



# Swiss–UK relations post Brexit

August 2021

The United Kingdom formally left the European Union on 31 January 2020. On 1 January 2021, following the end of the transition period, the UK also departed from the EU single market and the customs union. Relations between the EU and the UK are now governed by the Trade and Cooperation Agreement signed on 30 December 2020. This means that EU agreements with third countries – including the bilateral agreements between Switzerland and the EU – no longer apply to the UK.

As part of its Mind the Gap strategy, Switzerland concluded nine new bilateral agreements with the UK, which ensure, as far as possible, that the existing rights and obligations between the countries will continue to apply. These agreements, which came into force on 1 January 2021, concern trade, services, road and air transport, insurance and migration. An additional bilateral agreement on police cooperation will come into force in the second half of 2021. In April 2021 the Federal Council approved a further agreement to facilitate security-related customs procedures for authorised economic operators (AEOs) and in August 2021 a social security agreement. In a later phase, cooperation between Switzerland and the UK will be extended to other areas, where this is in the interests of both countries (Mind the Gap+).

## Chronology

- 11.08.2021 Adoption of social security agreement
- 14.04.2021 Approval of Agreement on mutual recognition of AEO status
- 01.01.2021 **Entry into force of new Swiss–UK agreements**
  - Provisional application of EU–UK Trade and Cooperation Agreement
- 31.12.2020 End of EU–UK transition period
- 30.12.2020 Signing of EU–UK Trade and Cooperation Agreement
  - Signing of EU–UK agreement concerning security procedures for exchanging and protecting classified information ('Security of Information Agreement')
  - Signing of Euratom–UK agreement
- 21.12.2020 **Signing of MoU on strengthening migration cooperation**
- 15.12.2020 **Signing of Police Cooperation Agreement**
- 14.12.2020 **Signing of Services Mobility Agreement**
- 30.06.2020 **Signing of joint statement on deepening cooperation in financial services**
- 31.01.2020 Formal withdrawal of the UK from the EU
- 25.02.2019 **Signing of the Citizens' Rights Agreement following the UK's withdrawal from the Free Movement of Persons Agreement**
- 11.02.2019 **Signing of Trade Agreement**
- 25.01.2019 **Signing of the International Carriage of Passengers and Goods by Road and Agreement on Direct Insurance other than Life Insurance**
- 17.12.2018 **Signing of Agreement relating to Scheduled Air Services**
- 29.03.2017 Initiation by the UK of the withdrawal process from the EU under Article 50 of the Treaty on European Union (date originally set for withdrawal: 29.03.2019)
- 19.10.2016 Adoption of Mind the Gap strategy by the Federal Council
- 23.06.2016 UK referendum on withdrawal from the EU (leave: 51.9%)

### **Swiss–UK relations post-Brexit**

The UK government formally left the EU on 31 January 2020 following the Brexit vote by the British public in a referendum held on 23 June 2016. A transition period until 31 December 2020 was agreed to ensure an orderly exit from the EU under a withdrawal agreement. During this period, the UK remained part of the EU's single market and customs union, but without any co-decision rights. EU third-country agreements, such as the Switzerland-EU bilateral agreements, also continued to apply to the UK. On 1 January 2021, the UK fully left the EU. Relations between the EU and the UK are now governed by the Trade and Cooperation Agreement (TCA) signed on 30 December 2020.

The TCA is essentially a free trade agreement, i.e. it provides for zero tariffs and zero quotas on all goods traded between the EU and UK. This approach does not require the UK to adopt EU law. Consequently, the EU and the UK now form two separate markets, i.e. two different regulatory areas, and the UK no longer enjoys equal access to the EU single market (non-tariff barriers). The TCA also establishes a new framework for law enforcement and judicial cooperation. Furthermore, the TCA sets out arrangements on governance, including partnership councils and specialised committees responsible for ensuring the proper implementation of the agreement and a dispute settlement mechanism in the form of traditional arbitration. Because the TCA does not require legislative alignment, so that the UK does not adopt EU law, the Court of Justice of the European Union (CJEU) also has no jurisdiction to resolve disputes where the interpretation of EU law is at issue.

### **Impact of Brexit on Switzerland**

Relations between Switzerland and the UK are close and multifaceted. The UK was Switzerland's third-largest trading partner in 2019, with a trade volume of CHF 44.6 billion. The UK is the fifth-largest recipient of Swiss direct investments (CHF 78.3 billion at the end of 2018), as well as the third-largest source of direct investments in Switzerland (CHF 65.9 billion). In the same year, there were more than 56,000 flights between Switzerland and the UK. Furthermore, around 37,000 Swiss citizens live in the UK, while 42,000 British citizens live in Switzerland.

