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Bilateral Agreements

Switzerland – European Union

Fact sheets

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Switzerland's policy towards the European Union: the bilateral agreements

The bilateral approach

The European Union (EU) and its 27 member states are by far *the most important partners* of Switzerland. This is due not just to the EU's political and economic weight but also to Switzerland's geographical and cultural closeness to the countries of the EU. The economic relationship is especially important however: almost every third franc that Switzerland earns is the product of our economic relations with the EU. Switzerland is one of the four most important trading partners of the EU alongside the USA, China and Russia.

The closeness of this relationship clearly requires an *active* policy towards Europe. Switzerland has therefore adopted a *policy for the protection of Swiss interests* based on *bilateral agreements* with the European Union. Concrete questions and problems in clearly defined areas are regulated by a series of bilateral agreements. This pragmatic step-by-step approach has made it possible to devise tailor-made solutions to a wide range of economic and political questions. The agreements not only provide both parties with extensive market access, they are also a basis for close cooperation in such key policy areas as research, security, asylum, the environment and culture. Switzerland's bilateral approach is based on a policy of *openness* and close collaboration with all European neighbours. Examples include cooperation in the cross-border taxation of savings, coordination of asylum policy procedures, and a Swiss contribution to European enlargement or cohesion in support of the new EU members states. This approach also guarantees Switzerland's continued *institutional independence*. As a non-member of the EU however Switzerland has no right to participate in decisions taken at the EU level.

The objective of Switzerland's EU policy is to create the best possible basis for relations with the Union. It is with this in mind that the bilateral agreements between Switzerland and the EU (including with its predecessor organisations) have been *continuously* over the decades. Altogether around 20 main agreements plus a hundred or so secondary agreements have been concluded in various stages. The agreements resulting from the bilateral approach have been duly submitted to the Swiss electorate and approved at regular intervals— five referendums since the year 2000.

The basis for economic exchanges was laid in 1972 with the *Free Trade Agreement*, which was approved by 72.5 per cent of the Swiss electorate as well as by parliament. This was followed by the *Insurance Agreement* in 1989.

Free Trade Agreement (FTA) of 1972: Industrial goods originating in one of the States Parties to the agreement are not subject to customs duties. Limitations on quantity (quotas) and any similar measures such as tariffs or duties are prohibited. In the case of processed agricultural products (dealt with in Protocol 2 of the FTA) no customs duties apply to the industrial component of such products. As for the agricultural component, Switzerland has reduced its duties and export subsidies, and the EU has eliminated all duties and export supports.

Insurance Agreement of 1989: Insurance companies in Switzerland and the EU are guaranteed the freedom to choose their domicile. Agencies and branches are granted equal access and operating conditions on the territories of the States Parties. The agreement is not applicable to life insurance companies, reinsurance companies or statutory social insurance schemes, and it makes no provision for cross-border services.

Switzerland, together with the other members of the European Free Trade Association (EFTA), negotiated the creation of the *European Economic Area* (EEA) with the forerunner of the EU, the European Community (EC), on the basis of four fundamental freedoms: freedom of movement of persons, goods, capital and services. The corresponding EEA agreements were signed by Switzerland in May 1992. Switzerland submitted a request to begin negotiations for membership of the EC the same month in Brussels. However, following the rejection of the EEA agreements by the Swiss electorate and parliament on 6 December 1992, this request was put on hold. In its statement of January 1993, the Swiss Federal Council resigned to start negotiations on membership of the EC and decided in-

stead to pursue its relations with the Community on a bilateral basis. This led to the negotiations and the conclusion of the Bilateral Agreements I and II.

Bilateral Agreements I

Participation in the EEA would have put Switzerland on the road to full economic integration and thus access to the European internal market on an equal footing. To ensure market access for Swiss companies without discrimination in key economic sectors, following rejection of the EEA, the Federal Council decided to launch negotiations with the EU. At the end of 1993, the EU declared itself ready for negotiations in seven sectors on condition that the negotiations be conducted in parallel and that they be signed and take effect together (*parallelism*). The EU set this condition because it considered that the different files would only be in the interest of both partners if they were adopted as a single package. Legally, the agreements were linked by a "*guillotine clause*", stipulating that they can only take effect together: if one of the seven agreements were to be denounced, the other six would also cease to be valid¹.

On 21 June 1999, Bern and Brussels signed the seven bilateral (sectoral) agreements. Known as *Bilateral Agreements I*, these were approved by 67.2 per cent of the electorate on 21 May 2000 and came into force on 1 June 2002. Together with the Free Trade Agreement they make it possible for the Swiss private sector to have extensive access to the Single European Market, which is today an internal market with 490 million potential consumers.

The Bilateral Agreements I are – with the exception of the research agreement – classical market liberalisation agreements:

Free movement of persons: The labour markets are to be opened gradually. Following transitional periods, Swiss and EU citizens will be able to take up residence in any of the partner countries and will enjoy the same employment rights. The prerequisites are to have a valid employment contract, to be self-employed or to have sufficient independent means, and to have health insurance.

Technical barriers to trade (TBT): This agreement simplifies the admission of products. Testing and admission for the entire European market is now the responsibility of a single certification authority, either in Switzerland or in the EU.

Public procurement markets: The procurement of goods and construction of buildings is to be subject to a public tender procedure in accordance with the rules of the World Trade Organization. The obligation has been extended to local authorities and to certain private companies as well as to railway traffic.

Agriculture: Trade in agricultural products has been simplified in certain areas (cheese, processed dairy food), partly through the dismantling of tariffs and partly by the mutual recognition of the validity of regulations in the areas of veterinary medicine, plant protection and biological agriculture.

Overland transport: The markets for road and rail transport will gradually be opened to competition, and Switzerland's transport policy based on road-to-rail transfer becomes part of European policy. The EU accepts an increase in the levy on heavy goods vehicle (LSVA) to CHF 325 (as of 2008), while Switzerland accepts a gradual increase in the weight limit for HGVs to 40 tonnes (from 2005).

Civil aviation: The agreement gives airlines gradual access to each other's markets.

Research: Swiss researchers as well as companies may now participate in the EU research framework programs.

Bilateral Agreements II

The second round of agreements, *Bilateral Agreements II*, considers more economic interests (such as food industry, tourism, financial centre) and extends cooperation between Switzerland and the EU beyond economic affairs to important new political areas including security, asylum, the environment and culture.

Despite mutual declarations of intent to continue negotiations contained in the final acts of Bilateral Agreements I in 1999, the European Commission was in fact sceptical about further negotiations of this kind. However, two new matters of particular concern to the EU provided Brussels with a reason for considering a new round of negotiations with Switzerland. In the first place the EU hoped to include Switzerland in a planned system of cross-border *taxation of savings*. Secondly, Brussels wished to cooperate with Switzerland in stepped-up *efforts to combat fraud* in relation to indirect taxes, notably with regard to cigarette smuggling.

¹ An exception is the Research Agreement, which since its renewal is no longer linked to the other six.

Switzerland agreed to negotiations in these areas but under the following conditions: the negotiations would have to include also areas of special interest to Switzerland in addition to the two requested by Brussels, for example collaboration in the areas of security and asylum, with Swiss participation in the *Schengen/Dublin* arrangements (cooperation in police and justice, asylum and migration matters). Switzerland also wanted negotiations in areas mentioned in the joint declaration of intent to Bilateral Agreements I: *processed agricultural products, statistics, the environment, MEDIA, education, pensions and services*. Furthermore Switzerland wanted to protect the interests of its financial centre, beginning with *banking secrecy*.

Negotiations between Switzerland and the EU began in June 2002 in the 10 separate areas of *Bilateral Agreements II*. In March 2003, both parties agreed to terminate negotiations for the liberalisation of services, due to the large number of questions that remained unresolved. The agreement at the political level on the taxation of savings in June 2003 was a major milestone in the negotiations. On 19 May 2004 at a *Switzerland-EU summit meeting*, agreement was announced in the remaining politically sensitive area, relating to the question of exchanging information on tax-related offences in the framework of judicial and administrative cooperation²:

- With regard to *Schengen/Dublin*, Switzerland receives the guarantee that, in the area of direct taxes, banking secrecy remains protected. In the event that a future Schengen provision revokes the principle of double liability with regard to direct tax offences thus giving rise to an obligation for legal assistance with regard to evasion offences, Switzerland receives an opt-out.
- Insofar as efforts to combat fraud are concerned Switzerland extends cooperation in the area of indirect taxes to tax evasion offences (*national treatment*).

Throughout the entire period of the negotiations Switzerland observed the principle of *parallelism*: as far as Bern was concerned the package of agreements had to be accepted as a whole. Among other things this approach ensured that a *balanced overall result* would be achieved that would take into account both the essential interests of Switzerland and the major concerns of the EU. As Switzerland desired, all the agreements including Schengen/Dublin were approved as a package. Banking secrecy remained intact. On the other hand, Switzerland has agreed to cooperate with the EU in the matter of cross-border taxation of savings, while extending cooperation to efforts to combat fraud in relation to indirect taxes.

The *Bilateral Agreements II* extend Switzerland's cooperation with the EU to other key political areas:

Schengen/Dublin: The elimination of the systematic control of individual movements facilitates cross-border traffic. At the same time, controls at the Schengen external borders and international cooperation between police authorities and justice systems have been strengthened in efforts to combat crime. The Dublin rules on jurisdiction and the Eurodac fingerprint database help to avoid multiple requests for asylum, lightening the burden on the national asylum systems.

Taxation of savings: Switzerland collects a withholding tax on interests on behalf of the EU states on natural persons whose residency for tax purposes is in the EU.

Efforts to combat fraud: Cooperation has been extended to combat smuggling and other indirect tax offences (customs duties, value added tax, tax on consumption), in the area of subsidies and in public procurement markets.

Processed agricultural products: Tariffs and export subsidies have been abolished for a large number of food industry products.

Environment: Switzerland becomes a member of the European Environment Agency, one of the most important instruments of European cooperation in the environmental field.

Statistics: The collection of statistical data is harmonised between the partners, thus ensuring access to a wide range of comparable data of considerable potential importance for political and economic decision-making.

MEDIA: Swiss filmmakers have full and equal access to EU promotional programmes in this area.

Education: Efforts are made to ensure Swiss participation in EU education programmes for the 2007-13 period.

Pensions: Retired EU officials living in Switzerland will no longer be subject to double taxation.

The Bilateral Agreements II were signed on 26 October 2004 and approved by the Swiss parliament on 17 December 2004 in the form of individual federal decrees. Although seven of the agreements

² The political agreement behind Bilateral Agreements II, reached at the summit meeting, was part of an overall understanding. This also covered solutions in the parallel negotiations on extension of the freedom of movement for persons to the 10 countries admitted to the EU in 2004, and in relation to customs questions concerning re-exports. The political decision of the Federal Council, to provide support to the 10 new EU-States in the form of a so-called enlargement or cohesion contribution, was also an important aspect of the overall understanding.

were subject to an optional referendum³, only one was held on the Schengen/Dublin Association Agreement. This was approved by 54.6 per cent of the Swiss electorate on 5 June 2005. In contrast to Bilateral Agreements I, Bilateral Agreements II are not legally linked since each can take effect independently in accordance with the relevance provisions. All but two agreements are in force: the Schengen/Dublin Association Agreement and the Agreement on the Fight Against Fraud will take a little longer. Furthermore, implementation of Schengen/Dublin at the operational level, i.e. participation in practical cooperation in the areas of security and asylum, will only be possible once Switzerland has undergone an evaluation. Among other things this means an investigation to see if Switzerland meets the Schengen security standards (external border controls, connection to the computerised pan-European electronic investigation database (SIS).

Extension of the free movement of persons agreement

In parallel with the conclusion of Bilateral Agreements II, Switzerland and the EU also agreed on the extension of the Bilateral Agreement on the Free Movement of Persons to the 10 new member states that joined the EU in 2004. In a Protocol to the agreement on free movement of persons, signed on 26 October 2004, a separate transitional regulation for the new Eastern European EU member states was defined. These transitional measures allow for gradual controlled mutual liberalisation of the labour markets. Market limitations including priority to own citizens, quotas, prior control of wage and employment conditions, may continue up to 30 April 2011.

Parliament linked this Protocol together with a revision of the flanking measures to a federal decree and this was approved in the winter of 2004. In parallel to the extension of the freedom of movement of persons, employee protection was improved by means of a strengthening of the flanking measures against wage and social dumping. A referendum was held against the federal decree. On 25 September 2005, the electorate voted by 56 per cent in favour of the extension of the Agreement on the Free Movement of Persons and the revision of the flanking measures. The new provisions came into force on 1 April 2006.

Legal and institutional framework

All of these agreements are based on a *classic form of cooperation between governments* i.e. the conclusion of the agreements by the States Parties did not involve the transfer of any legal or decision making authority to a supranational body (higher than the State). Each of the Parties is responsible for implementation of the agreements on its own sovereign territory⁴.

The Bilateral Agreements are based either on the *equivalence* of legislation (such as for example the dismantling of technical barriers to trade and the agreement on public procurement markets), or on the (literal) *adoption of the Acquis communautaire* (for example in the case of the Civil Aviation Agreement and Schengen/Dublin). The *cooperation agreements* regulate cooperation in the framework of EU programmes and agencies (e.g. the Research Agreement and the Agreement on Participation in the Environment Agency).

³ The Bilateral II negotiations produced results in nine separate areas. Eight ended in bilateral agreement (processed agricultural products, statistics, pensions, environment, MEDIA, Schengen/Dublin, combating fraud, taxation of savings), and one in a political declaration of intent (education programme). All of the agreements – except the one on processed agricultural products – were subject to an optional referendum. None of the agreements meet the constitutional criteria for an obligatory referendum (Art. 140 Federal Constitution). These criteria include adherence to an organisation of collective security or to a supranational community, conditions which even the Schengen/Dublin Association Agreement does not meet, since there is no transfer of sovereignty to a supranational community.

⁴ An exception is observance of the competition rules in the area of civil aviation, the supervision and implementation of which is in the hands of the EU Commission and the European Court of Justice, except in the case of subsidies.

The agreements are administered by *mixed committees*⁵. These see to the proper functioning of the agreements. They are also platforms for information exchanges, for advice as well as for mutual consultations. The parties can turn to these committees when there are differences of opinion.⁶ In the mixed committees the two Parties must reach a unanimous decision. However, they have the power of decision only if expressly stated in the agreements. Here it is a question of a delegation of responsibility to the Federal Council, approved by parliament (both chambers). For example, the committees can decide on changes in appendices to the agreements, insofar as these are of a technical nature (e.g. lists of laws or authorities or products). Changes in the provisions of the agreements themselves and in particular the introduction of new obligations on the States Parties must be approved via the appropriate internal procedures of the States Parties.

The mixed committees for the *Schengen/Dublin* Association Agreement are of a special kind in that they perform two different tasks: on the one hand they oversee the proper functioning of the agreements, and on the other they are involved in further developing existing Schengen/Dublin legislation. In the performance of these two functions the mixed committees meet at various levels: at the level of experts, at the level of high-ranking officials and finally at the ministerial level.

The basic approach of the Bilateral Agreements (except for Schengen/Dublin and the Civil Aviation Agreement) is *statistic in nature*. Since the agreements are based on the *equivalence* of the laws on both sides, it is in the interest of both parties to maintain this equivalence, also when new legislation is adopted. Adaptations might be required for example for reasons that have to do with competition (avoidance of obstacles to market access) and the question of legal security. In cases where one of the parties plans to change certain legal requirements, information exchanges and consultations are the agreed procedures.

Following the enlargement of the European Union to 10 new States on 1 May 2004, and to two further States on 1 January 2007, the Bilateral Agreements have been extended to include these new EU states. For in adopting EU law, the *Acquis communautaire*, they also adopt the EU's international agreements with third countries, including those with Switzerland. The extension of the Bilateral Agreements to the new EU states thus comes about automatically. Only the Agreement on the Freedom of Movement of Persons, which is a "mixed agreement"⁷, requires adapting to the new States Parties through additional negotiations.

Economic importance

Bilateral Agreements I (1999) complements the Free Trade Agreement of 1972 by means of a gradual controlled mutual *opening of markets*. This puts the relations between these two important trading partners on a broader footing. Both partners benefit from the dismantling of barriers to trade. Eased trade conditions and stronger competition results in increased growth, leading to greater job security as well as job creation.

