

COUNCIL DECISION

authorising the opening of negotiations on an agreement between the European Union and the Swiss Confederation on an institutional framework governing bilateral relations

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 217, 218(3) and (4) thereof,

Having regard to the Recommendation from the European Commission,

Whereas:

- (1) Relations between the Union and Switzerland have developed towards a higher degree of integration. Switzerland has already been given access to many sectors linked to the internal market and negotiations are on-going, or envisaged, which will widen Switzerland's participation in the internal market.
- (2) Continued participation of Switzerland in the internal market and its possible enhancement presuppose that rules applicable to relations with Switzerland in the fields covered by the agreements are the same as those applying in the internal market and that their interpretation and application cannot differ.
- (3) For these reasons, an institutional framework ensuring homogeneity within the internal market extended to Switzerland should be established and the completion of on-going negotiations and the examination of Swiss requests for access to further sectors linked to the internal market should be subject to the conclusion of such a framework.
- (4) This framework should apply to both existing and future agreements with Switzerland related to the internal market and should be grounded on certain essential principles.
- (5) The legal nature of the institutional framework should be determined at the end of negotiations, on the basis of an analysis of the precise scope of the provisions of the agreement.
- (6) Elements for discussions on EU-Swiss institutional questions have already been identified in exploratory discussions, and one out of three working hypotheses was subsequently retained as a basis for negotiations.

- (7) In order to ensure homogeneity and to create a level-playing field for operators within the internal market, the provisions in the agreements with Switzerland and the Union acts referred to in the agreements are-to-should be applied in accordance with the case law of the Court of Justice. This should cover all case law, whether prior or subsequent to the signature of the corresponding agreement.
- (8) Moreover, homogeneity requires that future Union law in the fields covered by those agreements is incorporated into the agreements as it is adopted, or as it develops or changes; a decision-making procedure, including a maximum time-limit for implementation, should be provided to this end.
- (9) The institutional framework should also include independent mechanisms for surveillance and judicial control.
- (10) The Commission should supervise the application of the agreements by Switzerland; where necessary, the Commission should in particular have investigatory and decision-making powers in exercise of its supervisory role.
- (11) The Court of Justice should settle, upon request of either party, disputes among the parties concerning the application of the agreements. Swiss courts should also have the possibility to request the Court of Justice to give a preliminary ruling when a question concerning the interpretation of a provision of an agreement is raised before them. Appropriate mechanisms should be established in order to preserve the binding nature of the decisions taken by the Court of Justice.
- (12) The institutional framework for EU-Switzerland bilateral relations should facilitate the coordinated and coherent management of the agreements.
- (13) Without prejudice to EU law, nothing in the above should be taken as authorizing the Commission to negotiate an agreement conferring upon any EU institution any additional powers of surveillance, supervision or judicial control as regards any provisions falling under the competence of Member States and which are contained in agreements with the Swiss Confederation.

HAS ADOPTED THIS DECISION:

Article 1

The Commission is hereby authorised to negotiate, on behalf of the Union, an international agreement on an institutional framework governing bilateral relations with the Swiss Confederation.

Article 2

The negotiating directives are set out in the Annex.

Article 3

The negotiations shall be conducted in consultation with the Working Party on European Free Trade Association (EFTA), acting as special committee in accordance with Art. 218 (4) TFEU.

The negotiator shall regularly inform the special committee about the state of play of negotiations, including by submitting draft documents relevant to the negotiations, as appropriate.

Article 4

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President

DIRECTIVES FOR THE NEGOTIATION OF AN AGREEMENT BETWEEN
the European Union and the Swiss Confederation on an institutional framework governing
bilateral relations

1. GENERAL PRINCIPLES GOVERNING THE INSTITUTIONAL FRAMEWORK

The common objective of the parties should be to ensure homogeneity and legal certainty in the internal market.

Bearing in mind that objective, the agreement on an institutional framework should provide for certain essential principles.

The agreement on an institutional framework should provide for an obligation to interpret and apply homogeneously the Union acquis, all through the internal market, including, as necessary, competition provisions. This requires that the agreements with Switzerland and the Union acts referred to in the agreements are interpreted and applied in conformity with the case law of the Court of Justice, both prior or subsequent to the signature of the corresponding agreement.

The agreement should provide for independent mechanisms for surveillance and judicial control of the application of the agreements by Switzerland.