Until now, relations between Switzerland and the UK have largely been based on the bilateral agreements between Switzerland and the EU. In order to safeguard as far as possible, and where appropriate to extend, the existing mutual rights and obligations with the UK in the wake of Brexit, the Federal Council adopted its Mind the Gap strategy early on, in October 2016. In April 2018,

the Federal Council clarified this strategy by deciding that Swiss–EU bilateral agreements would continue to apply to the UK during the transition period, as provided for in the EU–UK withdrawal agreement. Following the establishment of the withdrawal agreement, the EU and Switzerland exchanged notes formally confirming that the bilateral agreements between Switzerland and the EU would continue to apply to Swiss–UK relations until 31 December 2020. These agreements ceased to apply on 1 January 2021.

### **New Switzerland–UK agreements**

An interdepartmental steering group led by the Europe Division of the Federal Department of Foreign Affairs (FDFA) coordinates the activities of the Mind the Gap strategy.

A total of seven agreements were signed. These agreements preserve to a large extent Switzerland's current legal relationship with the UK. Six of these took effect on 1 January 2021. Two further agreements have been fully negotiated and approved by the Federal Council, but have not yet been signed.

#### **1. Agreement relating to Scheduled Air Services**

The Agreement relating to Scheduled Air Services (signed on 17 December 2018) ensures that existing air transport rules will continue to apply in full, allowing air carriers to retain their current traffic rights. The agreement came into force on 1 January 2021.

#### **2. Agreement on the International Carriage of Passengers and Goods by Road**

The Agreement on the International Carriage of Passengers and Goods by Road (signed on 25 January 2019) provides that carriers may continue to transport goods without requiring an authorisation and ensures the transportation of passengers and goods by road between the two countries. The agreement still prohibits cabotage, i.e. the transport of goods or passengers within the territory of the other state. It came into force on 1 January 2021.

#### **3. Agreement on Direct Insurance other than Life Insurance**

The Agreement on Direct Insurance other than Life Insurance (signed on 25 January 2019) allows Swiss and UK companies providing direct insurance to establish and operate branches in the territory of the other country. This agreement thus transfers the terms of the 1989 agreement on insurance between Switzerland and the EU to relations between Switzerland and the UK. It came into force on 1 January 2021.

#### **4. Trade Agreement**

The Trade Agreement (signed on 11 February 2019) transfers several existing trade and economic agreements with the EU to the future relationship between Switzerland and the UK. This includes the 1972 Free Trade Agreement, the 1999 Agreement on Government Procurement, the 1999 Agreement on Mutual Recognition in relation to Conformity Assessment (MRA), the 1999 Agreement on Agriculture, the 2004 Agreement on Combating Fraud, and the 2009 Agreement on Customs Facilitation and Security.

The Trade Agreement came into force on 1 January 2021. However, some of the aforementioned agreements, or parts thereof, are predicated on an alignment of rules between Switzerland and the EU. As a result, they do not apply to the relationship between Switzerland and the UK for the time being. They will only apply once the EU and the UK agree equivalent terms based on harmonised standards. This applies to the Customs Facilitation and Security Agreement, certain sectors under the Agricultural Agreement (e.g. veterinary standards), and most sectors under the MRA agreement, excluding motor vehicles, good laboratory practice, and good manufacturing practice for medicines (which account for two-thirds of trading volume).

#### **5. Citizens' Rights Agreement**

Switzerland and the UK signed a Citizens' Rights Agreement on 25 February 2019 that protects the rights of Swiss citizens living in the UK – which they acquired under the Agreement on the Free Movement of Persons (AFMP) – such as residency rights, social security entitlements and the recognition of professional qualifications. Reciprocal conditions apply to UK citizens in Switzerland. As the approval process is still ongoing in Switzerland, the Citizens' Rights Agreement has applied on a provisional basis since 1 January 2021. In relation to social security, the agreement provides for a decision by the Swiss–EU Joint Committee under the AFMP, which extends the protection of rights to citizens of EU member states. Regarding the mutual recognition of professional qualifications, individuals who have not yet submitted an application or who have started training towards, but not yet obtained the relevant qualification, may apply for recognition of their qualifications by 31 December 2024. Applications will be reviewed in accordance with the criteria laid down in the AFMP. In this respect, nothing will change in the short term for Swiss and British nationals compared to the pre-Brexit situation.

#### **6. Services Mobility Agreement**

The Services Mobility Agreement (signed on 14 December 2020) sets out the terms of mutual access and temporary stays for Swiss and British service providers, i.e. natural persons, such as IT specialists and engineers, supplying services in the other country. British service providers have access to the Swiss market for periods not exceeding 90 days per calendar year, while Swiss service providers have access to the UK market for periods not exceeding 12 months in any 24 month period (through market access commitments for over 30 services sectors and other preferential terms). The agreement also contains provisions on the mutual recognition of professional qualifications. The agreement is initially limited to two years, and the contracting parties may jointly decide to extend its duration. The agreement applies on a provisional basis since 1 January 2021.