Experience has shown that the fears expressed in the referendum campaigns by those opposed to the agreements concerning a "flood of immigrants" or an "avalanche of trucks" were unfounded. In fact, quite the opposite has occurred. The positive economic impact of these sector agreements are now recognised by all. The Swiss Business Federation (*economiesuisse*), has described the agreements as "indispensable and inevitable". The importance of the Bilateral Agreements has further increased as a result of their extension to the Eastern European growth markets of the new EU states. Particularly

⁵ By law, implementation of the Bilateral Agreements is in the hands of mixed committees. Exceptions are the Research Agreement, for which the Mixed Committee of the Framework Agreement on Scientific Cooperation, of 1986, is responsible), and the Agreement on the Taxation of Savings and the Agreement on Pensions, for which no mixed committees have been set up. The administration of these agreements is under the supervision of the States Parties. In the framework of the Agricultural Agreement, two mixed committees have been called into being: the "Agriculture" Mixed Committee, which deals with general questions, and the "Veterinary Medicine" Mixed Committee, which is exclusively concerned with veterinary matters.

⁶ Switzerland also takes part as an active observer (consultation, but no right to vote) in the meetings of the most important EU committees in the areas of research, civil aviation, social security and the recognition of diplomas. In areas in which Swiss legal provisions correspond to those of the Community, the Commission pays as much attention to Swiss experts as to those of EU member states when working on proposals for regulations or measures.

⁷ A mixed agreement is an agreement that has been concluded not just with the EC but also with each of its member states.

important to the economy are the Agreements on the Free Movement of Persons, on the Technical Barriers to Trade, and on Public Procurement Markets.

Switzerland-EU: essential economic facts

The population of the Single European Market increased to 490 million with the accession to the EU of Bulgaria and Romania, making this market even more important as a trading partner for Switzerland. More than two thirds of Swiss exports (approx. CHF 110bn) are to the EU, from which Switzerland receives four fifths of its imports (CHF 135bn). Between 1993 and 2005, Swiss-EU trade grew at an annual rate of 5 per cent, matching the growth rate of Switzerland's foreign trade in general. The most promising growth potential is now in the markets of Eastern Europe, where between 1993 and 2005 the annual rate of growth in trade with the 10 countries that joined the European Union in 2004 was on average of about 12 per cent. Trade with the two new members of 2007, Romania and Bulgaria, is already growing at a rate of over 14 per cent.

The EU is also the most important partner when it comes to direct investments: more than half of the foreign capital invested in Switzerland originates in the EU (CHF 125bn); and vice versa more than 40 per cent of Swiss direct investments abroad go to the EU (approx. CHF 200bn). Swiss companies have created some 850,000 jobs in the EU.

Switzerland and the EU are closely interlinked not only in terms of goods and capital flows but also in terms of employment: around 390,000 Swiss live and work in the EU, while some 890,000 EU citizens are employed in the Confederation, including 180,000 who commute daily to jobs in Switzerland. Further proof of the importance of these exchanges is the fact that every day about 700,000 people cross the border between Switzerland and the EU.

The economic advantages can be summed up as follows:

- Swiss companies now find *new business opportunities* in markets that were formerly closed to them, notably with regard to certain agricultural products, civil aviation, overland transport and public procurement. It is now easier for Swiss companies active in these sectors to penetrate the European markets and to benefit from the advantages of economies of scale. Swiss suppliers for example will be able to compete under the same conditions as their European competitors in public procurement markets including for municipal utility services, waste disposal and transport infrastructure – sectors where central and Eastern Europe has a great need to modernise, and in which the EU will be providing substantial financial assistance in the next few years.
- Vice versa foreign suppliers gain free access to the Swiss market, which should result in *greater competition* in the sectors concerned, providing incentives for increased productivity.
- Direct *savings* are possible in relation to the already liberalised trade in goods due to the simplification of rules for the admission of products (dismantling technical barriers to trade): testing and admission of products for the entire European market can now be carried out by a single certification body, either in Switzerland or in the EU.
- The biggest economic impact is that resulting from *liberalisation of the movement of persons*: this makes it easier to send Swiss staff to positions in the EU states, and also to recruit workers for the Swiss labour market. Thanks to the agreement on the free movement of persons the Swiss labour market effectively includes the entire area of the EU and indeed the EEA. Conditions which simplify the international mobility of labour result in more efficient allocation of resources, making it easier for Swiss entrepreneurs to recruit staff with appropriate qualifications for any particular job. This reduces the danger of staff shortages due to excessive wage levels. This is all the more important due to the fact that, for demographic reasons, the supply of Swiss staff is likely to fall in the medium term. The new arrangement will help to improve the growth of productivity and gross domestic product (GDP), keeping the Swiss labour market attractive over the long term.
- Finally, the complete integration of Switzerland in the European *research sector* will help to promote manufacture and the free exchange of specialised know-how (technology, innovation), which is seen as a determining factor when it comes to strengthening future growth potential.

The second series of bilateral agreements, *Bilateral Agreements II*, goes beyond the primarily economic concerns of the first round, dealing with cooperation in *important policy areas* such as security, asylum, the environment and culture. Only the Agreement on Processed Agricultural Products, facilitating exports for the food industry, is a market liberalisation measure comparable to those of Bilateral Agreements I. However, Bilateral Agreements II do cover *economic interests* in certain areas, e.g.:

- the interests of the financial sector through the protection and safeguarding of banking secrecy (tax on savings, efforts to combat fraud)

- strengthening of Switzerland's position as a tourist destination with the introduction of a Schengen visa (Schengen/Dublin)
- tax advantages for internationally active Swiss companies, which receive tax relief through the adoption of the parent-subsidiary directive (taxation of savings).

Enlargement contribution

As a corollary to its policy towards the EU, Switzerland accepts a certain responsibility towards Europe as a whole. One important aspect of this policy is the support which Switzerland gives to democratic and economic reforms in the former Communist states of Eastern Europe following the end of the Cold War (*traditional aid to Eastern Europe*). In addition, on 12 May 2004, i.e. shortly after the EU's enlargement towards the East on 1 May 2004, the Federal Council declared its readiness to help reduce the economic and social disparities in the enlarged EU (*enlargement or cohesion contribution*). Projects and programmes in the 10 new EU states are to be given support by Switzerland valued at CHF 1bn, over a period of five years. The ways and means for this commitment were set out in a *Memorandum of Understanding* between Switzerland and the EU in February 2006. On 26 November of the same year, the Swiss electorate voted in favour of the *Federal Act on Cooperation with Eastern Europe*, approving the necessary legal basis for this commitment, as well as for the continuation of Switzerland's traditional aid to Eastern Europe.

The cohesion contribution expresses Switzerland's feeling of solidarity with Europe and is at the same time the continuation of a policy of pursuing Swiss interests in Europe. Switzerland benefits both politically and economically from the increased stability and security, as well as from the growing prosperity in Europe due to the successful integration of the new EU states. This support for the growth markets of Eastern Europe is an investment in partnerships that has growing economic potential. Switzerland's acceptance of a share of the cost of the EU's enlargement is essential for the maintenance of good relations with the EU and for the continuing success of the bilateral approach to European policy.

As a European nation Switzerland takes its *shared responsibility* for security and prosperity on the continent seriously, a commitment that takes the form of contractual relations with the EU:

- Switzerland is a member of the *Council of Europe*, the *European Free Trade Association (EFTA)* as well as the *Organisation for Security and Cooperation in Europe (OSCE)*.
- Switzerland participates (through the UN, the EU and the OSCE) in military as well as civil *peacebuilding* efforts in the Balkans, and as a traditional *land of asylum* offers a safe haven to the victims of European crises.
- Since 1990, Switzerland has provided support for *reforms* in the former Communist states of Central and Eastern Europe – the so-called process of transition – amounting to a substantial sum (CHF 3.4bn).
- Finally, Switzerland as a transit country is making an important contribution to the proper functioning of the Single European Market with the *construction of the New Transalpine Rail Link (NEAT)*. This is a contribution to the transportation of both goods and passengers between the north and south of Europe that is both efficient and environmentally sustainable.

Report on Europe 2006

The Federal Council has outlined its policy towards Europe in the Europe Report 2006. After reviewing all its European policy instruments, the Federal Council reached the following conclusion: Switzerland's objectives, both those of a material and non-material nature, are best achieved at this point in time by means of the further development of the bilateral approach. This is not a definitive assessment, however. Important is the need for Switzerland's policy-makers on Europe constantly to review the question of interests and the efficiency of the policy's approach, and if need be, make adjustments. Moreover, EU membership remains a long term option.

The prerequisites for the continuing success of the bilateral approach include the following:

- Switzerland must be able to participate in EU decision-making to a sufficient degree in the framework of the Bilateral Agreements, and must also have sufficient room for manoeuvre in carrying out its own policies (*participation in decision-making*).
- The EU must be ready, in deciding its policy towards third countries, to seek solutions with Switzerland in the framework of bilateral sectoral agreements (*foreign political feasibility*).
- Finally the *economic framework conditions*, particularly in monetary matters, must not be allowed to alter to Switzerland's disadvantage.

Switzerland can influence the fulfilment of these prerequisites only to a limited degree. Its European policy instruments will have to be adapted if a new situation makes this necessary.

The following priorities will govern continuation of the bilateral approach:

- The *existing Bilateral Agreements* are being implemented efficiently. Whenever necessary they are to be adapted or renewed. This concerns in particular the implementation of Schengen/Dublin, the renewal of the Research and MEDIA Agreements and extension to Bulgaria and Romania of the Agreement on the Free Movement of Persons.
- It is possible that *bilateral agreements* will be necessary in new areas, assuming that there is interest on both sides. Exploratory talks are currently taking place in several areas (electricity, Galileo, education, health, free trade in agricultural products). Furthermore, to ensure better and more efficient coordination in the management and further development of the Bilateral Agreements the desirability and feasibility of a framework agreement between Switzerland and the EU is under consideration.
- Switzerland intends to continue contributing to the *elimination of economic and social disparities* in Europe.

Free Trade Agreement

The 1972 Free Trade Agreement (FTA) between Switzerland and the European Community created a free trade zone for industrial products originating in the States Parties to the Agreement. The Agreement also prohibits the setting of limits on the volume of goods that can be traded (quotas) as well as tariffs and measures that would have the same effect. The FTA relates exclusively to industrial products. Agricultural products are excluded. A special case is that of processed agricultural products⁸ such as chocolate, pasta, which are both industrial and agricultural. The tariff position of these products is the subject of Protocol 2 of the FTA.

The Free Trade Agreement is one of the main pillars of trade relations between Switzerland and the EU, and is thus of great economic importance. The Union and its 27 member states are Switzerland's most important trading partners by far: more than two thirds of Swiss exports go to the EU. Likewise, four fifths of all Swiss imports come from the EU. Switzerland is the second most important market for EU products and one of the Community's four most important trading partners together with the USA, China and Russia.

Key data

- Date of signing: 22 July 1972
- Approval by parliament and the electorate: 3 December 1972
- Date effective: 1 January 1973

Content

With the founding of the *European Community* in 1957, followed by that of the *European Free Trade Association* (EFTA) in 1960, Western Europe had two distinct paths towards integration. To prevent further splitting into two separate economic blocs and instead in order to create a market across Western Europe, a new free trade agreement was negotiated between the European Community (EC) and individual members of EFTA at the beginning of the 1970s. Switzerland participated in the negotiations and, in 1972, signed a Free Trade Agreement (FTA) with the EC, paving the way for closer economic relations with the Community, but without relinquishing any power to conclude treaties with other countries. Although not required to do so by the Swiss Constitution, the agreements were made subject to an obligatory referendum. The Free Trade Agreement was approved by the 72.5 per cent of the electorate on 3 December 1972 as well as by parliament.

The FTA prohibits the application of tariffs in the product categories (*industrial products*) covered by the Agreement, as well as the use of any quota systems or similar measures. *Agricultural products* are excluded. *Processed agricultural products* are a special case, being part industrial and part agricultural. Their tariff position is regulated by Protocol 2⁹ to the FTA, the industrial part being made duty free on both sides, whereas the cost differences of the agricultural commodities involved between the States Parties continue to be evened out to a great extent through tariffs and export subsidies.

Duties are eliminated only *within* the free trade area. Partners in a free trade area, unlike the practice in a customs union, may act independently in setting tariffs and quotas for third nations. Customs clearance thus applies again at the free trade partners' borders. To qualify under the terms of the Free Trade Agreement, it must be demonstrated that imported goods have their origin in one of the partner countries.

⁸ These consist on the one hand of agricultural raw materials, and on the other of an industrial processing component.

⁹ Protocol 2 was revised in the framework of Bilateral Agreements II, considerably improving the market access of food industry products: EU tariffs based on the agricultural content of Swiss imports were completely eliminated, as were export subsidies. For its part, Switzerland reduced both import tariffs and export subsidies (see "Processed Agricultural Products" Fact Sheet).

Protocol 3 to the FTA calls for a so-called *cumulation of origin*, which makes it possible for a product, as defined in the Agreement, to be further processed in various countries of Europe without losing its preferential status¹⁰. This means that the original materials can be considered as goods from one's own country and are thus more attractive to the manufacturer. Gradual extension of a cumulation of origin for free-trade goods to all Mediterranean countries was launched in the context of the *Euro-Med Cumulation System*¹¹.

Significance

The Swiss economy is an export economy by tradition. The Free Trade Agreement provides the basis for intensive trade relations with Switzerland's most important trading partners, i.e. the EU and its 27 member states. In 2006, Switzerland exported goods worth CHF 110bn to the EU states, while imports from the EU were worth CHF 135bn. The volume of trade has grown by an average of 5 per cent a year over the past decade, the same as the rate of growth for all foreign trade. A major portion of this exchange of goods is covered by the FTA. The nearly 35 years of partnership in the context of the FTA has thus been beneficial to both partners.

Information

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¹⁰ Pan-European Cumulation System: EU 27, EFTA 4, Turkey.

¹¹ The following count as Mediterranean countries: Egypt, Algeria, Israel, Jordan, Lebanon, Morocco, Syria, Tunisia, West Jordan and the Gaza Strip.

Insurance

Switzerland and the European Community concluded a bilateral agreement on the partial opening of insurance markets in 1989. This agreement guarantees the right of establishment on the basis of reciprocity: Swiss insurance companies have equal rights when it comes to establishing and taking over agencies and branches on the sovereign territory of the European Union. The same applies to EU companies in Switzerland.

The Insurance Agreement applies exclusively to direct insurance against loss or damage. This includes insurance on contents of the home, motor third party insurance, travel insurance, liability insurance, and so on. It does not cover life insurance, reinsurance or statutory security social systems. The Agreement regulates only the right of establishment, not the freedom to provide cross-border services.

Even though the Insurance Agreement liberalises the insurance market only partially, it is nonetheless of considerable economic importance, as can be seen from the thriving business which Swiss insurance companies do in EU member states.

Key data:

- Date of signing: 10 October 1989
- Approval by parliament: 30 January 1992
- Date effective: 1 January 1993

Significance

The insurance sector is of considerable importance to the Swiss economy (45,000 jobs in Switzerland and 90,000 abroad)¹². Income from premiums in the area of insurance against loss or damage (non-life) amounts to more than CHF 80 billion a year, about three quarters of which is earned abroad. Considering the size of the European market, the right of establishment in the EU was a major step forward for Swiss companies.

Experience

This is an important agreement, paving the way for many Swiss insurance companies to establish or acquire branches in the member states of the European Union. It has enabled these companies to improve their position on the international market.

Information

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¹² Data from the beginning of 2004. Source: Swiss Insurance Association (SIA)

Free movement of persons

The Agreement lays down the basic rules for the free movement of persons between Switzerland and the European Union, their gradual introduction between the two parties. It gives citizens of Switzerland and of the EU states the right to work and live in the territory of whichever of the countries concerned they choose. This is conditional however on the possession of a valid employment contract, being self-employed, or in the case of a person who is not in gainful employment, being financially independent and covered by health insurance. In support of the free movement of persons the partners have also agreed on the mutual recognition of professional diplomas and to coordinate national social security schemes.

