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The moment of truth is at hand

Switzerland must act fast to clarify the nature of its relationship with the European Union. However, the Federal Council wants to consult with the main domestic actors before adopting a position on the framework agreement awaiting signature. They have some major reservations.

THEODORA PETER

After five years, the negotiations on an institutional framework agreement to regulate future bilateral relations between Switzerland and the European Union (EU) were finally concluded in December 2018. A draft agreement has been awaiting signature ever since. However, to the amazement of Brussels, a response of any kind has yet to materialise. The Federal Council has simply “taken note” of the long anticipated outcome of these negotiations as it wants to consult the main actors at home to gauge the mood before adopting a position on the pros and cons of the agreement in the spring. Federal Councillors have been busy holding discussions with the cantons, political parties, social partners, the business community and academia.

One thing is clear: the stakes are high. One in every three francs generated by Switzerland stems from the country’s ties to the EU. The bilateral agreements facilitate trade worth 1 billion francs every day. The Swiss economy requires free access to the EU market. The institutional framework agreement is designed to secure the extension of the five current bilateral agreements (free movement of persons, land transport, air traffic, mutual recognition of industrial standards and agricultural products) and facilitate new ones (electricity market).

This consultation process shows that there are at least three obstacles to furthering bilateral relations.

1. Wage protection

Switzerland would have to adopt almost all the EU rules on wage protection, which would weaken its flanking measures against wage dumping. Foreign companies are currently obliged to give eight days’ notice if they wish to operate in Switzerland. This protectionist practice is a thorn in the EU’s side, which is why it wants to reduce the period to four working days. However, this concession crosses a red line in the eyes of the Swiss unions and Swiss Social Democratic Party (SP). They are not prepared to compromise on the eight-day rule. They see it as the only way to maintain effective protection against wage dumping.



The framework agreement would help foreign firms to operate in Switzerland – on local construction sites, for example. This has caused concern among the unions who fear it will jeopardise wage levels. Photo: Keystone

2. The dynamic adoption of laws

The framework agreement would commit Switzerland to take a “dynamic adoption approach” to passing laws. That means when the EU passes new laws, Switzerland would have two years in which to adopt those laws. However, the direct democratic processes would remain intact as Switzerland would be granted a third year for implementation in the event of a referendum. If Switzerland does not want to adopt a new EU law, Brussels can appeal to an independent arbitration panel. This mechanism has proven to be very controversial. The Swiss People’s Party (SVP) considers it a threat to Swiss sovereignty and has warned against “foreign judges”. At a public hearing of the Foreign Affairs Committee of the National Council, Carl Baudenbacher, former EFTA court president, even labelled the arbitration panel a “fig leaf”. There is a danger of unilateral dependence on the European Union Court of Justice as its interpretation of EU law would be binding on the arbitration panel. Other commentators, such as European law expert Astrid Epiney, see the legal dynamic adoption process as a more workable prospect, as it would actually enable legal certainty. Switzerland would also have consultation rights and could even appeal to the arbitration panel itself if necessary.

Swiss citizens in the UK remain secure post Brexit

Swiss citizens in the UK and British citizens in Switzerland will continue to enjoy the same rights post Brexit, as established in a bilateral agreement between the two countries. They will retain residence rights plus entitlement to social insurance and recognition of professional qualifications. These rights are lifelong. However, they do not extend to British and Swiss citizens who move when the free movement of persons is no longer in force.

In the event of a no-deal Brexit, the agreement between Switzerland and the UK is set to come into force on 30 March. In the event of an orderly Brexit, there will most likely be a transition phase until the end of 2020, during which time the current provisions of the Agreement on the Free Movement of Persons will apply. At the end of 2017, there were about 34,500 Swiss citizens in the UK and 43,000 British citizens in Switzerland.

The two countries have also concluded an agreement on air traffic to secure current traffic rights and a seamless continuation of the status quo. There are approximately 150 flights between Switzerland and the UK every day. (TP)

Brexit agreement: ogy.de/schweiz-brexit

3. The Citizens’ Rights Directive

The Citizens’ Rights Directive does not actually feature in the draft framework agreement. However, it was not explicitly excluded either, as Switzerland had wanted during the negotiations. The matter of adopting this directive could even be the first case to land before the arbitration panel. The Citizens’ Rights Directive has ensured reciprocal civil rights for EU member states since 2004. These rights extend beyond the free movement of persons, which exists between Switzerland and the EU, to include entitlement to social assistance, the right to an extended stay and protection from deportation. The Liberals (FDP) and Christian Democrat People’s Party (CVP) see this as a stumbling block and demand the explicit exclusion of the directive from the framework agreement.

None of the parties represented in the Federal Council have given their unconditional support to the agreement as it currently stands. The economic umbrella organisation *economiesuisse* also has reservations. The advantages of market access to the Swiss economy are beyond dispute. However, *economiesuisse* wants “clarification” on the specific application of the agreement, for example regarding the Citizens’ Rights Directive and social partnership. The system of joint monitoring also needs to be fully upheld.

economiesuisse does not want further negotiations, which the EU has excluded anyway; however, Brussels may not prove to be as intransigent as it seems in that respect. Political commentators believe that the Federal Council’s strategy could be to draw out the process through internal consultation and ultimately gain concessions. The EU has always proven to be flexible in delicate situations and granted exceptions to individual states – so why would a well disposed non-member state not expect the same?

The article is valid as at the editorial deadline of mid-February 2019.

A brief overview of the framework agreement: ogy.de/eu-deal