As to the mechanisms for surveillance, the Commission should supervise the application of the agreements by Switzerland; the Commission should also be granted specific powers if required depending on each sector, such as investigatory and decision-making powers. These powers should reflect those already vested on the Commission in the field of the internal market. In relation to judicial control, each party should have the possibility to seize the Court of Justice, without the other party's prior consent, in case of dispute on the correct application of an agreement.

Swiss courts should also have the possibility to request the Court of Justice to give a preliminary ruling when a question concerning the interpretation of provisions of an agreement is raised before them.

The agreement on an institutional framework should ensure that the decisions of the Court of Justice are legally binding on both parties. The agreement should provide for the procedure to be followed if Switzerland departed from these decisions, leading, if no solution is found, to the termination of the agreement or the agreements concerned.

Furthermore, the agreement on an institutional framework should provide for an obligation of the parties to ensure the dynamic adaptation of the agreements with Switzerland to the evolving Union acquis, via an appropriate decision-making procedure. This procedure should include a maximum time limit for the implementation of relevant EU acquis into the Swiss legal order.

The institutional framework established in the agreement should apply to both existing and future agreements related to the EU internal market.

The agreement should make clear that without prejudice to EU law, the provisions of the agreement do not confer any additional powers of surveillance, supervision or judicial control as regards any provisions falling under the competence of Member States and which are contained in agreements with the Swiss Confederation.

2. SCOPE OF THE AGREEMENT ON AN INSTITUTIONAL FRAMEWORK

2.1. Existing agreements with Switzerland related to the internal market

The existing agreements with Switzerland would be applied under the institutional framework established by the new horizontal agreement and should be clearly identified in this agreement.

In particular, the following existing agreements related to the internal market should be considered during the negotiations for coverage under the agreement on an institutional framework:

- Agreement on free trade
- Agreement on the free movement of persons
- Agreement on air transport
- Agreement on the carriage of goods and passengers by rail and road
- Agreement on trade in agricultural products
- Agreement on mutual recognition in relation to conformity assessment
- Agreement on certain aspects of government procurement
- Agreement on the simplification of inspections and formalities in respect of the carriage of goods and on customs security measures

- Agreement on cooperation in the field of statistics

Agreements establishing the terms and conditions for participation in EU programmes may also be considered, as appropriate.

2.2. Future agreements with Switzerland related to the internal market

The agreement on an institutional framework should include provisions which enable its application, as appropriate, also to future agreements which might be concluded with Switzerland, be negotiations already on-going or authorised (e.g. electricity, trade in agricultural and processed agricultural products, food, health, consumer protection, animal and plant health, animal welfare, and safety of the food chain, savings taxation, services) or envisaged (e.g. audio-visual cooperation; REACH).

Negotiations on agreements giving Switzerland access to further sectors of the internal market should not be concluded before the conclusion of the agreement on an institutional framework.

3. OTHER 'HORIZONTAL' QUESTIONS WHICH MAY BE COVERED BY THE AGREEMENT ON AN INSTITUTIONAL FRAMEWORK

The agreement should as well cover,

- Swiss participation in decision-shaping, as appropriate, drawing on the EEA model.
- Long-term financial mechanism. EU cohesion is a central counterpart to the participation in the internal market. The agreement should therefore establish a long-term financial mechanism for the Swiss contribution to economic and social cohesion within the EU.
- Horizontal joint committee. An institutional framework for EU-Switzerland bilateral relations should also include the establishment of a horizontal joint committee which would deal with overarching and overlapping technical issues regarding the participation of Switzerland in the internal market, oversee the correct application of the institutional framework and contribute, in general, to closer coordination of on-going cooperation. The Union will be represented in this Joint Committee by the Commission and Member States, as appropriate. The Joint Committees established under sectoral agreements concluded between the EU and Switzerland should, however, remain responsible for the management of the respective agreement and retain their decision-making powers on matters falling under the respective agreement. Current competences of the Council and

its Member States, as appropriate, will not be affected by the establishment of this joint committee.

- Strengthening of inter-parliamentary cooperation between the European Parliament and the Swiss Federal Assembly.
 - Clause on WTO obligations. The new framework agreement should include a clause indicating that it does not prejudice the WTO obligations of the two parties nor their possibilities to use the WTO dispute.
 - Possibly other issues of common interest.
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