The Agreement allows for transitional periods during which immigration restrictions, including own citizens' prior rights, prior control of wage and employment conditions, and quotas may be maintained in relation to both employees and self-employed people. This is designed to ensure a gradual, controlled opening of the labour markets:

- The quota rules for the 15 "old" EU states (EU 15)¹³ together with Malta and Cyprus were revoked on 31 May 2007 after five years in application.
- For the eight Eastern European states (EU 8) which joined the EU in 2004¹⁴, immigration restrictions apply up to 30 April 2011 at the latest, as set out in a supplementary protocol to the agreements.
- Insofar as the states which joined in 2007 are concerned, Bulgaria and Romania, separate transitional measures are being negotiated in the form of an additional protocol¹⁵, again subject to an optional referendum.¹⁶
- Restrictions on residence permits (quotas) may be reintroduced up to the year 2014 in the case of an increase in immigration of more than 10% on the basis of a safeguard clause ("safety valve" clause).

The Agreement on the free movement of persons, which was negotiated for an initial period of seven years, has been in force since 1 June 2002. Before it expires, Switzerland will decide on its continuation in the form of a federal decree, which is subject to an obligatory referendum. The EU must be notified of Switzerland's decision in writing by 31 May 2009 at the latest.

In parallel with the introduction of the free movement of persons, flanking measures against wage and social welfare dumping came into force on 1 June 2004. They are designed to protect employed people against unfair undercutting of the wage and social welfare levels existing in Switzerland. In view of the extension of the free movement of persons to the EU states which acceded in 2004, the implementation of these measures and their effectiveness have been strengthened in an effort to improve employee protection. The stronger measures came into force (together with the protocol) on 1 April 2006.

The Agreement on the free movement of persons is one of the most important of the Bilateral Agreements for the Swiss economy, which is dependent on foreign workers. This applies both to skilled workers, of which there is a shortage in Switzerland and which are also sought after in the international market, and to less skilled workers. In addition to the improved recruitment possibilities, finding it easier to transfer Swiss staff to EU states is also important for Swiss companies. This agreement improves Switzerland's standing both as a manufacturing centre

¹³ EU 15: Belgium, Denmark, Germany, Finland, France, Greece, the United Kingdom, Ireland, Italy, the Netherlands, Austria Luxembourg, Portugal, Sweden, Spain

¹⁴ EU 8: Estonia, Latvia, Lithuania, Poland, Slovakia, Slovenia, the Czech Republic, Hungary

¹⁵ As with the rules governing the EU 8, in particular the *transitional period*, labour market restrictions including own citizens' prior rights, prior control of wage and employment conditions, and quotas – as well as the *size of quotas* – may be the subject of negotiations. The EU internal transitional arrangements for Romania/Bulgaria serve as a guideline for the duration of the transitional period. These provide for immigration restrictions up to 2014 at the latest, together with special regulations for Austria and Germany in the services sector.

¹⁶ Until the relevant Protocols take effect, Bulgaria and Romania basically remain subject to the immigration restrictions applicable to third countries (quotas, own citizens' prior rights, residence permits limited to qualified employees).

and as a labour market. Another reason why the Agreement is important is the fact that, for demographic reasons, the supply of workers in the home market is expected to decrease in the medium term.

Key data

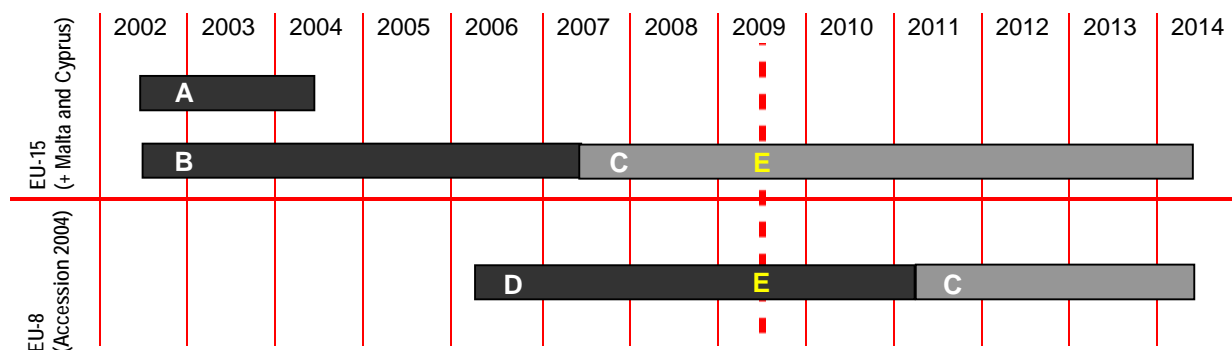
- Date of signing: 21 June 1999 (in the context of Bilateral Agreements I)
- Approval by the electorate: 21 May 2000 (by 67.2 %)
- Date effective: 1 June 2002
- Date of signing of the supplementary protocol: 26 October 2004
- Approval of the protocol by the electorate: 25 September 2005 (by 56 %)
- Date protocol became effective: 1 April 2006

Content

Controlled opening of the labour market

The reciprocal opening of the labour market is a gradual and controlled process. For *employees* and *self-employed people* from the EU 15 and the EU 8 countries, basically two different sets of transitional regulations apply in Switzerland (see chart). At the end of the transitional periods, there is still the possibility of setting quotas in the event of an increase in the arrival of job-seekers from the EU of more than 10 per cent of the average for the three previous years. The number of work permits can be set unilaterally at the average of the three previous years plus 5% for a period of two further years. This *safeguard clause* is valid up to the 12th year after the agreement takes effect (i.e. up to 31 May 2014).

Transitional regulations



Introduction of the free movement of persons in relation to EU 15 + Malta and Cyprus:

- A** Own citizens' prior rights¹⁷ and prior control of wage and employment conditions¹⁸ up to 31 May 2004. Since this date Swiss citizens have enjoyed complete freedom of movement in the EU 15 countries.
- B** Quotas up to 31 May 2007: Switzerland limits the number of residence permits for employees and self-employed people from the EU to 15,000 new long-term (5-year) residence permits a year and 115,500 short-term residence permits (between four months and one year).
- C** Special safeguard clause (in the event of an increase in immigrants of more than 10%) up to 31 May 2014.
- E** Federal decree on the continuation of the free movement of persons agreement (with optional referendum) by 31 May 2009.

¹⁷ Priority to own citizens: foreign employees may only be hired if there are no candidates with comparable qualifications in the domestic labour market.

¹⁸ Wage controls: the cantons must check the wage and employment conditions before a work permit can be issued.

Introduction of the free movement of persons with the EU 8 countries of Eastern Europe which joined in 2004¹⁹:

- D** Own citizens' prior rights, prior control of wage and employment conditions as well as quotas up to 30 April 2011 at the latest: the quota for long-term residence permits increases gradually from 1,700 (2006/07) to 3000 persons (2010/11), and the quota for short-term residence permits from 15,800 (2006/07) to 29,000 persons (2010/11).
- C** Special safeguard clause for Switzerland in the event of an increase in immigration of more than 10% (up to 31 May 2014).
- E** Federal decree on continuation of the free movement of persons agreement (with optional referendum) by 31 May 2009.

Additional provisions

- *Long-term permit (B)*: for persons with an employment contract covering several years, a permit will be granted for a period of five years; the permit will be automatically renewed if the employment is continued.
- *Short-term/seasonal permit (L)*: seasonal worker status disappeared once the agreement took effect, being replaced in the case of employment for less than a year by a short-term EU-compatible residence permit. The duration of the permit is tied to that of the employment contracts (max. 1 year).
- *Physical and professional mobility*: holders of both long-term and short-term residence permits have the right to change their place of residence and their place of work.
- *Family reunification*: regardless of the length of residence, holders of a residence permit are entitled to be accompanied by their family.
- *Self-employed*: people from the EU 25 countries who are self-employed must be able to prove this. They are eligible for a long-term residence permit (5 years).
- *Cross-border commuters*: once the free movement of persons agreement (and protocol) came into force, people who commute across the border to work in Switzerland are required to return home on a weekly basis rather than every evening. There are no quotas for cross-border workers. As of 1 June 2007, border zone limits cease to apply to cross-border workers from the EU 15 as well as Malta and Cyprus, i.e. the place of residence and place of work no longer need be within a certain distance of the border. For citizens of the EU 8 countries, the border proximity rule remains in force until 30 April 2011 at the latest.
- *Service providers²⁰*: the agreement liberalises personal, cross-border provision of services for up to 90 days in a calendar year, i.e. service providers may operate in a host country for a maximum of 90 working days. As of 1 June 2004, insofar as the EU 15 countries are concerned, prior registration is all that is necessary in this category²¹ (own citizens' prior rights and the need for permits no longer apply). Insofar as the EU 8 countries are concerned, cross-border service providers in certain fields (construction, building cleaning services, security, gardening) are subject to labour-market restrictions (own citizens' prior rights, prior wage controls and quotas, Swiss qualifications requirements) during the transitional period.
- *Residence up to 4 months* is not subject to quotas and, as of 1 June 2004, there is only a prior registration requirement, i.e. own citizens' prior rights and the need for permits no longer apply. Exceptions: citizens of EU 8 countries require residence permits during the transitional period and are subject to labour-market restrictions (own citizens' prior rights, prior wage controls and quotas, Swiss qualifications requirements).
- *Job seekers* can come to Switzerland to seek work for a period of six months. They may remain in Switzerland for three months without a permit, after which they will be given an L permit for the remaining three months. They are not eligible however for Swiss social welfare benefits. If no job is found no residence permit can be provided.

¹⁹ Cyprus and Malta, which also joined the EU on 1 May 2004, differ from the Eastern European EU 8 in that they are subject to the same transitional regulations as the 15 "old" EU states and the EFTA countries.

²⁰ In areas in which an agreement on services exists between Switzerland and the EU (e.g. public procurement markets, agreements on civil aviation and overland transport) the provision of services must not be made more difficult by regulations on the movement of persons.

²¹ *Compulsory registration for workers*: EC/EFTA citizens must register before commencing activity in Switzerland. This is usually done by the employer.

Residence rights for persons not gainfully employed

Persons who are not gainfully employed, e.g. pensioners and students, have the right to enter Switzerland and take up residence. This is conditional however on having health insurance and sufficient funds to ensure that social welfare benefits will not be required. If such assistance is requested the residence permit may be withdrawn.

Right to the recognition of professional diplomas

A diploma attesting that a person has met the legally recognised requirements to exercise a given profession in a particular country must be accepted in another country if it meets the minimum standards stipulated in the agreement. It is up to this other country to ascertain the degree of equivalence in each case. If there are significant differences, the States Parties are obliged to suggest compensatory measures in the form of additional examinations or a course of study to bring the person up to the level required. The diploma recognition system applies only to so-called regulated professions, which can only be practised in a given country by persons having obtained the necessary qualifications. Recognition of these diplomas is automatic, i.e. without need for further checks, for the following seven professions: medical practitioners, dentists, veterinary surgeons, pharmacists, nurses, midwives and architects.

Coordination of national systems of social security

National social security schemes will not be standardised or harmonised, but simply coordinated. The aim is to ensure that no one loses any rights to make a claim when working in a partner country.

The following basic rules apply in relation to *unemployment insurance*:

- *Equality of treatment*: whether foreigner or national - anyone in a situation of involuntary unemployment is entitled to benefits if they fulfil the required conditions (e.g. minimum number of contributions) in the state in question. People who are voluntarily unemployed are also entitled to benefits but must allow for a period of suspension. They may also lose their residence permits.
- *Determining the responsible state*: the state where a person was last employed is in principle responsible for providing unemployment benefit. Cross-border workers are an exception to this rule: the country in which they are resident remains the responsible state.
- *Principle of totalisation*: the right to receive unemployment benefit depends among other things on the period of contributions (in Switzerland 12 months within a period of two years). The change is that thanks to the Agreement, periods of contributions abroad are henceforth taken into account in calculating benefits. To avoid overburdening the Swiss unemployment insurance system, the principle of totalisation shall only apply to workers in possession of a short-term residence permit (up to one year) from EU 15 countries from 1 June 2009, and for short-term workers from the EU 8 countries from 1 May 2011.
- *Export of services*: this regulation enables a person to seek work in another country for a maximum period of three months, during which time the unemployment benefit is "exported".

Health insurance: Basically, premiums are paid in the country of employment. The guiding principle is that the insurance cover is in the country of employment, whereas the services are provided in the country of residence.

Old age, survivors' and disability insurance: this category of insurance must usually be taken out in the country of employment. Persons insured in two or more states obtain a pension contribution from each of these states in accordance with a *pro rata* system. The first old-age pension payment is made according to the legal retirement age in the countries concerned.

Occupational pension schemes: As of 1 June 2007, the benefit due on leaving an obligatory occupational pension scheme for persons leaving Switzerland definitively can no longer be paid out in cash, to the extent that, or for as long as, the person concerned is under a legal obligation to be insured in an EU state. Such persons may leave the amount due in a blocked insurance policy or a blocked bank account, so that the required provident protection is guaranteed.

Family allowance: the right to a family allowance usually concerns the country of employment.

Flanking measures against social welfare and wage dumping

As a consequence of the introduction of free movement of persons, all discriminatory controls in the employment conditions of EU citizens in Switzerland must be abolished. This means prior wage controls of foreign employees cannot be maintained once the transitional regulations cease to apply. The Swiss government and parliament have therefore decided on a package of *flanking measures* in parallel with the introduction of the free movement of persons to strengthen the protection of employees against wage and social welfare related dumping. These measures came into effect on 1 June 2004. The wage and social welfare levels in Switzerland must be maintained by all employers and apply to all gainfully employed persons, particularly in the case of employees transferred to posts in Switzerland. Abusive undercutting of Swiss wage and employment conditions will be combated with the help of the following measures:

- *Federal Act on Transfers*: employees of a foreign company who are temporarily transferred to Switzerland for the purpose of providing a service, are subject to the minimum wage and employment conditions that apply in Switzerland.
- *Facilitated extension of collective labour agreements*: in the event of abusive and repeated undercutting with regard to everyday working conditions, it will be easier to impose regulations on minimum wages and working hours contained in collective labour agreements (CLA).
- *Standard employment contracts with minimum wages*: in sectors where collective labour agreements do not exist (or without CLAs of universal binding character), in cases of repeated cases of abuse, the federal and cantonal authorities can impose binding minimum wage conditions as part of a normal employment contract for a given period.
- *Tripartite commissions*: at the federal and cantonal levels, tripartite commissions (composed of authorities, employers and trade union representatives) oversee the labour market and impose whatever sanctions are appropriate²².

In anticipation of the extension of the free movement of persons to the countries which joined the EU in 2004, efforts have been made in cooperation with employers' and workers' representatives to improve the effectiveness and implementation of these measures to increase employee protection. The following additional improvements have been made since 1 April 2006:

- *Labour market inspectors*: the cantons are required to appoint a sufficient number of labour market inspectors. These are responsible for overseeing employment conditions and reporting any cases of abuse. The assumption is that a total of 150 inspectors will be necessary (divided between the cantons and the joint commissions).
- *Collective labour agreements with minimum wages*: the CLA of universal binding character has been further simplified. The quorum requirement for employers has been entirely eliminated, while the requirement for number of employees represented has been increased from 30 to 50 per cent.
- *Tougher sanctions*: to ensure more effective application of the law on transferred employees, foreign employers guilty of abuse will be subject to greater obligations and tougher sanctions. Foreign employers who are guilty of undercutting wage and employment conditions in Switzerland, can more easily and rapidly be excluded from the Swiss market.
- *Notification of the authorities*: in order to simplify controls, foreign employers intending to temporarily transfer employees to Switzerland must inform the Swiss authorities in writing as to each employee's identity, activity, place of work, etc.
- *Information in writing*: in order to simplify controls, employees will be informed in writing on the essential aspects of more long-term working conditions.
- *Measures against sham self-employment*: self-employed persons are not subject to the flanking measures. However before commencing activity in Switzerland they are now required to provide proof of their self-employed status (e.g. evidence from their accounts or an extract from the commercial register).
- *Better protection for temporary employees*: additional provisions from collective labour agreements of universally binding character will be applicable in the area of temporary employment (contributions to further education and the cost of controls, regulation of flexible retirement). Furthermore, hiring agencies are now obliged by law to provide information to the joint and tripartite commissions.

²² Branches that are covered by a binding collective labour agreement are supervised by joint commissions made up of workers' and employers' representatives.

