On 28 September 2018, the Federal Council approved the dispatch on a second contribution to selected EU member states in response to broadly positive feedback received at the consultation stage. The Federal Council aims to leverage Swiss expertise to reduce economic and social disparities and to manage migration better in selected EU member states. In 2017, the Federal Council already set the two priorities for Switzerland's contribution: vocational education and training, and migration. As with the enlargement contribution, a total of CHF 1.302 billion has been earmarked by the Federal Council for the second contribution. CHF 1.102 billion has been earmarked to strengthen cohesion within the EU-13 countries, in particular in the priority area of vocational education and training. CHF 200 million will be used for migration-related measures, including in EU countries outside the EU-13 which are particularly affected by migration movements. The final decision to approve the corresponding framework credits lies with Parliament.

The legal basis for the Swiss contribution in the area of cohesion is the Federal Act on Cooperation with the States of Eastern Europe, which was renewed by Parliament on 30 September 2016 and has been in force since 1 June 2017. The legal basis for the migration focus of the second Swiss contribution is the Asylum Act.

Following accession to the EU of ten new states on 1 May 2004, of Bulgaria and Romania on 1 January 2007, and Croatia on 1 July 2013, the bilateral agreements have been extended to include these new EU states. In adopting the body of EU law, these states also adopt the EU's international agreements with third countries, including those with Switzerland. Extension of the bilateral agreements to new EU member states does not therefore

entail renegotiation, with the exception of the Agreement on the Free Movement of Persons. This is a 'mixed agreement', to which each member state is also a party in addition to the EU; the agreement thus has to be adapted to each new state party through additional negotiations.

In entering into an institutional agreement (InstA), the Federal Council aims to consolidate Switzerland's bilateral approach, specifically to ensure continued access to the single market and facilitate further development. In the context of the negotiations surrounding the institutional issues, since 2014 Switzerland and the EU have been setting out mechanisms to ensure that the agreements on market access are applied more consistently and efficiently now and in the future. The Federal Council adopted the negotiating mandate for institutional issues on 18 December 2013; the EU Ministerial Council adopted its mandate on 6 May 2014. The two parties conducted negotiations from 22 May 2014 until 7 December 2018.

In its conclusions on relations between the EU and Switzerland, the Council of the European Union stated in February 2017 that an agreement regulating institutional matters would be necessary to continue to develop the bilateral approach. In its conclusions of 2012 and 2014, the Council had already emphasised that an institutional framework was a precondition to ensure the continuation of mutual market access. As long as there is no consensus between Switzerland and the EU on how to regulate their bilateral relations and the institutional issues surrounding the consolidation and further development of mutual market access, new market access agreements cannot be contemplated.

### **State of play**

The Federal Council has emphasised repeatedly the social and economic importance of the bilateral approach, which allows Switzerland to prosper while maintaining its independence. The Federal Council aims to maintain and build on this relationship, particularly in regard to market access. Switzerland and the EU have negotiated since 2014 an agreement on institutional issues to ensure that the agreements on market access are applied more consistently and efficiently now and in the future. At its meeting on 7 December 2018, the Federal Council took note of the conclusion of negotiations and decided to send the negotiated text for con-

As a European nation, Switzerland shoulders its share of responsibility for security and prosperity on the continent. It does so by making **commitments that go beyond its contractual relations with the EU:**

- Switzerland is a member of the Council of Europe, the European Free Trade Association (EFTA) and the Organization for Security and Co-operation in Europe (OSCE).
- Switzerland participates through the UN, the EU and the OSCE in military and civilian peacebuilding efforts in the Balkans.
- Since 1990, Switzerland has provided substantial transition support for reforms in the former communist states of Central and Eastern Europe amounting to CHF 5.6 billion.
- Finally, as a transit country, Switzerland is making a major contribution to the proper functioning of the single European market with the completion of the New Rail Link through the Alps (NRLA), which ensures the transportation of goods and passengers between the north and south of Europe in a way that is both economically efficient and environmentally sustainable.

sultation to Parliament's foreign affairs committees, the cantons, the political parties, the social partners and other stakeholders. The Federal Council approved the report on these consultations at its meeting of 7 June 2019. He considers the draft as broadly in the interest of Switzerland but wants to clarify certain points.

### **Switzerland–UK relations post Brexit**

The United Kingdom is an important partner for Switzerland, economically, politically and in terms of migration. At present, relations between Switzerland and the UK are largely based on the bilateral agreements with the European Union, which will cease to apply to the UK after its withdrawal from the EU (possibly after a transition period). Switzerland wishes to ensure that its close relationship with the UK, based on existing mutual rights and obligations, will be maintained as far as possible after the UK leaves the EU and expanded where necessary ('Mind the gap' strategy). To this end, Switzerland has entered into a series of new agreements with the UK in relation to trade, migration, road and air transport and insurance.

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Directorate for European Affairs DEA  
Tel. +41 58 462 22 22, [europa@eda.admin.ch](mailto:europa@eda.admin.ch)  
[www.fdfa.admin.ch/europe\\_en](http://www.fdfa.admin.ch/europe_en)