#### **7. Agreement on Police Cooperation**

Switzerland and the UK signed an Agreement on Police Cooperation on 15 December 2020. The purpose of the agreement is to strengthen bilateral police cooperation, particularly in the fight against crime and terrorism. The agreement is intended to strengthen public security in both countries and further expand Switzerland's relationship with the UK (Mind the Gap+, see below). It is due to come into force in the second half of 2021.

#### **8. Agreement on mutual recognition of AEO status**

On 14 April 2021, the Federal Council approved the Agreement on the mutual recognition of authorised economic operators (AEOs) with the UK. The agreement is designed to make it easier for Swiss companies with AEO status to trade with the UK and vice versa, as well as to reduce technical barriers to trade. Companies with AEO status are considered particularly trustworthy, which is why they enjoy privileges in security-related customs controls and are entitled to simplified customs clearance. The agreement has not yet been signed.

#### **9. Social security agreement**

On 11 August 2021, the Federal Council approved the agreement on coordination of social security, which grants insured persons largely equal treatment and facilitated access to social security benefits. It also aims to avoid overinsurance and insurance gaps for people who come into contact with the Swiss and UK social security systems. The agreement has not yet been signed.

Owing to the EU–UK agreement now in effect, it was not possible to achieve full continuity for Swiss-UK relations with regard to certain areas of market access. Because the new EU–UK relationship is not based on legal alignment, the corresponding Swiss–EU agreements or parts thereof which are based on common rules cannot therefore be directly transferred to the Swiss–UK relationship. This is the case, for example, with the Agreement on Customs Facilitation and Security, sectors under the Agreement on Agriculture (e.g. the annex on animal health) and the MRA (with the exception of motor vehicles, good laboratory practice and good manufacturing practice for medicinal products). In addition, rules of origin have been defined for EU–UK trade, which are not based on the Pan-Euro-Mediterranean cumulation system of origin (PEM Convention) and merely provide for bilateral cumulation of origin, i.e. diagonal cumulation for non-originating materials from third countries does not apply. This creates certain new restrictions on diagonal cumulation within the Pan-Euro-Mediterranean (PEM) region, which also impact on Swiss businesses. Intensive talks are currently being held with the relevant UK authorities, with a quick solution being in both sides’ interests.

### Other areas

Work is also under way to ensure continuity in other areas, where new agreements will not be required.

- **Data protection:** according to the Federal Data Protection and Information Commissioner (FDPIC), the UK is currently on the list of states that provide an adequate level of data protection. After the UK withdraws from the EU, it should continue to provide a high level of protection of personal data. The EU is expected to reach a decision by the beginning

of 2021 regarding the adequacy of the UK’s level of data protection. The FDPIC is closely following these developments. If the UK’s data protection rating changes, the FDPIC and its UK counterpart, the Information Commissioner’s Office, will agree on a coordinated approach to finding alternative solutions, such as standardised contracts, and will inform businesses at the appropriate time.

- **Lugano Convention:** like all other international agreements of the EU, the Lugano Convention on jurisdiction and the enforcement of judgments in civil and commercial matters continued to apply to the UK during the transition period. The UK has now applied to accede to the Lugano Convention as an independent contracting party. While Switzerland supports the UK’s application, the express approval of all contracting parties is needed (Switzerland, the EU, Denmark, Iceland and Norway). Not all contracting parties have yet agreed to the UK’s accession, which means that the Lugano Convention will cease to form the legal basis for Swiss-UK relations, at least temporarily. The jurisdiction for and recognition of proceedings initiated after 1 January 2021 and decisions arising therefrom will in principle, therefore, be governed once again by national law in relation to the UK. For more information see Federal Office of Justice FOJ: [Brexit](#).

### Mind the Gap+

In addition to ensuring legal continuity, Switzerland’s Mind the Gap strategy also provides for a possible further development of relations with the UK (Mind the Gap+). Discussions are currently ongoing regarding possible areas for enhanced cooperation where the two countries have common interests.

The Swiss–UK Trade Agreement already specifies that the two countries will hold exploratory talks following Brexit in order to replace, update or further develop the agreement. These talks are based on both countries’ mutual interest in a long-term deepening of economic and trade relations.

In the area of financial services, Federal Councillor Ueli Maurer and the UK Chancellor of the Exchequer Rishi Sunak signed a joint declaration of intent on 30 June 2020 for an agreement to be negotiated between the two countries. This purpose of such an agreement would be to facilitate cross-border market access for a wide range of financial services in the insurance, banking, asset management and capital market infrastructure sectors.

A non-binding joint declaration signed by Switzerland and the UK on 21 December 2020 affirms the two countries’ intentions to strengthen their collaboration in the area of migration. UK citizens lost their status as EU nationals on 1 January 2021. Reciprocal access to the labour market for newcomers is therefore governed by each country’s national legislation from this date forward. In Switzerland, the relevant rules are set out in the Foreign Nationals and Integration Act (FNIA) combined with the Federal Council’s decision to create a separate quota of 3,500 workers from the UK for 2021.

**Link to PDF**

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