Significance

The Swiss economy depends on imported labour. Every fifth gainfully employed person in Switzerland is a foreign national. For Swiss companies, being able to transfer Swiss staff to branches in EU states and to recruit employees on the European labour market is of considerable importance. Increased labour mobility makes it easier to find suitable staff for specific jobs. It also reduces the danger of serious staff shortages with a corresponding increase in wage demands. This is particularly important in view of the fact that for demographic reasons the supply of labour on the domestic front is likely to diminish over the medium term. The availability of suitable staff improves both productivity and growth. The Swiss economy and labour market will thus remain attractive over the long term. Finally, thanks to the Agreement on the free movement of persons, Swiss citizens have equal access to the EU labour market and can establish themselves in the EU more easily.

Experience

Since coming into force on 1 June 2002, the Agreement on the free movement of persons has fulfilled the *positive expectations* placed on it. Immigration has developed in a controlled manner in line with expectations and has helped the economy. There have been no noticeable negative effects on wage levels or the rate of unemployment and no displacement of Swiss employees (Observation Report [Observatoriumsbericht], SECO, May 2007²³). Overall, net immigration to Switzerland *began to slow as from 2002* and only began to increase again in June 2005 as the economy improved. In this context, there has been a *clear replacement* of immigrants from other countries by immigrants from the EU/EFTA area. The first experiences of arrivals from the countries of Eastern Europe which joined the EU in 2004 show a moderate rate of immigration. The number of issued annual residence permits (June 2006 to April 2007) was only around 50 per cent, and of short-term residence permits about two thirds of the set quotas. There has above all been demand for seasonal workers, i.e. in agriculture, hotels and catering, and in the tourism sector.

The change in the flow of immigrants in favour of EU citizens meets the objectives of Swiss migration policy: immigration from the EU is given preference, whereas only qualified people from third countries are admitted. The extension of the free movement of persons makes it possible to pursue this aspect of the government's migration policy consistently. Experiences with immigration from the EU 15 countries since the Agreement on the free movement of persons came into force on 1 June 2002 can be summarised as follows²⁴:

- Professions and economic sectors in which there has been a considerable increase in employment have also shown an increase in the arrival of foreign employees. This illustrates the importance of the free movement of persons to the Swiss labour market and to *economic growth*. Demand from the Swiss private sector for *medium to highly qualified* employees was particularly high²⁵.
- As expected, the quotas for *long-term residence permits* (5 years) came under much pressure right up to their removal on 1 June 2007. The annual quota of 15,300 residence permits were fully taken up. The demand for *short-term residence permits* (4-12 months) increased in the first five years, reflecting the phase of the economic cycle. The shortage of available long-term residence permits made it necessary to make increasing use of short-term residence permits as a temporary solution. As a result, the number of issued annual permits increased from 58 per cent in the first year to 83 per cent of the maximum permitted level of 115,700 in the fourth year.
- *Short-term residence permits for a maximum 90 days* (cross-border service providers and short periods of gainful employment with a Swiss employer) have no longer been necessary since 1 June 2004, being replaced by an obligation to register. This simplified procedure resulted in a significant increase in demand²⁶. Between June 2005 and May 2006 the number

²³ <http://www.europa.admin.ch/dokumentation/00437/00633/index.html?lang=de>

²⁴ Whereas wage controls and Swiss citizens' prior rights were cancelled in relation to workers from the EU 15 countries as of 1 June 2004, upper limits (quotas) remained in force for residence permits until 31 May 2007.

²⁵ The greatest increases in gainful employment for EU/EFTA citizens was in the academic professions, management, technicians and similar skilled professions. Branches with increased numbers of immigrant workers: agriculture, construction, hotels and catering, real estate, consulting, applied computer science, research and development (R&D), education and other services.

²⁶ It can be assumed that a considerable number of gainfully employed persons who were formerly illegal took advantage of the simplified procedures to become legal.

who registered under this procedure corresponds to an estimated work volume of 13,300 full-time jobs (equal to 0.4 per cent of the total Swiss work volume).

- The *rate of unemployment* is influenced by the business cycle. The rate fell slightly as from 2003, and fell significantly in 2006 to 3.3 per cent. The unemployment rate for Swiss citizens has always been significantly lower than that for foreign workers. Sectors with large numbers of immigrants did not suffer from above-average unemployment, which argues against any significant displacement of Swiss citizens in gainful employment.
- The *employment* of Swiss citizens also increased in economic sectors with large numbers of immigrants. This also contradicts the idea that incoming employees from the EU displace Swiss job-holders, and indeed suggests that the former tend to have a positive influence on job creation.
- There has been no noticeable negative impact on *wage developments*. In sectors with large numbers of immigrants, the evidence shows wage developments that have been both above average (e.g. hotels and catering and other services) and below average (e.g. building trades and education). Experience with controls and *flanking measures* confirm the fact that the wage levels customary in Switzerland have been maintained to a great extent²⁷. In 2005, 6.7 per cent of the companies and 16 per cent of persons checked were involved in violations or suspected abuses²⁸. The controls are constantly being improved. The control activities of the cantons have increased noticeably, focusing on sectors where the risks are greatest, i.e. CLA without universal binding character.

Information

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²⁷ SECO: Report on implementation of flanking measures in relation to the free movement of persons. 1 January 2005 to 31.12.05. 20. April 2006. www.seco.admin.ch/aktuell/00277/01164/01980/index.html?lang=de&msg-id=4753

²⁸ Most were in the building trades, in assembly work, repairs and service, placement agencies or agriculture.

Technical barriers to trade

The Agreement on dismantling technical barriers to trade (also known as the “Mutual Recognition Agreement”, MRA) calls for the mutual recognition of conformity tests for most industrial products. Conformity tests determine whether or not a product meets current standards, e.g. with regard to consumer protection, and is therefore suitable for introduction on the market. If it can be established within the scope of the Agreement that Swiss legislation is equivalent to that of the Community, a single conformity test is sufficient for the product to be marketed in both Switzerland and the EU. Conformity tests carried out in accordance with Swiss law on products covered by the Agreement allow manufacturers to export their products directly to the EU with the required EC label.

Elimination of the need for double conformity tests removes a major barrier to trade. Swiss manufacturers thus have market access that is virtually equal to that of their EU competitors for products covered by the Agreement. This generally means lower costs and a savings in time for entrepreneurs launching new products on the European market.

Key data

- Date of signing: 21 June 1999 (in the framework of Bilateral Agreements I)
- Approval by the electorate: 21 May 2000 (in the framework of Bilateral Agreements I)
- Date effective: 1 June 2002

Content

Differences in product regulations²⁹, together with the non-recognition of the relevant conformity tests³⁰, constitute major *technical (or non-tariff) barriers to international trade* in goods. These regulations have been harmonised in many areas of the Single European Market. To save Swiss manufacturers from having to develop separate products for the home market and for export to Europe, the Federal Council decided, after the electorate voted against EEA membership in 1992, to unilaterally adapt Swiss technical regulations so that they would conform to those of the EU. The corresponding *Federal Act on Technical Barriers to Trade* (THG; SR 946.51) came into force on 1 July 1996. Since then, Swiss technical regulations have been formulated to correspond with those of the most important trading partners, i.e. the EU member states. Exceptions are possible however, particularly in relation to the protection of health, of consumers and of the environment.

This unilateral adaptation of national legislation does not however eliminate all technical barriers to trade. For, without the mutual recognition of conformity tests, Swiss products being marketed in the EU would still have to undergo double conformity tests, i.e. in a Swiss testing laboratory and subsequently in an EC laboratory. This is where the Agreement comes into play. Switzerland and the EU agree to accept the verdict of each other's conformity tests for all products covered by the Agreement. There are two possibilities:

- To the extent that Swiss regulations and those of the EC are recognised as *equivalent* in the context of the Agreement, just *one* conformity test will be necessary. The conformity test can be performed by the official laboratory of one of the States Parties on the basis of its own legislation. It is then automatically recognised by the other States Parties without need for further procedures. The location of the laboratory conducting the test, be it in Switzerland or in the EU, is not relevant

²⁹ Technical regulations concerning products (composition, packaging, labelling), procedures (manufacture, transport, storage, preparation) and certification in the country of origin and the country of destination. The purpose of these requirements is to guarantee safety, consumer/health protection and environmental protection.

³⁰ Test, certification, inspection, registration and admission.

- If there is *no recognition* of the equivalence of the regulations, then two conformity tests – one in accordance with Swiss law and the other according to EC law – become necessary. Both tests can be conducted by the same laboratory however. This means that a Swiss manufacturer can carry out the conformity tests necessary for export to the EU in Switzerland, at an official Swiss laboratory, on the basis of EC regulations.

Areas covered by the Agreement, in which Swiss regulations *correspond* to those of the EC (extensively, or are seen as equivalent), include machinery, medical products (prostheses etc.), telecommunication terminals, motor vehicles and tractors, measuring instruments, packaging, electrical equipment, manufacturing controls for pharmaceutical products (GMP³¹), tests on the basis of Good Laboratory Practices (GLP³²). Areas covered by the Agreement in which the regulations do *not (or not completely) correspond* include gas-fired equipment and boilers. Not included in the Agreement at present are items such as chemicals, pesticides, biocides and construction materials. However, it is possible to *extend* the Agreement: Other sectors can be included as long as Switzerland adapts its legislation to that of the EU³³. The Agreement can in any case cover only products for which regulations have been harmonised within the EU³⁴.

Significance

The Agreement is of great importance to the economy. Entrepreneurs benefit from *falling costs* and *shorter delays* when marketing new products throughout Europe. This makes Switzerland more competitive as a production centre and thus protects jobs. The simplified import of EU products gives consumers a wider choice and also puts downward pressure on prices. The Agreement covers most industrial products. Export-oriented industries such as mechanical and electrical engineering, and metallurgy, the chemical and pharmaceutical industries, and producers of medical equipment and measuring instruments benefit the most. Thanks to the Agreement, these industries save between CHF 200-500 million a year³⁵. The advantage of products reaching the market more rapidly is difficult to calculate.

On 1 February 2007, the original limitation to the Agreement for goods originating in the States Parties was lifted. Conformity tests on products from outside Europe recognised in the EU are now also accepted in Switzerland. Once again Switzerland's competitiveness has been improved.

Information

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³¹ *Good manufacturing practices*. The mutual recognition of approval for pharmaceutical products is not covered by the Agreement.

³² *Good laboratory practices* for the registration of chemical substances and preparations

³³ To date it has not been possible to extend the Agreement to cover additional product areas.

³⁴ The *non-harmonisation* of products is regulated in the EU by the so-called *Cassis de Dijon principle*: products which can be legally sold in accordance with the national regulations of an EU state can basically be sold and consumed in the other EU member states. This principle does not however apply between Switzerland and the EU. A revision of the Act on Technical Barriers to Trade (THG) should however make it possible for products that freely circulate in the EC or the EEA to be admitted in Switzerland as well. This would require either bringing the regulations in Switzerland in line with those of the EC if covered by the bilateral agreement (MRA, Agricultural Agreement), or on the basis of new THG provisions for the application of the Cassis de Dijon principle in Switzerland. Exceptions are possible only in cases of overriding public interest (such as the protection of health, the environment or consumers).

³⁵ The extra cost due to additional conformity assessments in the importing country are on average between 0.5 and 1 per cent of the value of the product.

Public procurement markets

The rules of the World Trade Organization (WTO)³⁶ require that contracts above a certain threshold for the procurement of goods and services by public bodies, as well as construction work, be put out to international tender. The aim of this rule is to foster transparency and more competition in public procurement markets.

In Switzerland, the WTO rules originally applied only to public procurement markets at the federal and cantonal levels. They were binding only for public water and energy utilities, and municipal public transport (inner city) systems. The Switzerland-European Union Agreement on public procurement markets extends the WTO rules to other areas, i.e. to public procurement by local authorities, to railway and telecommunications companies as well as to private concessions in the water, electricity and gas sectors.

Considering the large sums spent by public bodies in the EU as well as in Switzerland, this additional liberalisation to include local authorities creates new opportunities for export industries, e.g. the mechanical engineering industry, as well as in the services sector, e.g. engineering and architectural offices. Furthermore, it can be assumed that greater competition between suppliers in public procurement markets will lead to lower prices and thus to considerable savings for the federal, cantonal and local governments.

Key data

- Date of signing: 21 June 1999 (in the framework of Bilateral Agreements I)
- Approval by the electorate: 21 May 2000 (in the framework of Bilateral Agreements I)
- Date effective: 1 June 2002

Content

The Bilateral Agreement between Switzerland and the EU extends the WTO rules to new public procurement markets (goods and services as well as construction work). Contracts offered by local authorities, railway and telecommunications companies as well as companies with concessions or enjoying special or exclusive rights must also put projects out to public tender. The rules for the awarding of contracts are based on three principles:

- equal treatment for all suppliers (non-discrimination)
- transparent procedures
- right of appeal against tender and award procedure decisions (beyond a certain threshold)

Public bodies and related companies are obliged to put public procurement market contracts beyond a certain threshold³⁷ out to tender in accordance with WTO rules.

The most economically advantageous or the lowest bid must be awarded the contract if the quality of the goods and services offered are comparable to those of higher bids. The criteria may also include delivery dates, the quality of after-sales service and environmental impact. Public procurement agencies may also insist on compliance with regional or industry-wide wage and employment conditions. The selection criteria, however, must be non-discriminatory and must be made clear at the outset.

³⁶ The WTO Agreement on Government Procurement (APM/RS 0.632.231.422), concluded on 15 April 1994 in Marrakesh, came into effect on 1 January 1996.

³⁷ The WTO rules apply to building contracts in excess of CHF 9,575 million. For goods and services the threshold is CHF 248,950 at the federal level, CHF 383,000 at the cantonal level and CHF 766,000 when it is a case of a public body or state-controlled company in the water, energy or transport sectors. The Switzerland-EU Agreement also calls for contracts at the district and local authority level to be put out to international tender when the value exceeds CHF 383,000. These values apply to the year 2007 as per the ordinance of the Federal Department of Economic Affairs (DEA) of 30 November 2006 (RS 172.056.12), on the basis of values relative to the Special Drawing Rights (SDR, unit of currency of the International Monetary Fund, IMF).

The Bilateral Agreement between Switzerland and the European Union includes the possibility of excluding public procurement in certain sectors from the agreement on the condition that competition is clearly effective. A procedure evaluating the possible exclusion of the telecommunications sector is already under way.

Significance

The value of contracts for infrastructure and the procurement of goods and services by public bodies in the European Union has been estimated at around €1,500 billion a year. The opening of this market offers enormous potential, not only for the high-tech equipment of specialised Swiss exporters, e.g. medical equipment, railway equipment, power grids, water pipes, etc. but also for the services sector, e.g. engineering and architectural offices.

The application of WTO rules, in particular the rules for international tenders at the European level, means greater competition between suppliers in Switzerland and the European Union. Public procurement agencies have more choice and can give their business to suppliers who offer the best price-performance ratio. This helps to bring down prices and means a considerable overall savings in the public sector.

Common rules and greater transparency in the awarding of government contracts make arbitrary and discriminatory decisions less likely. Suppliers can appeal against unfair decisions with regard to their bids.

Experience

Thanks to this Agreement, Swiss companies can participate in public tender procedures on an equal footing with competitors in the 27 EU states, and EU companies can tender for Swiss public sector contracts and may find the kind of opportunity that is not always available on their national markets. In 2004, the value of public sector contracts in Switzerland totaled CHF 33.5 billion (7.5 per cent of GDP). The breakdown is as follows: 19 per cent at the federal level, 38 per cent at the cantonal level and 43 per cent at the local level.

Information

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Information on public procurement markets in Switzerland: www.simap.ch
Information on public procurement markets in the EU: <http://simap.eu.int/>

Research

The Agreement on research, of 1999, provided for comprehensive Swiss participation in the fifth EU Framework Research Programme (FRP). It has had to be renewed to allow Switzerland's participation in the next programmes (6th FRP, 2003-2006; 7th FRP, 2007-2013).

The FRPs cover the activities of the European Community in the areas of research, technology development and demonstration, as well as research and training in the context of the European Atomic Energy Community (Euratom). They are the European Union's main instrument for implementation of its science and technology policy. The aim is to strengthen Europe as a centre for research and to promote growth and employment by means of the cross-border networking of European research capacities.

The seventh FRP has a total budget of about €54.6 billion (CHF 90 billion). Switzerland's contribution of around CHF 2.4 billion over seven years amounts to 2.8 per cent of the total. The research being promoted in the framework of the seventh FRP includes information and communication technologies, health, energy, nanotechnology and environment technology. For the first time, basic research is also being promoted at the European level.

