



Annex to institutional agreement press release: outcome of talks between Switzerland and the EU on Citizens' Rights Directive (CRD), wage protection and state aid issues

Background

On 23 November 2018, the EU informed Switzerland that it considered negotiations on the draft institutional agreement to have been concluded. In line with its negotiating mandate from 2013, the Federal Council wanted to safeguard the accompanying measures for the future and rule out any requirement for the CRD to be incorporated into the Agreement on the Free Movement of Persons (AFMP) – issues not covered by the draft institutional agreement (InstA) of November 2018. As a result, the Federal Council did not sign the draft agreement, but undertook consultations with the parliamentary foreign affairs committees, the cantons, political parties, social partners and other stakeholders.

The extensive consultations in spring 2019 allowed policymakers and businesses in Switzerland to express their interests and concerns, prompting a wide-ranging debate on the benefits and drawbacks of the InstA for Switzerland. The consultations revealed three issues requiring further clarification and legal certainty for Switzerland: wage protection, the CRD and state aid. In a letter dated 7 June 2019, the Federal Council asked the European Commission for clarification of these issues. On 11 November 2020, the Federal Council set out the three objectives it hoped to achieve through the clarification process:

- **CRD:** obtain explicit assurance that the CRD will not be incorporated in full into the Agreement on the Free Movement of Persons between Switzerland and the EU (AFMP) and that only the provisions allowing freedom of movement for workers and their family members will be incorporated into the AFMP.
- **Accompanying measures:** preserve the protective effect of the current accompanying measures, including the dual enforcement system currently in effect, notwithstanding any changes in EU law and the case law of the Court of Justice of the European Union (CJEU).
- **State aid:** ensure that the state aid provisions of the draft InstA have no horizontal effects extending beyond the issues covered by the InstA, for example in relation to the 1972 free trade agreement (FTA), before the FTA can be updated as necessary.

Outcome of talks with the EU

Switzerland and the EU have conducted six rounds of talks on the three issues requiring clarification, as set out above. Substantive, focused and thorough discussions were held. The parties also exchanged documents setting out their respective positions and specific recommendations for clarification. Switzerland always responded clearly to specific proposals put forward by the EU. FDFA State Secretary Livia Leu was accompanied by SEM State Secretary Mario Gattiker at meetings concerning the CRD and by SECO State Secretary Marie-Gabrielle Ineichen-Fleisch at meetings to discuss the accompanying measures and state aid.

- Switzerland and the EU have fundamentally diverging views on the **Citizens' Rights Directive**. As a non-EU member state, Switzerland believes that freedom of movement under the AFMP should be restricted to workers and their family members and that rights (e.g. the right of residence) should only be conferred on economically inactive individuals who can provide evidence of adequate financial resources. On the contrary, in adopting the Citizens' Rights Directive, the EU has extended freedom of movement and linked this to the concept of EU citizenship. This change has reinforced free movement rights for EU citizens and created new rights ensuring greater mobility and cohesion within the EU. In terms of the potential incorporation of the CRD into the AFMP, the EU has shown no inclination to grant exemptions to Switzerland in areas that from a Swiss standpoint extend beyond free movement for workers.
- With regard to the **accompanying measures**, both Switzerland and the EU apply the principle of 'equal pay for equal work'. However, there are significant differences in how Switzerland and the EU interpret this: Switzerland takes the view that the principle primarily serves to protect workers, whereas for the EU protecting the job market against any distortions in competition is also of major importance. The EU has responded to each of Switzerland's concerns by putting forward specific counterproposals, although these are solely a reflection of applicable EU law. The EU is, however, unwilling to agree to the clarifications sought by Switzerland, i.e. preserving the accompanying measures currently in effect notwithstanding any changes in EU law and CJEU case law.

In relation to both issues (CRD and accompanying measures), the EU has stated that it cannot agree to any significant narrowing of free movement under the InstA. While Switzerland seeks to safeguard key interests by limiting freedom of movement, as far as the EU is concerned, the real added value of the InstA lies in the dynamic adoption of legislation in relation to free movement.

- In terms of **state aid**, the EU was to some extent open to clarifying that the InstA would not have advance horizontal effects, for example on the Swiss–EU FTA, subject to the condition that solutions could be found for the accompanying measures and CRD.