



Institutional issues

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Relations between Switzerland and the EU are very close and based on a network of treaties made up of about 20 principal bilateral agreements and around 100 supplementary agreements. Switzerland and the EU discuss institutional issues which cover the mechanisms to ensure the current and future efficient application of the agreements on market access. One speaks of «institutional issues» because they concern the tasks, functions and powers of Switzerland's and the EU's political institutions. They address the fundamental mechanisms of cooperation within the individual agreements for the purpose of determining the powers an institution has in any particular situation and which procedure should be applied.

Current situation

- Exploratory discussions

The Federal Council has noted on several occasions – including in its report of 17 September 2010 on the evaluation of Switzerland's policy on Europe – that the consolidation and renewal of the bilateral way was a priority of Swiss foreign policy. It considers the bilateral way to be the most suitable instrument for safeguarding Switzerland's interests both within Europe and towards the EU – which is by far its biggest economic and trading partner. Today, around 60 % of all Switzerland's exports go to the EU and about 80 % of all its imports come from the EU-area.

Switzerland has pursued the bilateral way since it rejected membership in the European Economic Area (EEA) in a referendum on 6 December 1992. In the meantime, Switzerland and the EU have concluded about 20 main agreements and more than 100 supplementary agreements ensuring access for Swiss companies to particular sectors of the EU single market and governing a number of areas of co-operation between Switzerland and the EU.

The current agreements are administered in the framework of the so-called mixed committees (see box).

In its conclusions on the relations between the EU and EFTA countries of 2010¹, the Council of the European Union describes relations between Switzerland and the EU as good and intensive but notes that the existing system of bilateral agreements has reached its limits. In particular, the report states, there is a

need for solutions to the institutional aspects of the co-operation between the two parties.

In the area of market access, it is as much in Switzerland's interests as in those of the EU to find mechanisms to facilitate rapid adjustment to developments in EU legislation (acquis) in order to prevent new

Mixed committees (MC)

- Almost all the main agreements are administered by specific mixed committees (MC) which oversee the agreements to ensure that they function well. Bilateral agreements can be amended if necessary and in mutual interest.
- The approximately 20 MCs today are composed of representatives of Switzerland and the EU, and convene in principle once a year. They deal primarily with questions concerning the application of the agreements. The MCs provide the setting to settle any differences that may arise, where possible.
- In addition, the MCs serve as platforms for information, consultation and decision-making procedures should an agreement require adjustment. In most cases, adjustments are needed following a change in the legislation of one of the contracting partners so as to ensure the mutual equivalence of the legislation. They are mostly technical adjustments that only require a change in the annexes, such as lists of legislation, authorities and product lists, which the MC can carry out itself.
- Decisions are taken by consensus in the MCs and only in cases where the agreement in question has accorded decision-making powers to the MC, e.g. changes to particular annexes and those of a technical nature. Amendments to agreements must be approved by means of the internal procedure provided for by the contracting parties – in Switzerland usually by Parliament and in cases of a referendum, the people.

¹ www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/118458.pdf

obstacles from arising to access for Swiss economic players to the EU single market in areas governed by bilateral agreements.

Institutional issues concern the following four areas:

- *Legal developments:* Which procedure to apply for taking over new legislation, i.e. how could be proceeded in adjusting agreements following possible new legal developments?
- *Supervision:* How to ensure the correct application of the bilateral agreements?
- *Interpretation:* How to ensure uniform interpretation of the bilateral agreement.
- *Dispute settlement:* By what means of which procedures should disputes between Switzerland and the EU be settled, and which instance or authority should decide in disputes between the two parties?

In the process of giving concrete shape to a comprehensive and co-ordinated approach, which the Federal Council has pursued in the continuation and further development of the bilateral way in accordance with its decision of 26 January 2011, the Federal Council considered in February 2012 that institutional issues should be discussed in the course of negotiations of a dossier on access to a specific sector (electricity). On 20 March 2012, the President of the Confederation and the President of the European Commission agreed that institutional issues should be discussed within the framework of a comprehensive and co-ordinated approach.

On 15 June 2012, the Federal Council adopted the following principles that would serve as the basis for future negotiations with the EU on the institutional issues:

- *Homogeneity:* It is important to ensure that the legal provisions in the bilateral agreements are applied and interpreted as uniformly as possible.
- *Dynamic adoption of laws:* The adoption of new laws should be dynamic but not automatic. When adjusting to a new law, the provisions of the Swiss constitution, including the possibility to carry out referendums, must be ensured at all times. A simplified procedure can be envisaged for technical adjustments. With new developments in legislation concerning the agreements, Switzerland shall participate in the form of «decision-shaping».
- *National surveillance authority:* In reference to the competences of the European Commission, Switzerland proposes an independent national surveil-

lance authority to oversee the implementation of the bilateral agreements in Switzerland.

- *Complaints about contractual violations:* In the event of a violation of the terms of agreement, the Swiss supervisory authority could open a court procedure. An institutionalised dialogue between Switzerland's and the EU's highest courts would be established to ensure homogeneity in jurisprudence.
- *Compensatory measures:* Differences of opinion between the parties should be dealt with primarily in the mixed committees. If a mixed committee cannot reach an agreement within a set period of time, the disadvantaged party may resort to appropriate and proportional compensatory measures. An arbitration court can review the scope, duration and proportionality of a particular compensatory measure.

On 20 December 2012 the Council of the EU adopted his new conclusions on EU relations with EFTA countries² and invited the EU-Commission to pursue exploratory discussions on institutional issues with Switzerland and to consider the possibility of negotiation. EU-commission President Barroso wrote on 21 December 2012 to the President of the Federal Council³.

In the following discussions between Switzerland and the EU, three possible solutions were identified in a joint paper. Based on this paper, the Federal Council decided on further steps on 26 June 2013 and the Federal Department of Foreign Affairs (FDFA) instructed to prepare a draft negotiating mandate.

Importance

A renewal of the bilateral way, which would also include solutions to open questions about institutional issues, is a concern for both Switzerland and the EU. Problems with regard to implementation and delays in adjusting legislation to new legal developments can lead both to new obstacles to market access and to discrimination against the actors involved, as well as to legal insecurity.

Further information

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www.eda.admin.ch/europe

² http://eeas.europa.eu/norway/docs/2012_final_conclusions_en.pdf

³ www.europa.admin.ch/themen/00499/00503/01777/index.html?lang=de&download=NHzLpZeg7t,Inp6i0NTU042I2Z6In1acy4Zn4Z2qZpnO2Yuq2Z6gpJCDd3t2gmy162epYbg2c_JjKbNokSn6A