Participation on an equal footing in FRPs of Swiss research (universities, private companies and individuals) brings with it scientific, technological and economic benefits that are also particularly advantageous for the private sector. Experience with the sixth FRP has surpassed expectations. Provisional results show that Swiss project submissions enjoy a success rate that is well above the European average. If this continues, 100 per cent of Switzerland's contribution will flow back into the country in the form of support for projects in Switzerland.

Key data

- Date of signing: 21 June 1999 (in the framework of Bilateral Agreements I)
- Approval by the electorate: 21 May 2000 (in the framework of Bilateral Agreements I)
- Date effective: 1 June 2002
- Renewals of the Agreement: 2004 and 2007 for participation in the 6th (2003-2006) and 7th FRPs (2007-2013).

Content

Switzerland has participated as a third party in the EU's research programmes since 1992. The Bilateral Research Agreement of 1999, which came into force in June 2002 for a specific period of time, gave Swiss researchers the right to full participation in the fifth Framework Programmes. The possibility of *full participation* in the follow-up programmes was expressly provided for in the Agreement. The Agreement has been renewed twice: in 2003 for the sixth FRP (2003-2006) and in 2007 for the seventh FRP (2007-2013).

The Agreement grants *the same rights* to Swiss researchers at universities, in the private sector, and for individuals as their EU partners. This means in particular:

- Swiss project partners obtain their grants directly from the European Commission.
- Swiss researchers are free to initiate projects and to take charge of their coordination. To launch a project, they need only two partners from the EU/EEA or other associate states.
- They obtain access to the research of other projects.

As an associate state, Switzerland has been given *extended opportunities* for collaboration in the various steering and advisory committees involved in the implementation of the Framework Research Programmes. Swiss delegates with observer status sit on programme committees in the various disciplines. Their duties include preparing tenders and working programmes. In addition, their approval is

required for all selected projects that involve financing of more than €1.5 million. Swiss nationals also take part in the prior and independent process of evaluating all projects.

Significance

The aim of the EU Framework Programme is *to promote cooperation in research* as well as cross-border links between the private sector and the research establishment in EU member states, candidate countries, EEA states as well as Israel and Switzerland. The current FRP, the seventh, has been adapted to the basic economic policy objectives of the EU – growth and employment. In comparison with the average annual budget of the sixth FRP, funding has been increased by 60 per cent to around €54.6 billion for the programme's seven-year duration. The EU has thus clearly demonstrated its belief in research as an essential tool for the creation of sustainable jobs and economic growth.

The seventh FRP will above all focus on information and communication technologies, health, energy, nanotechnology, and environment technology – all areas where Switzerland can offer a great deal of expertise as a partner in European research. The newly created "Joint Technology Initiative" involves a combination of public and private investment, and aims to increase cooperation with the private sector. Moreover, for the first time as part of the seventh FRP, basic research is to be given support at the European level.

In view of the significance of the FRP, Switzerland's participation is of major importance for both scientific and economic reasons. It can only enhance Switzerland's position as a centre of research and technology. Projects focusing on innovation, industrial applications or technology transfer are clearly of interest to the private sector. Until 2005, a third of the EU promotional funds that went to Swiss projects as part of the sixth FRP were earmarked for big companies (11 per cent) and for small-to-medium-sized enterprises (18 per cent). The remainder went to the Swiss Federal Institutes of Technology (32 per cent) and the other universities (25 per cent).

Experience

An interim assessment based on the data available indicates that Switzerland's experience with the sixth FRP has on the whole been positive. The 24 per cent success rate for Swiss project tenders compares favourably with the European average of 20 per cent. Moreover, Switzerland's financial contribution has come back in its entirety in the form of support for projects in Switzerland. A good two thirds of the projects in which Switzerland participated involved information technology (33 per cent), life sciences and health (22 per cent) as well as nanotechnology, materials, and production processes (13 per cent). A survey at the end of 2005 showed that 70 per cent of Swiss participants would not have gone ahead with their projects without the FRP. In more than 50 per cent of the cases, the project results involved new products and services. About 40 per cent of participants either experienced or expected a positive impact on employment, and 30 per cent an increase in turnover. There was some criticism of the high administrative costs. This should be remedied in the seventh FRP by a number of simplifications.

Information

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Agriculture

The Agreement on trade in agricultural products facilitates trade between Switzerland and EU member states. It does not create free trade in this market, but only a partial liberalisation. This is achieved by the reduction of *tariffs* as well as *non-tariff* barriers for specific product segments which are of particular interest for both Switzerland and the EU:

- **Tariff concessions** (import quotas and tariff reductions) primarily apply to the cheese sector, which was completely liberalised on 1 June 2007, as well as to fruit and vegetables, horticulture, meat and wine specialties.
- **Non-tariff or technical barriers to trade** (different product regulations and admission requirements) are to be reduced through the mutual recognition of the equivalence of regulations. The products concerned include wine and spirits, biological agricultural products, plant protection, fodder and seeds. In the veterinary sector, the equivalence of regulations in the field of hygiene for all foodstuffs of animal origin was recognised at the end of 2006.

The EU is also Switzerland's most important trading partner in agricultural products, with about two thirds of all exports going to member states, while in Switzerland three quarters of all imports are from the EU. The Agreement has created additional export opportunities. The first findings indicate a steady growth in exports, notably of cheese. The so-called *evolution clause* in the Agreement allows for further market openings.

Key data

- Date of signing: 21 June 1999 (in the framework of Bilateral Agreements I)
- Approval by the electorate: 21 May 2000 (in the framework of Bilateral Agreements I)
- Date effective: 1 June 2002

Content

The *tariff* segment of the Agreement on trade in agricultural products requires primarily the full liberalisation of trade in cheese as of 1 June 2007. Cheeses of all types can be traded without restrictions as to amount (quotas) or tariffs as of that date. EC import licences for Swiss cheese will also be abolished in the near future. Substantial mutual concessions have been agreed in the fruit and vegetables sectors as well as for horticulture including cut flowers. This also applies to a lesser extent to certain dried meats and wine specialties.

In the *non-tariff* segment, technical barriers to trade were reduced in the sectors for veterinary medicine, plant protection, fodder, seeds and biological products. The same applies to licensing regulations for wine and viticultural products as well as quality standards for fruit and vegetables. In general this is achieved by mutual recognition of the equivalence of legal regulations (product regulations and admission requirements). This means, for example, that Swiss producers can export their fruit, vegetables, and bio-products to the EU with a Swiss certificate, eliminating the need for additional controls in any member state.

In the *veterinary segment*³⁸, the equivalence of regulations for all products of animal origin as well as for animal health were recognised as of December 2006. Prior to this, equivalence was accepted only for milk, dairy products and the means to combat epizootic disease. This means that all foodstuffs of animal origin such as cheese, meat specialties, eggs and honey can be exported without special certificates in the future unless specifically required by EC law. Furthermore, veterinary controls related to trade with the EU can be reduced at the borders.

³⁸ Concerns animal health and protection measures for trade in live animals and products of animal origin. The regulations are contained in an annex to the Agreement on trade in agricultural products.

The labelling of wines and spirits is mutually protected. In a joint declaration of intent, the Parties also agree to adopt provisions at a later stage on the mutual protection of certificates of origin (GUB/AOC) and geographical indications for additional products. Switzerland has a particular interest in protecting the designation of cheese.

Significance

The EU is by far Switzerland's most important trading partner. In 2006, 71 per cent of Swiss agricultural exports (CHF 3.7 billion) went to the EU while 77 per cent of Swiss agricultural imports (CHF 7.7 billion) originated in the Community. More or less every fourth litre of Swiss milk is indirectly exported today. Partial liberalisation in the framework of the Agreement on trade in agricultural products makes it easier for Swiss producers in certain sectors to gain access to the Single European Market with its some 500 million consumers. Moreover, production costs are expected to fall in certain product areas due to liberalisation in the seed, plant protection and fodder markets.

The Agreement on trade in agricultural products, however, has not ushered in free trade in agricultural products. In certain areas such as cereals, milk and meat, a significant level of protection will remain at the border. Nonetheless, Swiss agriculture faces greater competition from EU imports in a number of areas. This increased competition means a wider choice and lower prices for consumers.

Experience

In 2006, Swiss agricultural exports increased over the previous year by around CHF 700 million or 20 per cent – a fair indication of their true export potential. A considerable portion of the increase involved *processed* agricultural products. This trade is regulated in the framework of Protocol 2 to the Free Trade Agreement of 1972, which was revised in the framework of Bilateral Agreements II (see Fact Sheet). Experience with the Agreement on trade in agricultural products has thus been positive. Among the various products covered by the Agreement, the steady growth in the export of Swiss cheese is particularly noteworthy (4 per cent in 2006 compared with 4.6 per cent in 2005 and 0.7 per cent in 2004).

Information

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Overland transport

The Bilateral Agreement on overland transport is an indispensable pillar of Switzerland's transport policy. On the one hand, it opens the market for the transport of persons and goods by road and rail. And on the other, it provides a contractual basis for the introduction and gradual increase of a heavy goods vehicle tax (HGV tax) linked to the kilometres covered, which could only be established with the approval of the EU member states. Since its introduction in 2001, the HGV tax has helped to finance the development of the railway infrastructure in Switzerland, and is an important instrument for transferring the transport of goods from road to rail. In accepting the Agreement on overland transport, the EU officially recognised this aspect of Swiss transport policy. In exchange, Switzerland has accepted the gradual increase in weight limits for heavy vehicles from 28 to 40 tonnes (since 2005).

The sharp rise in the number of trucks crossing the Alps in the 1980s and 1990s has been stabilised thanks to introduction of the HGV tax and has even begun to diminish somewhat. This trend is likely to continue in the coming years, particularly once the HGV tax has been further increased, in accordance with the Agreement, by 11 per cent to an average of CHF 325 on 1 January 2008. The New Transalpine Rail Link (NEAT) and the Lötschberg and Gotthard Tunnels will further reduce the number of heavy goods vehicles crossing the Alps.

Key data

- Date of signing: 21 June 1999 (in the framework of Bilateral Agreements I)
- Approval by the electorate: 21 May 2000 (in the framework of Bilateral Agreements I)
- Date effective: 1 June 2002
- Increases in the HGV tax: 2005 and 2008

Content

The aim of the Agreement on overland transport is to provide *comparable conditions in terms of market access and competition* for road and rail transport companies in Switzerland and the EU. For this purpose, for instance, the licencing of truck drivers, social security regulations, technical standards and weight limits for trucks have been largely harmonised.

The Agreement liberalises the entire *road transport* market, both with regard to *persons* and *goods* in Switzerland and the 27 EU member states. Thanks to the Agreement, Swiss hauliers can carry goods from one EU state to another (grand cabotage), for example. The liberalisation does not include the so-called "national cabotage" i.e. inland transport by foreign companies, for example from Paris to Nice or from Bern to Zurich.

Railway enterprises also benefit in the area of goods transport from improved mutual access to the railway networks. This enables transport companies, for example, to carry out international *combined road-rail transport*, with trucks or containers being loaded onto railway wagons. Transport by *freight wagon* requires an international grouping of at least two companies. In addition to the right of transit, companies obtain a right of access to the countries concerned in the grouping. The transport of persons by rail is *not* liberalised because it has not yet been liberalised within the EU itself.

In efforts to improve its railway services, Switzerland has undertaken the construction of the New Transalpine Rail Link (NEAT), and for its part the EU is committed to improving the future NEAT rail links both to the north and to the south. The Lötschberg base tunnel is will open in December 2007, whereas the Gotthard base tunnel is not expected to be ready before 2017.

Significance

The Agreement on overland transport makes it possible for Switzerland and the EU to implement a harmonised and coordinated transport policy. The shared objective is to meet the demands of greater mobility and the steady increase in goods transport, while advancing the cause of environmental protection, in particular by promoting transport by rail and avoiding roundabout itineraries or detours.

In the framework of the Agreement, the EU has accepted the gradual introduction of an HGV tax and Switzerland's policy of transferring freight from road to rail. The HGV tax has been collected on all trucks travelling in Switzerland since 2001. In accordance with the "polluter pays" principle, this depends on the kilometres covered, the axle weight of the vehicle as well as estimated polluting emissions. Since 2005, the tax has amounted to an average of CHF 292.50 for the journey of a 40-tonne truck over a distance of 300 km (e.g. Basel-Chiasso). As of 1 January 2008 the tax will be increased to an average of CHF 325.

In exchange, Switzerland agreed to a gradual increase in the limit on axle weight for heavy goods vehicles, increasing it from 28 to 40 tonnes by 2005. It is justified on both economic and ecological grounds, since it takes fewer 40-tonne vehicles to transport the same amount of goods.

Experience

The number of HGVs crossing the Alps fell by 16 per cent between the years 2000 and 2006. In the 1990s, this number was increasing at an annual rate of 7 per cent. The downward trend is likely to continue in the years ahead, notably thanks to a further increase in the HGV tax. The proportion of goods being transported by rail grew by 66 per cent in 2006 and by 65 per cent the year before. In this way, the railways have constantly increased their market share since 2004, whereas previously it had been falling after the opening of the St. Gotthard road tunnel.

The net revenues from the HGV tax in 2006 amounted to CHF 1,306 million (2005: CHF 1,231 million; 2004: CHF 694 million; 2003: CHF 701 million; 2002: CHF 773 million; 2001: CHF 679 million). Foreign hauliers contributed about one quarter of these revenues. The revenues are divided between the federal government and the cantons on the basis of two thirds, one third respectively. The federal government's share is earmarked for a fund to finance public transport infrastructure projects (RAIL 2000, NEAT, connection to the European network of high-speed trains, noise abatement measures, etc.).

Information

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Civil aviation

The Agreement on civil aviation defines the terms according to which Swiss airline companies will have access to Europe's deregulated civil aviation market on a reciprocal basis. The granting of commercial flying rights together with a ban on discrimination mean that Swiss companies will have the same opportunities as their European competitors. They are free, for example, in the choice of destination and in setting tariffs, as well as in the choice of aircraft.

Key data

- Date of signing: 21 June 1999 (in the framework of Bilateral Agreements I)
- Approval by the electorate: 21 May 1999 (in the framework of Bilateral Agreements I)
- Date effective: 1 June 2002

Content

The Agreement on civil aviation extends the existing *Community law* in this sector to Switzerland, and in particular the principle of non-discrimination on the basis of nationality. Swiss airlines are thus treated *on a par* with those of the EU.

Switzerland adopts legislation compatible with that of the EU, according to which *flying rights*³⁹ are gradually⁴⁰ extended to the airlines of both contracting parties. Switzerland and the EU will both enjoy the *freedom to establish and invest* in the area of air travel. Moreover, the Agreement allows a Swiss airline to acquire a majority stake in an EU airline company, without the latter losing its EU status or the rights that go with it.

The European Commission and the European Court of Justice (ECJ) monitor the European air travel market to ensure *compliance with the rules on competition*. The Agreement extends the responsibility of these two bodies to the supervision and control of Swiss companies as well, except in the case of *state subsidies* and restrictions on landing rights for reasons relating to *environmental protection* in Switzerland.

Significance

Thanks to the Agreement on civil aviation, Swiss airlines enjoy almost all⁴¹ of the same competitive conditions as their EU rivals. The Agreement is therefore of greatest importance for success in the highly competitive air travel market.

The Agreement also allows a Swiss airline to fly to the destination of its choice with aircraft of any size. This will improve capacity utilisation for the entire fleet and lower production costs. The airline is also free to set prices with no need for these to be vetted or approved.

Switzerland had previously concluded bilateral air travel agreements with almost all of the EU member states. These have been more or less invalidated by the Switzerland-EU Agreement on civil aviation

³⁹ The eight "freedoms" in civil aviation from the point of view of a Swiss airline: 1: right to overfly; 2: non-commercial stopover; 3: flight from Swiss airports to EU airports (e.g. Geneva-Paris); 4: flight from any EU airport to Switzerland (e.g. Paris-Geneva); 5: flight from EU airports with a stopover and the possibility of taking on passengers in the EU, and continuing (e.g. Zurich-Vienna-Rome); 6: flight connecting two EU destinations, with stopover and possibility of taking on passengers in Switzerland and continuing (e.g. London-Zurich-Berlin); 7: flight connecting two EU destinations (e.g. Madrid-Athens); 8: so-called "cabotage", i.e. internal flight carried out by foreign airline (e.g. Paris-Lyon).

⁴⁰ The civil aviation companies of both contracting parties benefit as of 1 June 2002 (date the Agreement takes effect) from the 3rd, 4th and 6th freedoms, and from 1 June 2004 (after 2 years) from the 5th and 7th freedoms. The Agreement on civil aviation provides for negotiations for the introduction of the 8th freedom as of 1 June 2007 (after 5 years).

⁴¹ The 8th freedom has not yet been granted.

except in areas where the original terms go beyond those of the new Agreement, for example with regard to rights.

Experience

The Agreement on civil aviation came into force in what was an unusually turbulent period for the European airline industry in general, and for Switzerland in particular with the grounding of Swissair on 2 October 2001. The obstacles to access to the European market, which were a factor in the bankruptcy of Swissair, have been gradually removed since then. The possibility of operating connecting flights between two EU member states as of 1 June 2004 has helped considerably to improve the situation.

The flight connections which were relinquished by the newly-founded airline, Swiss, notably from the Geneva Cointrin and Basel-Mulhouse-Freiburg airports, have in part been taken over by foreign airlines which have also benefited from the Agreement. The low-cost airlines in particular have been able to increase their market share significantly. This pan-European trend has benefited the travelling public through less expensive tickets.

Since the Agreement came into force, the mixed committee responsible for its administration has approved Switzerland's participation in the European Aviation Safety Agency (EASA) as well as in the "Single European Sky" (SES) arrangement. EASA is responsible for licensing and supervision in relation to technical matters such as the manufacture and maintenance of aircraft, their certification and for maintenance companies. In coming years, its authority will extend to all areas of safety in civil aviation: flight training, flight operations and safety. The aim of SES is to restructure all safety aspects of flights across Europe in order to ensure that future growth of air traffic takes place in conditions of safety and efficiency. Key areas are the certification of air traffic control services and the definition of air space in accordance with operational criteria rather than being simply based on national boundaries.

Information

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Cooperation in the fields of police, justice, asylum and migration (Schengen/Dublin)

International cooperation in the context of the Schengen Agreement (*Schengen cooperation*) facilitates travel for private individuals through the elimination of checks at the common borders of the Schengen signatory states (internal borders). At the same time, a series of new measures have improved international cooperation between justice and police authorities to combat crime. These include security measures and tighter controls at the external Schengen borders, greater cross-border police cooperation using the Schengen Information System (SIS) for example, and improved legal assistance.

The so-called *Dublin cooperation* is designed to ensure that asylum seekers can only make one application for asylum in the “Dublin area”. The Dublin criteria determine which state is responsible for processing an application for asylum in order to ensure an equitable sharing of the burden among Schengen signatory states. Thanks to the electronic fingerprint database (Eurodac), persons who make more than one request for asylum can be identified and referred to the country responsible for processing their case. This eliminates the expense of multiple processing and reduces the burden on national asylum systems.

The Schengen/Dublin Association Agreements enables Switzerland to participate in European efforts to increase cooperation in security and asylum questions. Although Switzerland has a *former right of decision-shaping* in the further development of this cooperation and of the corresponding Schengen/Dublin rules, it has no *right of decision-making*. Switzerland retains the sovereign right to accept or reject any new Schengen/Dublin rules. In the event of non-adoption, the States Parties are obliged to find pragmatic solutions. Ultimately, non-adoption can lead to cancellation of the Agreement⁴².

Through its participation in Schengen/Dublin cooperation, Switzerland obtains access to essential instruments for combatting international crime, including the Schengen Information System (SIS) which is of primary importance. Thanks to Dublin cooperation, multiple and abusive requests for asylum can be avoided, thus relieving the asylum system. Switzerland's borders are no longer a Schengen external border. This removes the risk of cross-border traffic being held up by systematic border controls. Moreover, Switzerland's tourism industry benefits from the introduction of the Schengen visa. Henceforth, tourists from growth markets such as China, India and Russia need only a Schengen visa to enter Switzerland when travelling through Europe.

Key data

- Date of signing: 26 October 2004 (in the framework of Bilateral Agreements II)
- Approval by the electorate: 5 June 2005 (54.6 per cent in favour)
- Date effective: not before beginning of 2008⁴³

⁴² In the context of mutual legal assistance, Switzerland has been guaranteed the right to opt out at any time. If at some point in the future Schengen rules were to include restrictions on banking secrecy, Switzerland can reject this without consequences.

⁴³ Formal enactment does not imply Switzerland's *operational* participation in the Schengen/Dublin cooperation, which becomes possible only in the autumn of 2008 at the earliest. First the EU must initiate special procedures to evaluate the application of Schengen regulations in Switzerland. This evaluation covers the following areas: police cooperation, SIS, data protection, securing the outer borders of Schengen (at the airport) and cooperation with regard to visas.

Content

The *Schengen Implementation Agreement* eliminates controls on the movement of persons across the internal borders between Schengen signatory states, thus enabling the freest possible flow of traffic across borders. General measures have also been agreed to improve security including:

- *increased controls* at the outer borders of the Schengen area
- improved cross-border *police cooperation*, in particular through the exchange of information on wanted and undesirable persons (SIS)
- improved cooperation in the field of justice (*legal assistance*)
- a common *visa policy* for short-term residence permits of a maximum of 3 months (Schengen visa)

The *Dublin Regulation* governs procedures for the coordination of asylum across Europe to discourage multiple applications.

Schengen

The Schengen security system consists of coordinated measures in the following areas:

Border controls

As a non-member of the EU Customs Union, Switzerland will remain a special case in relation to border controls. Swiss border guards will continue to *check goods* crossing the Swiss borders (searching for goods on which duty has not been paid as well as illegal merchandise). This also involves the control of persons. If there is reason for suspicion, it is possible for the police to *check individuals* at the borders within the Schengen area. However, systematic controls at the border are no longer possible. In cases of heightened risk (G8, WEF, European football championships, etc.), Schengen allows for the *temporary reintroduction of systematic personal controls*. These include not only controls at the border posts but the extension through *mobile controls* inside national boundaries. In this context, the jurisdiction of the cantonal police as well as the division of responsibilities between the Confederation and the cantons remain as set out in the Swiss Constitution in all cases.

Police cooperation

Switzerland already has bilateral agreements for cooperation in police and customs matters with neighbouring states. Schengen extends this police cooperation geographically to all participating States, and improves it. Access to the *Schengen Information System (SIS)*, the pan-European electronic investigation database, is particularly important for Switzerland. It has proved to be an efficient means of fighting cross-border crime such as the illicit smuggling of migrants, and trafficking in human beings, drugs and arms. The capacity for the rapid exchange of information by computer has increased the effectiveness of inspections and of international arrest warrants. The EU plans to introduce an updated version, SIS II (see box below). This project, however, has been delayed for technical reasons. As a transitional measure, an extended platform is due to be introduced at the end of 2007. Participants in the so-called "SISone4all" will also include the new EU member states from 2004 (except Cyprus) as well as Norway and Iceland. The preparatory work for SIS II will continue parallel to this in the Schengen signatory states. The Federal Council in Bern has declared that it is in favour of Switzerland's participation in SISone4all to ensure that implementation of the Schengen/Dublin Agreement will not be delayed.

Schengen Information System SIS

The SIS is a database containing information on individuals wanted by the police, missing persons and those forbidden entry into Switzerland, as well as on stolen property. It currently contains more than 13 million items of data that can be called up at any time, including by mobile controls. Police, border guards and the visa authorities of 13 EU countries, together with those of Norway and Iceland, are linked to the system. The "SIS II" now being developed will considerably expand the capacity of the information system. For the first time it will include biometric data and links between registered alerts, and it will extend access to the authorities responsible for internal security such as Europol, Eurojust and the vehicle licensing authorities. Furthermore, it is intended to link SIS II to the planned electronic visa information system VIS. All Schengen signatory states connected to SIS I or SISone4all will eventually transfer their data to the SIS II platform. The United Kingdom and Ireland will also be linked to SIS II.

Legal assistance

Schengen improves cooperation between the judicial systems in criminal procedures through the simplification of legal assistance. Areas of cooperation include the exchange of information between judicial authorities by using coercive measures such as the examination of witnesses, confiscation or inspection of bank accounts through the lifting of banking secrecy. Switzerland only provides legal assistance for fiscal matters when the request involves a case of tax fraud, not however in cases of tax evasion (principle of double liability with regard to tax offences). In the current state of Schengen legislation (Legal Assistance, Article 51 of the Schengen Implementation Agreement), Switzerland is under no new obligation to provide legal assistance with regard to direct taxation⁴⁴. Banking secrecy is protected. In the event that further development of the Schengen Acquis in the area of direct taxation were to create a new obligation of legal assistance in cases of tax evasion offences, Switzerland is entitled to opt out at any time. The Confederation can refuse to adopt any such legal obligation without its participation in Schengen being called into question. This means that banking secrecy will remain protected over the long term.

Visa policy

The Schengen security system provides for a common visa policy. All Schengen states must adopt uniform criteria for issuing visas. The so-called "Schengen visa" enables citizens of third countries to enter any state in the Schengen area (unless there is a national prohibition of entry) and is valid for three months. A Schengen visa also allows entry to Switzerland. If there is suspicion of abuse with regard to the issuing of visas, a Schengen state can demand to see the applications from the state where the risk is suspected. And it can veto decisions to issue a visa in individual cases. Furthermore, a Schengen state can ban holders of a Schengen visa from entering its sovereign territory if it so desires.

Legislation on weapons

Schengen lays down specific minimum requirements to prevent the misuse of weapons. Swiss weapons legislation already meets the requirements in many areas. One major adaptation has been necessary however. The existing preferential treatment for acquisition by and among private individuals (including acquisition through inheritance) is now subject to the *same rules* that apply to the retail trade: weapons that are normally banned, such as grenades, mines, and antitank rocket launchers, may only be purchased by the holder of an exemption certificate; the purchase of restricted weapons, e.g. handguns and semiautomatic weapons, requires a certificate of authorisation; and some types of weapons are subject to obligatory registration. To obtain such a certificate, it is necessary to provide a *reason for purchase*, although the purchaser does not have to prove a need. Those who shoot for sport, as well as hunters and collectors, are exempt. The introduction of the *European Firearms Passport* is also new. This allows the export of firearms for limited periods by hunters and sportsmen when travelling to or through a Schengen state.

Schengen does not, however, require a central, national weapons register. It merely requires notification and specifies the information that must be provided for identification of the person and the weapon. Nor does Schengen require any change in the traditional supply of weapons to the Swiss Armed Forces personnel. A joint declaration in the Association Agreement explicitly states that youth shooting clubs, the keeping of weapons at home that have been issued to persons required to do military service, and acquisition of the weapon at the end of military service remain unaffected by the Agreement. Nor are the national regulations governing hunting and shooting activities affected by the Schengen obligations, e.g. hunting and shooting permits, shooting events, etc.

Dublin

Dublin cooperation determines which country is *responsible* for vetting an application for asylum. Additional applications from the same person (so-called second or multiple applications) will no longer be processed. The *Eurodac* fingerprint database makes it easier to identify multiple applications. The computer assisted database stores the fingerprints of all asylum seekers and all persons who are taken into custody after crossing the external border illegally. The criteria for assigning responsibility for the asylum process include the following:

⁴⁴ Insofar as indirect taxation is concerned (customs duties, VAT, consumer taxes), the Agreement calls for further collaboration in the context of efforts to combat fraud, and extends to cases of tax evasion.

- *First entry*: The state which the asylum seeker first entered is responsible.
- *Entry permit/visa*: The state which issued an entry permit or visa is responsible.
- *Place of residence of family members*: The state in which family members of asylum seekers are resident is responsible.

The objective is for only one country in the area covered by the Dublin Agreement to be responsible for the asylum process. This ensures that asylum seekers have a clearly defined *right of due process* in a given country and cannot be pushed from one country to another. It thus strengthens Europe's humanitarian tradition. At the same time, *the burden on national asylum systems is lessened* insofar as this allocation of responsibility ensures that it is shared and avoids costly and inefficient second and multiple applications ("asylum shopping" or "asylum tourism"). It also undermines the trend to harsher national asylum policies, with each country doing its best to be less attractive to asylum seekers.

Further development

The Schengen/Dublin Association Agreement calls for Switzerland to be treated on a par with the two associated States of Norway and Iceland. This means that, following the signing of the Agreement in October 2004, Swiss experts can participate in the Schengen mixed committees of the Council of the European Union and take an active part in the discussions on the further development of the Schengen rules. They have a *right of decision-shaping*, but no *right of decision-making*. This right of co-determination is important. Decisions in all cases are based on consensus.

With the further development of the Schengen/Dublin body of law, Switzerland will make its own decisions on whether or not to adopt any new legal provisions. For this purpose it has negotiated a *transitional period* of up to two years. This allows sufficient time for decision-making at the different levels required by Swiss law (Federal Council, approval by Parliament and a possible referendum). Adoption is by no means automatic.

If Switzerland rejects a new legal provision, the States Parties will attempt to find a solution in accordance with the procedures set out in the Schengen/Dublin Association Agreement that would allow cooperation to continue. If the main pillars of the Swiss political system – direct democracy, federalism, neutrality – were to be affected by adoption, it would still be possible for Switzerland to discuss alternative solutions at the highest ministerial level in the framework of an additional *consultation mechanism*. In a worst case scenario, i.e. if no solution could be found, the Agreement would then be terminated.

Developments so far

Since the signing of the Agreement on 26 October 2004, Switzerland has adopted about 30 new legal provisions. The content of each legal provision determines whether it is the Federal Council or Parliament that is responsible for approval. In the latter case there is the possibility of an optional referendum. At present, the following three developments requiring amendments to laws could probably be subject to an optional referendum:

- the introduction of *biometric data in passports* and travel documents
- adoption of the Schengen *Borders Code* (rules for border controls for persons travelling beyond the external borders of Schengen)
- participation in *FRONTEX* (specialised agency to improve the operational cooperation at the external borders).

Another possible development is the proposal to set up an external borders fund. The aim is to achieve a more equitable sharing of the burden of protecting the external borders: member states that have permanently higher costs due to the length of their borders or their geopolitical importance would receive support.

Significance

Criminals, smugglers and trafficking gangs operate at will across national boundaries. This is a new challenge to the security forces of each country and requires the strengthening of international cooperation at the level of police and justice. Switzerland's most important partners in this area are its neighbours in the EU. For some time now, the EU has decisively focused on cooperation in the areas of security and migration. The Schengen/Dublin security and asylum system is at the core of this cooperation, and has included the two non-EU states of Norway and Iceland since 1999. The Schengen/Dublin Association Agreement enables Switzerland to make use of the EU instruments for cooperation in security and asylum affairs.

The most important advantages are:

- *Facilitated cross-border movement:* Switzerland is now a Schengen internal border, eliminating the risk that neighbouring countries could seriously impede cross-border movement by means of systematic checks on individuals as required for Schengen external borders, which could also have negative effects on the Swiss economy.
- *Reinforced security cooperation* through connection to the SIS electronic database for detecting and locating suspects. This links up police authorities as well as the consulates of the Schengen states and makes it easier to more efficiently search for wanted persons and missing property and to accelerate the process of issuing of visas.
- *Economy and tourism:* Banking secrecy is given formal protection in the area of direct taxation. Travellers with a Schengen visa require no additional visa in the future, and can thus spend their holidays in Switzerland. This should increase the number of tourists, in particular from growth markets such as China, India and Russia. Business travellers will also benefit from the Schengen visa.
- *Relief for the asylum system:* Thanks to Eurodac, asylum seekers who have already filed applications for asylum elsewhere can more easily be identified and can, without the need for formalities, be returned to the state responsible for processing their case. The same applies to all asylum seekers for whom Switzerland has no responsibility according to the Dublin criteria. It is expected that Switzerland will be able to pass on more asylum seekers to other countries than it will have to accept from them. This is because Switzerland, by nature of its geographical location, is not one of the classical countries of first asylum.

Information

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Taxation of savings income

Through the Agreement on the taxation of savings income, Switzerland supports the EU system for the taxation of cross-border payments of interest on savings to natural persons. Swiss paying agents such as banks deduct withholding tax on income from savings in Switzerland on persons liable for taxation in an EU member state (similar to the ordinary Swiss withholding tax). This withholding tax of 15 per cent rises gradually, and will reach 35 per cent in July 2011. Three quarters of this amount goes as tax revenue to the country of domicile of the income recipient, the other quarter remains in Switzerland. At the express demand of the income recipient, the withholding tax can be replaced by voluntary notification of the income to the tax authorities of the country of residence.

Switzerland shares the view of the EU that interest on savings should be taxed at an appropriate level, even when paid in a country other than that of the recipient's domicile. The withholding tax ensures that the EU system for the taxation of savings income cannot be circumvented via Switzerland. This solution also protects the Swiss legal system and banking secrecy. Another advantage for Switzerland is the abolition of taxation at source on the payment of dividends, interest and licensing fees between affiliated companies. This makes Switzerland more attractive as a base for companies operating internationally.

Initial experience has shown that the Swiss withholding tax model is working efficiently. In the first 18 months since the Agreement came into force (1 July 2005), it netted a total of CHF 696 million, of which three quarters went to the EU member states (CHF 522 million) and the remainder (CHF 174 million) to Switzerland.

Key data

- Date of signing: 26 October 2004 (in the framework of Bilateral Agreements II)
- Approval by Parliament: 17 December 2004
- Date effective: 1 July 2005

Content

The *EU Directive on Taxation of Savings Income* allows EU member states to tax the interest paid on the savings of citizens who are liable for taxation, even when the interest is paid in another EU state. In the EU member states, the *automatic exchange of information* on income from savings has been introduced between the tax authorities.⁴⁵ Thus, for example, income paid on a bank account in the United Kingdom, belonging to a person who is subject to taxation in Germany, will be reported to the German tax authorities who can then impose a tax on the savings income at the German rate.

The EU is interested in cooperating with certain third countries including Switzerland to prevent parties liable for tax in EU states from trying to circumvent the Investment Directive outside the EU. The Agreement between Switzerland and the EU regulates this cooperation. Switzerland does not participate in the automatic exchange of information. The core of the Agreement is Switzerland's obligation to introduce a *withholding tax*. This tax applies to all *interest payments* made by Swiss-based paying agents, e.g. banks or asset managers, to a *natural* person whose tax domicile is in an EU member state. Dividends as well as income from the savings of legal persons, e.g. companies, are not affected by this withholding tax. The most important provisions of the Agreement are as follows:

- The withholding tax is introduced at a *gradually* increasing rate of 15 per cent for the first three years, rising to 20 per cent for the following three years and reaching 35 per cent as of 1 July 2011.

⁴⁵ The exceptions are the three member states of Austria, Luxembourg and Belgium which impose a withholding tax instead of the automatic exchange of information – as does Switzerland. This enables them to protect the principle of banking secrecy.

- The revenue from the withholding tax is paid at a rate of *75 per cent to the country in which the person is liable for tax*. The remaining 25 per cent is claimed by Switzerland (90 per cent allocated to the Federal Treasury and 10 per cent to the cantons).
- As an alternative to the withholding tax, the interest recipient can expressly request the method of *voluntary notification*. The paying agent will then report the income payment to the tax authorities of the state of residence or tax domicile via the Federal Tax Administration.
- The States Parties accept the obligation, in cases of tax fraud or equally serious crimes of this nature⁴⁶, to provide *administrative cooperation* if so requested (insofar as interest payments within the scope of application of the Agreement are concerned). The corresponding provisions are defined in the Bilateral Agreement on Double Taxation enacted with each individual EU state.
- The States Parties mutually renounce any *taxation at source on the payment of dividends, interest and licensing fees between affiliated companies*, for example between a head office in Switzerland and a subsidiary in France (Parent-Subsidiary Directive).
- Switzerland and the EU will jointly discuss any possible revision of the Agreement when sufficient practical knowledge about the withholding tax becomes available. As the rate of taxation will only be raised to its final level of 35 per cent in mid-2011, this is unlikely to happen before 2013.
- In a memorandum of understanding, the EU has agreed to discuss equivalent measures to prevent evasion activities with *other third states* having important financial centres.

Significance

Income from the savings of taxable citizens of EU states should be subject to appropriate taxation, even when the interest accrues in another EU State or in a third country such as Switzerland. The EU Directive on Taxation of Savings Income allows taxation in accordance with national legislation without the need to harmonise tax rates. It is not in Switzerland's interests to attract clients who wish to circumvent this EU Directive. For this reason Switzerland has stated that it is prepared to provide the legal framework to make its financial centre unattractive for such transactions. The withholding tax ensures that Switzerland cannot be used to evade the EU Directive, thus upholding the good reputation of the Swiss financial sector and at the same time protecting banking secrecy.

The abolition of taxation at source on the payment of dividends, interest and licensing fees between affiliated companies in Switzerland and the EU member states makes Switzerland more attractive for companies with international activities.

Experience

The first results show that the Swiss withholding tax model is working efficiently. In 2006, about CHF 536 million in revenues was collected, of which CHF 402 million went to the EU states concerned and CHF 134 million remained in Switzerland. CHF 121 million of this was allocated to the Federal Treasury, the rest (CHF 13 million) to the cantons. Use was made of the alternative to withholding tax, i.e. the voluntary notification of the relevant authorities by the income recipient, 55,000 times in 2006. In the second half of 2005, i.e. in the first six months after the Agreement took effect on 1 July 2005, revenue from the withholding tax amounted to about CHF 160 million.

Information

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⁴⁶ Comparable in this sense to tax fraud are offences against precisely definable criminal law regulations of other states concerning tax offences, in which the definition of unlawfulness corresponds to that of tax fraud in Switzerland, but which do not exist under Swiss law. This provision does not always cover cases of simple tax evasion.

Fight against fraud

The Agreement on the fight against fraud improves cooperation between Switzerland and the EU in combatting smuggling and other offences in the area of indirect taxation (customs duties, value added tax, consumer tax), as well as in relation to subsidies and public procurement markets. Switzerland provides in principle administrative and legal assistance in all cases of serious crime in these areas. When acting on behalf of the EU authorities in such cases, Switzerland applies the same legal instruments as are used for Swiss proceedings (so-called national treatment). Coercive measures such as house searches and the freezing and inspection of bank accounts are now possible as part of the administrative assistance (between administrative authorities) and no longer limited to legal assistance (between judicial authorities) alone. Direct taxation is *not* affected by the Agreement.

Swiss assistance enables the EU to be more effective in efforts to eliminate for example the fraudulent activities of cigarette smugglers and other fraudsters, thus avoiding the loss of tax revenues. For its part, Switzerland has no intention of becoming a hub for fraudulent activities that only harm the country's reputation and its financial sector.

Key data

- Date of signing: 26 October 2004 (in the framework of Bilateral Agreements II)
- Approval by Parliament: 17 December 2004
- Takes effect after ratification by Switzerland as well as by each individual EU member state and by the EC itself

Content

In 1997, Switzerland and the EU signed an additional protocol to the Free Trade Agreement of 1972 to improve cooperation between their customs authorities in order to prevent international smuggling and customs fraud. Although this objective has been achieved to a great extent, certain difficulties remain, including the long duration of the procedures involved. For this reason, on the initiative of the EU, negotiations were started to further strengthen cooperation and make it possible for Swiss and European customs, tax and judicial authorities to work together more efficiently and rapidly.

The Agreement includes administrative and legal assistance, i.e. international cooperation between administrative and judicial authorities. The scope of the Agreement is limited to indirect taxes, subsidies and offences related to government procurement. Indirect taxes include customs duties, value-added tax, specific excise duties on alcohol, tobacco, petrol, etc. Direct taxation applies to income tax, taxes on assets and on profits, and is *not* included in the Agreement.

The Agreement accelerates, facilitates and strengthens cooperation between Switzerland and the EU. It includes the following provisions:

- *Obligation*: Switzerland is obliged to provide legal and administrative assistance in the area of indirect taxes. Until now, it has been a possibility but not an obligation.
- *"National treatment"*: In the framework of legal and administrative assistance, Switzerland applies the same instruments when acting on behalf of the EU authorities that are in use today for Swiss proceedings subject to Swiss legislation. This means, for example, that coercive measures such as house searches and the freezing and inspection of bank accounts are no longer limited to cases of tax fraud but may also be used in cooperation with EU member states in cases of tax *evasion*⁴⁷. However coercive measures are allowed only if the offence is also liable to prosecution in the state requesting cooperation. Such measures can be refused

⁴⁷ Tax evasion and tax fraud have in common that a person liable for tax deliberately or negligently pays less tax than required by law. Tax fraud in the case of indirect federal taxation must involve fraudulent misrepresentation to the tax authorities, but does not necessarily involve forgery of documents or a false declaration.

if the amount involved in the fraud (or evasion) does not exceed €25,000 or does not exceed €100,000 in the case of illegally imported or exported goods.

- *Coercive measures in administrative cooperation:* Coercive measures are now possible not only in the context of legal assistance (between judicial authorities), but also in the area of administrative assistance (between administrative authorities). The administrative authorities requesting assistance must be able to provide a valid search warrant.
- *Money laundering:* Switzerland will provide legal assistance for cases of money laundering relating to indirect taxes in the EU if the assets in question arise from an offence which, if committed in Switzerland, would constitute tax fraud or (following a total revision of customs legislation) commercial smuggling under Swiss law. Tax fraud is already eligible for legal assistance. Now, in addition, the laundering of the proceeds of tax fraud is also eligible for legal assistance. The definition of money laundering in the Swiss penal code remains unchanged. There are therefore no new reporting obligation for Swiss financial intermediaries.
- *The principle of speciality:* this principle ensures that information sent abroad for legal assistance purposes cannot be used in other areas, for instance direct tax proceedings.
- *Foreign officials* may be present when administrative or legal assistance is provided if the authority receiving the request approves. However, the investigation is always conducted by domestic officials.

Significance

The Agreement allows greater cooperation between customs, tax and judicial authorities in Switzerland and the EU in relation to offences involving indirect taxation such as cigarette smuggling. According to its own reports, the EU sustains high financial losses through tax and subsidy offences. It goes without saying that Switzerland is therefore ready to increase the level of cooperation.

Switzerland, due to its central geographical location, its non-EU membership, and the importance of its financial centre, risks being used as a hub for illegal activity. This is by no means in Switzerland's interests, particularly since smuggling has already been linked to organised crime and the financing of terrorism. Effective administrative and legal assistance usually has a preventive impact as well, acting as a deterrent to smugglers and fraudsters. The smuggling from which Switzerland has been affected can also have a serious impact on the home market for certain goods such as meat, vegetables and flowers. Efficient instruments that make it easier to combat tax and customs fraud are therefore in Switzerland's interests.

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Processed agricultural products

The Agreement on processed agricultural products revises Protocol 2 of the 1972 Free Trade Agreement between Switzerland and the European Community. Protocol 2 regulates trade in processed agricultural products, i.e. products of the food industry including chocolate, pastries, pasta, etc. In this product category, the Agreement stipulates the following:

- The EU forgoes import duties and export subsidies in trade with Switzerland. Switzerland in turn reduces its customs duties and export subsidies. Free trade will apply for sugar and all products that contain no other relevant agricultural commodities than sugar.
- The application of Protocol 2 will be extended to cover new products so that developments in the food industry can be taken into account.

The Agreement facilitates access to the European market. It enables Swiss food companies to export a wide range of products duty free to EU markets. The resulting improved competitiveness of the food processing industry creates additional market opportunities for Swiss agriculture. Greater competition should also lead to reduced prices for consumers.

Key data

- Date of signing: 26 October 2004 (in the framework of Bilateral Agreements II)
- Approval by parliament: 17 December 2004
- Date effective: 30 March 2005 (prior application as of 1 Februar 2005)

Content

The 1972 *Free Trade Agreement* (FTA) between Switzerland and the European Community introduced free trade for *industrially produced goods*. As a result, customs duties were progressively abolished. *Agricultural products*⁴⁸, on the other hand, are excluded from the Agreement. *Processed goods made from agricultural commodities*, e.g. chocolate, biscuits and bakery goods in general, sweets, soups, sauces, pasta, ice cream, instant coffee and prepared foods, occupy a special place between industrial products (free trade) and (protected) agricultural products because they are industrially prepared with agricultural raw materials. Protocol 2 of the FTA governs the details for trade in processed products: customs duties on the industrial component of these products were rescinded as of 1 July 1977 and a so-called *price compensation mechanism* was introduced for the agricultural raw materials component⁴⁹. The price difference for agricultural raw materials between Switzerland and the EU, in some cases considerable, creates a competitive disadvantage for the Swiss food processing industry ("raw materials handicap"). For this reason, the price difference for the raw materials is compensated by customs duties levied on imports and subsidies for exports.⁵⁰

The new Agreement simplifies the price compensation mechanism in trade between Switzerland and the EU set out in Protocol 2. Instead of taking as the reference for the level of customs duties and export subsidies the difference between the prices of agricultural raw materials in Switzerland and the world market, which has been valid until now, the reference is now the much smaller difference between the prices for raw materials produced in Switzerland and the corresponding EU prices (net price compensation). Since Swiss prices for agricultural raw materials are consistently higher than those in the EU, this amendment has the following consequences:

- The EU abolishes customs duties on all processed agricultural products from Switzerland covered by the Agreement and forgoes subsidies on all products exported to Switzerland.

⁴⁸ Agricultural raw materials and products at the first level of processing such as meat products, milk powder, cheese, flour etc.

⁴⁹ Such as flour, milk powder, butter, vegetable fat, etc.

⁵⁰ In Swiss law, these price compensation measures are based on the so-called "Schoggigesetz" (federal law of 13 December 1974 on the import and export of processed agricultural products)

- In exchange, Switzerland reduces its customs duties and export subsidies to the level of the difference between the price of Swiss raw materials and those of the EU. In this way the competitive disadvantages due to higher procurement costs in Switzerland are still taken into consideration. In the case of processed products that contain no agricultural commodities except sugar⁵¹, Switzerland eliminates all customs duties and export subsidies. This affects products such as coffee and coffee extracts (instant coffee), cocoa, jam, mineral water, lemonade, beer and spirits.

As well as simplifying the price compensation mechanism in Protocol 2, the Agreement also provides for a significant *extension of the area where it applies*. The food industry has made considerable technological progress since the FTA came into force in 1972 and developed a number of new products such as supplementary foodstuffs (specifically to improve health and well-being or for energy and specific nutrients) and phyto-pharmaceutical products (plant-based medicines). The extended coverage takes these products into account.

Significance

The Agreement improves the Swiss *food industry's* access to the EU market with its 500 million or so consumers. Swiss producers are able to export their products duty free to the EU, considerably improving their competitiveness in this major market. The Agreement covers a sector in which Switzerland now has an export volume worth around CHF 3 billion. Thanks to improved market access, Switzerland's market share will continue to grow. According to food industry statistics, the Agreement has secured about 30,000 jobs, directly or indirectly. This specifically benefits the structurally weak rural areas where much of the food industry is located.

Opportunities are also being created for Swiss *agriculture*: food industry demand for agricultural commodities is expected to continue growing. Export subsidies ensure the sale of 6-10 per cent of milk and cereal products. Consumers stand to benefit since facilitated access to the Swiss market for EU products will increase competition and is expected to lead to a wider product range and lower prices.

Experience

Bilateral trade in processed agricultural products increased significantly after the Agreement came into force. In 2005, exports to the EU grew by 9 per cent while imports from the EU rose by 6 per cent. In 2006, trade continued to rise at a fast pace. Exports to the EU increased by no less than 25 per cent compared to 2005, whereas imports from the EU fell by 6 per cent.

Information

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⁵¹ At the time of the signing of the Agreement, the price of sugar in the EU and Switzerland fluctuated more or less within the same range.

Environment

The bilateral Agreement on the Environment governs Switzerland's participation in the European Environment Agency (EEA). The EEA, with its headquarters in Copenhagen and a staff of about 100, gathers and analyses data on the state of the environment in European countries. To ensure comparability, the Agency is also responsible for seeing to it that this data is compiled on the basis of criteria that are binding on all countries concerned. The objectives of the Agency are as follows:

- preparation of selected, relevant and reliable data for submission to Europe's decision makers and the general public
- support for sustainable development
- improvement of environmental protection throughout Europe.

In carrying out these duties, the EEA relies on the support of the European Environment and Observation Network (EIONET), which receives relevant data from the individual EU member states. The main focus of its activities is in the following areas:

- climate change
- biological diversity and greater understanding of natural habitats
- protection of human health and the quality of life⁵²
- utilisation of natural resources as well as waste management.

The Environment Agency is an important advisory body and a source of expertise, and it supports the European Commission in the preparation of legislation in the area of environmental policy. Even though it is an Agency of the European Union, it is open to non-EU states that have the same objectives with regard to environmental protection and sustainable development. At present, the EEA has 32 members: the 27 EU member states, Turkey and the four EFTA states - Switzerland, Norway, Iceland and Liechtenstein.

As a full member of the European Environment Agency (EEA), Switzerland participates without restrictions in the Agency's work and has direct access to all of the data and information made available via EIONET. Switzerland pays an annual contribution of CHF 2 million.

Key data

- Date of signing: 26 October 2004 (in the framework of Bilateral Agreements II)
- Approval by Parliament: 17 December 2004
- Date effective: 1 April 2006

Content

The Agreement allows Switzerland to participate fully in the activities and projects of the European Environment Agency and to access the European Environment and Observation Network (EIONET). Switzerland can also take an active part on the EEA board and have a direct influence on the focus of European environmental research projects even though it has no formal voting right.

Institutions and organisations with headquarters in Switzerland such as university institutes and private consultants can participate in EEA programmes. They can take advantage of EU subsidies and participate in EEA invitations to tender. Moreover, Swiss citizens are eligible for employment by the EEA.

Switzerland pays an annual contribution of CHF 2 million for its participation in the European Environment Agency. This corresponds to the total paid each year to the EEA divided by the number of EU

⁵² This concerns chemicals, the quality of water and air, the marine environment, noise emission, natural and technological risks.

member states. The Agreement places new responsibilities on the Federal Office for the Environment (FOEN), which serves as the Swiss liaison with the EEA and EIONET. One of the Office's main tasks is to coordinate participation in projects with the EEA.

Significance

Considering Switzerland's central geographical position in Europe, it is clearly in the interest of both the Confederation and the European Union to collaborate in the compilation and exchange of comparable environmental data. Due to EEA membership, Switzerland will be fully integrated in all European studies in relation to the environment and environmental policy (air, water, soil, waste, biological diversity, etc.). Switzerland will thus have unlimited access to environmental data gathered by the EEA and will play an active role in the development of a pan-European database which will include data from Switzerland.

Swiss environmental data is published in the periodical reports of the EEA and thus makes a contribution to the development of measures to protect the environment at the European level. Switzerland is also involved in setting up EEA projects and participates in research. Furthermore, the intensive exchange of information makes it easier to compare and adapt Swiss efforts to those of neighbouring countries. One example concerns air pollution. On the basis of data from the Swiss National Air Pollution Monitoring Network (NABEL), which is routinely transmitted to the EEA, it was noted that in certain parts of Switzerland during the summer months the maximum ozone concentrations were 240 microgrammes per cubic metre of air – values which are as high as those of the industrial areas and major cities of southern Europe.

Information

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European Environment Agency EEA: www.eea.europa.eu/

Statistics

In a complex society, statistics have increasingly become an indispensable tool for making sound political and economic decisions. It is in the interest of both Switzerland and the EU to be able to rely on comparable statistical data, particularly in the numerous areas in which they enjoy close relations.

The Agreement on cooperation in the field of statistics provides the basis for harmonising the compilation of data and making Switzerland's statistics comparable with those of its partners from the European Economic Area (the 27 EU member states together with Norway, Iceland and Liechtenstein). As a result, Switzerland has access to a pan-European database covering a wide range of areas including the labour market, social security, transportation and the environment, and improving the quality and comparability of data. At the same time, the recording of euro-compatible Swiss statistics in EU publications gives Switzerland additional international visibility, which in turn has a positive influence on its potential as a business location.

The Bilateral Agreement governs the process of adapting the data compiled by Switzerland to the norms set by Eurostat, the statistical office of the European Community in Luxembourg. Eurostat's main responsibility is to gather and publish statistical information at the European level and to ensure the comparability of the data. However, the national statistical institutes have sole responsibility for collecting data, which they must check and analyse before forwarding it to Eurostat.

Key data

- Date of signing: 26 October 2004 (in the framework of Bilateral Agreements II)
- Approval by Parliament: 17 December 2004
- Date effective: 1 January 2007

Content

The Agreement on cooperation in the field of statistics enables Switzerland to participate over a period of years in the EU's *statistical programmes*, and provides the framework for Switzerland's activities in this field. There is also a joint *bilateral programme* that the partners redefine each year. Switzerland agrees to apply various EU laws regarding the compilation of specific statistical data with transitional periods allowed for the necessary adaptations.

Switzerland sits on the *committees* which support the European Commission in the preparation of programmes and measures concerning statistics, but it has no voting rights in these committees.

Switzerland makes an annual *contribution* of about CHF 9 million for participation in Eurostat. To this must be added expenditures of some CHF 4.8 million for 2007 and about another CHF 7 million for 2008 for adaptations to the EU norms for collecting data. There is also the cost of additional staff, estimated at up to 100 jobs by 2010. Thereafter the need for staff is expected to fall and stabilise at a lower level.

The Agreement provides the basis for the possible participation of Swiss institutions, such as *universities* and the *Federal Statistical Office*, in Eurostat programmes, and for EU institutions to take part in Swiss programmes. Switzerland is also able to send its own experts to Eurostat.

Significance

The Statistical Office of the European Communities, Eurostat, offers a wide range of important and interesting data for use by governments, companies, journalists and the general public. The Agreement on statistics enables Switzerland to participate in pan-European statistical programmes. Swiss

statistics are thus made euro-compatible and appear in Eurostat publications. At the same time, Switzerland is able to access a comprehensive pan-European database. Thanks to Eurostat publications, Switzerland is increasingly in the public eye throughout Europe, and can be seen as an attractive location for business. Moreover, Switzerland can make use of statistics that comply with recognised European standards for future international negotiations. This strengthens Switzerland's influence and its position, specifically in relation to the European Union.

The exchange and dissemination of comparable statistical information is especially important in areas such as the following:

Price levels and developments: Harmonised measurement of price levels and trends is important in evaluating the competitiveness of companies. The Swiss National Bank also benefits from euro-compatible information on price developments when deciding monetary policy.

Socio-economic statistics: The harmonised compilation of data makes it possible to compare rates of employment, its structure and development, as well as unemployment and poverty throughout Europe. International comparisons of this sort help in the search for, and the ongoing monitoring, of political solutions. Euro-compatible data detailing changes on the labour market, wage levels and costs are an important aid for devising measures to combat wage dumping.

Transport: The harmonisation of statistical standards leads to a significant increase in the frequency of data production. The availability of up-to-date statistics allows greater precision in Swiss transport policy, particularly in efforts to transfer freight crossing the Alps from road to rail.

Information

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MEDIA

To strengthen the position of Europe's film and television industry against competition from abroad, the EU introduced a programme called MEDIA at the beginning of the 1990s. The aim of this programme is to promote the development, distribution and marketing of European films, which are confronted with the structural difficulties of a market fragmented by cultural and linguistic barriers. MEDIA 2007, the current programme, has a total budget of €755 million for the 2007-2013 period. Two thirds of this amount will be used to promote the distribution of films outside the home market.

Switzerland's full participation in MEDIA programmes was agreed in the framework of Bilateral Agreements II. The Agreement, which came into force on 1 April 2006, governed the participation of film-makers in the programme that terminated at the end of 2006. The Agreement was renewed to allow Swiss participation in the new MEDIA 2007 programme which began on 1 January 2007.

The importance and commercial success of the Swiss film industry has been aided by participation in MEDIA. Thanks to this support, Swiss films have had more opportunities for screening at home and abroad. Switzerland's professional film-makers are able to enjoy the same advantages as their colleagues in the EU member states, particularly when it comes to professional training. Equally important, the Agreement helps to increase the diversity of films being shown in Swiss cinemas by promoting the distribution of European films.

Key data

- Date of signing: 26 October 2004 (in the framework of Bilateral Agreements II)
- Approval by Parliament: 17 December 2004
- Date effective: 1 April 2006
- Signature of the renewed agreement: 11 October 2007

Content

The 2004 Agreement has been renewed, enabling Switzerland to continue as a *full participant* in all activities of the new MEDIA 2007 programme (2007-2013), the 5th EU programme to promote European films. Thus Switzerland becomes a fully-accredited participant in all of the MEDIA 2007 activities. Swiss filmmakers, producers and distributors will benefit from the same MEDIA promotional measures as their colleagues in EU member states. *Financial support* is requested directly from the European Commission. For its part, Switzerland makes a contribution of €40 million to the MEDIA programme, or approximately CHF 10 million annually over the seven-year period.

For a final decision regarding Switzerland's participation in the MEDIA 2007 programme, Parliament must approve the renewed Agreement after it has been signed, and grant a guarantee credit for the Swiss contribution.

MEDIA focuses in particular on *co-productions* in which a minimum of three countries must participate in the MEDIA programme. As a MEDIA member state, it is now easier for Swiss producers to find European co-production partners and to benefit from MEDIA promotional funds.

MEDIA does not provide support for the actual production of films, limiting itself to *pre- and post-production stages* such as training, project development (e.g. script writing), the synchronisation of films, and most importantly to their distribution. MEDIA 2007 designates five lines of action:

- development of film projects
- distribution of films for the cinema
- promotion of cinematographic and audiovisual work
- support for film festivals
- training of professional filmmakers.

Participation in MEDIA programmes requires a certain adaptation of the Swiss legal framework in the audiovisual field to EU legislation. However, as Swiss law was already highly euro-compatible in this area, only one change was necessary for participation in the 2001-2006 MEDIA programme. This concerned *television quotas* for European films (50 per cent) and for independent productions (10 per cent). In fact, Swiss programmers had already met these minimum quotas.

There is an additional condition for participation in the current MEDIA 2007 programme. As of November 2009, Switzerland must apply another regulation of the EU "TV without Limits" directive. Advertising windows directed at Switzerland by foreign TV channels will be exclusively subject to the national regulations of the country where the TV channel is based (concerning, for example, permits to advertise alcohol, as well as religious and political advertising). This would require a parliamentary decision to amend the Swiss radio and television regulations. The Federal Council will evaluate Swiss interests and decide whether to proceed with the necessary amendment at a later stage.

Significance

Participation in MEDIA programmes creates more *market opportunities* and leads to greater *distribution* of Swiss films and coproductions throughout Europe, thus improving the international presence of the Swiss cinema.

Swiss film-makers have easier access to *film schools* that benefit from MEDIA subsidies. They enjoy the same conditions as EU citizens and no longer have to pay higher tuition fees. This also applies for training in new technologies such as digitalisation. In addition, it will be possible in future for Switzerland to organise seminars in these areas in collaboration with EU states.

Thanks to MEDIA, the Swiss film industry can participate more easily in *film festivals* and in European networks, contributing to the promotion of European film-making as a shared cultural heritage.

Finally, the promotion of films from the EU leads to *greater diversity* in the films being shown in Switzerland, benefiting the public as a whole.

Experience

The last generation of MEDIA programmes (2001-2006), endowed with a total budget of about € 500 million, made possible the promotion of around 8,000 film productions in some 30 countries. Half of the films from the EU being shown in cinemas today have benefited from this aid. Also the Oscar-winning film, "Das Leben der Anderen" (2007) by the German director, Florian Henckel von Donnersmarck, was supported by MEDIA funds.

Information

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Education, vocational training, youth

Switzerland has participated in EU education, vocational training and youth programmes on a project basis since the mid-1990s. In a political declaration of intent in the framework of Bilateral Agreements II (2004), Switzerland and the EU agreed to negotiate Switzerland's full and official participation in the programme for 2007 - 2013. This includes the "Lifelong Learning Programme" (general education and vocational training) as well as the "Youth in Action" programme (extracurricular activities). The package adopted by the EU at the end of 2006 was endowed with a budget of around €3 billion.

The Agreement is expected to ensure Switzerland's full and direct participation. Thus cooperation would be legally secured and extended. Swiss education institutions will be able to further develop their cross-border contacts, and Swiss citizens will find improved possibilities for attending schools and universities abroad, including those for vocational training and for extracurricular activities. It has not yet been decided at what point Switzerland will be able to begin direct participation in these EU programmes. In the meantime, Swiss involvement will be limited to indirect participation, i.e. in individual projects.

The aim of EU education and youth programme is to broaden the range of education and training opportunities and to increase the mobility of those involved. This is achieved through increased networking by the various European institutions and by promoting opportunities for study periods abroad for school pupils, apprentices and students, as well as teachers. Experience abroad also improves an individual's chances of success in the labour market.

Key data

- Official participation in two EU education programmes until 1995, followed by participation in individual projects.

Content

The aim of the EU education, training and youth programme is to improve the range and quality of education and the mobility of all concerned. Education institutions work together in various projects designed to *improve education and training opportunities*. The programmes support the cross-border mobility of school pupils, apprentices, students and teachers who could benefit from a period of academic study or from participation in practical projects based on cooperation abroad.

At the beginning of the 1990s, Switzerland participated officially in two EU education programmes. As a result of the Swiss electorate's "No" to the European Economic Area in 1992, participation in the new programme for 1995 was no longer possible. Since then, Switzerland has participated only indirectly in EU education, training and youth programmes. *Indirect participation* means that Swiss Institutions with federal financing are able to take part in individual projects as long as the EU project coordinator or the EU partner institution is in agreement.

Switzerland and the EU intend to give this cooperation a legal underpinning and create the conditions for *Swiss participation on the basis of full entitlement*. In a political declaration of intent in the framework of Bilateral Agreements II, Switzerland and the EU have made clear their desire to negotiate an agreement for Switzerland's official participation in the 2007-2013 programme. Specifically this concerns the "Lifelong Learning Programme", which involves both general education and vocational training and includes programmes such as Erasmus, Leonardo, Comenius and Grundtvig. The "Youth in Action Programme" on the other hand provides support for extracurricular activities for young people.

Official participation comparable to that of the EFTA/EEA states would bring the following advantages compared with the present indirect participation:

- A new agreement would ensure stable *cooperation anchored in the law* over the long term.

- Swiss citizens would obtain *equal rights to access* all programme activities with EU partners. This would probably lead to a considerable increase in the participation of Swiss students and teachers in exchanges as well as a greater number of vocational training posts abroad.
- Switzerland would have a *seat* (without voting rights) in strategic programme committees, as well as access to all information, and it would be able to influence the concept and content of the programmes.
- Swiss citizens would be able *to initiate projects* and assume responsibility for them.
- The cost of Swiss programme activities would be financed *directly by the EU programme budget*⁵³. Switzerland on the other hand would make a financial contribution to the EU programme budget.

Significance

Since the 1980s, the EU has been active in the area of education, vocational training and youth policy in a complementary capacity to national measures. Today, over 30 states (EU, EEA and candidate countries) participate in EU education and youth programmes, whose aim is to improve the range and quality of education and training, as well as the mobility of those involved. Cross-border learning is personally enriching and improves individuals' opportunities on the labour market. Cooperation in education is also an investment in improving the general level of education and consequently the competitiveness of Switzerland as a business location. More than 1.5 million students have benefited from the Erasmus programme since its creation 20 years ago.

As a country with an internationally oriented education system and experience in cooperation between cantons with different cultural and linguistic traditions, Switzerland is an attractive partner for the further development of cooperation in education at the European level. Interest in the EU in the very high standard of education and training in Switzerland is evidenced in the fact that over 30 per cent of teaching staff and 13 per cent of students at Swiss universities are from EU member states.

Experience

In 2006, about CHF 14 million was spent on financing cooperation in education projects. Some 5,400 young people were able to travel abroad for study or vocational training experience, about half moving from Switzerland to the EU and half in the other direction.

Information

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⁵³ Under the present system of indirect participation, Switzerland not only pays the grants of Swiss studying at EU institutions but also the grants of foreign students attending Swiss institutions. The latter would no longer be required with official Swiss participation.

Pensions

In the absence of a double taxation agreement between Switzerland and the European Union former EU officials living in Switzerland have in the past been taxed twice on their pensions: the EU taxed them at source and the remainder was then subject to income tax in Switzerland.

In the Bilateral Agreement on pensions, Switzerland and the EU agreed to stop further double taxation. Switzerland agreed not to tax pensions that have already been taxed at source in the EU. The tax-exempt amount can be taken into account, however, when determining the rate of taxation on other income that is subject to taxation.

This concerns only former officials of EU institutions such as the European Parliament, the European Commission, the Council of the European Union, and the European Court of Justice, who are now living in Switzerland, or a total of about 50 persons.

Key data

- Date of signing: 26 October 2004 (in the framework of Bilateral Agreements II)
- Approval by Parliament: 17 December 2004
- Date effective: 31 May 2005

Information

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