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Switzerland – European Union **The Bilateral Agreements with Special Consideration of** **the free movement of persons**

(Status October 2000)

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I. Introduction

In the referendum vote held on May 21, 2000, the Swiss voters approved the bilateral agreements with the EU by a clear 2/3's majority. With the conclusion of the agreements, a new chapter has been written in the relationship between Switzerland and the EU, Switzerland's most important economic partner. Since the Free Trade Agreement of 1972, little had changed in the Switzerland – EU relationship. With the rejection of the European Economic Area (EEA) agreements by the people and the cantons in 1992, the efforts to join the EEA had failed. The acceptance of the seven agreements by the people eight years later indicates that the Swiss policy vis à vis Europe is ready to head in a new basic direction.

Switzerland has concluded agreements with the EU in the following areas:

- **free movement of persons**
- **civil aviation**
- **overland transport**
- **agriculture**
- **public procurement**
- **technical barriers to trade**
- **research**

These agreements are primarily economic agreements which improve the access to the European market. For Switzerland - as a small, export-oriented country - it is especially important to open and secure access to Europe and to the European market. Moreover, additional steps towards integration are facilitated by virtue of the opening of the labor markets, the contact with the transportation markets, the reduction of disadvantages in connection with public procurement and of technical barriers to trade, the full participation in EU research programs and the reduction of tariffs on agricultural products.

The seven agreements must be approved by Switzerland and the EU in accordance with applicable procedures. The agreement on the free movement of persons must, in addition, be approved by all 15 member states of the EU in accordance with national legislation. Only afterwards can the agreements be ratified by the parties thereto. Following the approval by the Swiss voters, each of the EU member states has initiated the ap-

proval procedure. The bilateral agreements do not have any impact until they enter into force. According to information of the Integration Office EDA/EVD in Berne, it is expected that the agreements will enter into force in the first half of 2001.

II. The Agreement on free movement of persons

1. Basic principle

The agreement applies to employees, self-employed persons and persons without gainful employment. The latter must have sufficient financial means of their own and be able to prove that they have health insurance coverage. Students must, in addition, be enrolled for education at a recognized university or college.

The agreement foresees the introduction of the free movement of persons through a gradual and controlled opening of the labor market between Switzerland and the EU, with a twelve-year transitional period. After a period of seven years, Switzerland will be free to decide whether or not to prolong the agreement.

2. Free movement of persons and the labor market

As from the **effective date of the agreement**, EU citizens in Switzerland and Swiss citizens in the EU will be treated the same as national workers (national worker treatment). This equal treatment applies to wage and working conditions, social benefits and taxes. The quotas, the priority given to national workers and the control of wage and working conditions as a requirement for the granting of a work permit will, for the time being, remain unaffected.

The seasonal worker legislation will be replaced by the legislation on workers with short-term residence permits (from three months up to a year). The long-term residence permit (five years) will be added as an additional category. For a period of five years following the effective date of the agreement, the granting of these residence permits will be subject to annual quotas (15,000 long-term residence permits and 115,000 short-term residence permits). Thus, a short-term residence can be prolonged only to

the extent that the quota has not yet been fully exhausted. The third category of residence status is that of cross-border workers. For these workers, a weekly residence permit will be introduced. The right to professional and geographical mobility will exist during the five-year transitional period only within the border zones. Thereafter, such right will be granted without restriction.

The reunification of families is guaranteed in the case of workers with both short-term and long-term residence permits. Accordingly, anyone who takes up a job in Switzerland may be accompanied at any time by his or her spouse and by children and grandchildren under the age of 21. Apart from this, the reunification of families is foreseen only with respect to relatives who require support. Spouses and children have unrestricted access to the Swiss labor market. The professional and geographical mobility of EU citizens in Switzerland is fully guaranteed in the case of workers with permanent resident permits; these workers may change their place of employment and residence at any time and take up a self-employed activity. In contrast, in the case of workers with short-term resident permits, the professional and geographical mobility is not completely guaranteed until expiration of the five-year transitional period; until such time, a change in the place of residence and place of employment is only possible within the scope of the quotas on hand.

Two years as from the effective date of the agreement, the priority given to national workers will be reciprocally revoked. Therefore, the preference and/or priority given to national workers and the control of employment agreements which is discriminatory as a matter of EU law will be abolished. As from the same date, Swiss nationals will have full freedom of movement within the EU states. On the other hand, Switzerland will, vis-à-vis EU states, continue to adhere to the quotas during the 5-year transitional period.

After 5 years, all quotas will be abolished. Thus, the free movement of persons will therefore be introduced for the first time. However, within the scope of a special safeguard clause, Switzerland can reintroduce quotas after the fifth year for a two-year period in the event that the immigration exceeds the average over the three preceding years by more than 10%. This rule applies until the twelfth year. These limiting meas-

ures can be reintroduced on a unilateral basis and without danger of retaliatory measures on the part of the EU.

Moreover, upon expiration of the five-year transitional period, the cross-border workers also benefit from full freedom of movement. They have a right to be admitted to the labor market if they are able to produce evidence of employment.

7 years after the effective date of the agreement, Switzerland can decide whether it wishes to continue the agreement. The decision will be subject to the optional referendum. If neither Switzerland nor the EU has decided against the agreement, it will be continued for an indefinite period, subject to termination at any time. The termination of this agreement would result in the cancellation of the remaining six agreements ("guillotine clause").

12 years after the effective date of the agreement, the full reciprocal free movement of persons will exist between Switzerland and the EU states (for Swiss citizens, this will already be the case after 2 years). Each person who is a citizen of Switzerland or of one of the current fifteen EU states will have a right to admission to the relevant labor market if he or she can provide evidence of employment. A safeguard clause, however, permits both Switzerland as well as the EU, based on mutual consensus, to continue to impose immigration restrictions in the event these are required due to serious social or economic problems. A termination of the agreement and thus, automatically, of all seven agreements is possible.

3. Free movement of persons and the acquisition of real estate

The rules on the acquisition of real estate in Switzerland by EU citizens will also be loosened within the scope of the agreement on the free movement of persons. For persons who wish to take up residence in Switzerland, the acquisition of real estate is possible at any time. Restrictions also do not exist with respect to persons who need premises in order to engage in a professional activity, even though they do not wish to take up residence in Switzerland.

Pure capital investment in real estate, commercial trading in real estate and the purchase of a second home or a holiday home, however, will continue to be subject to a permit requirement. Only cross-border workers will have the right to purchase a second home at their place of employment without a permit, but not a holiday home.

4. Free movement of persons and services

The agreement also foresees a liberalization of the cross-border provision of services by persons. In those areas in which a services agreement exists between Switzerland and the EU (e.g., public procurement), it is intended that the provision of services not be hindered through the provisions on the movement of persons. For persons who supply services in application of these agreements, the right of entry and residence for the duration of the activity is guaranteed.

With respect to those service areas in which no such agreement exists, two years after the effective date of the agreement, the cross-border provision of services by persons for up to 90 days per year is possible without a permit. Self-employed persons and legal entities are entitled to this right. Thus, companies can, for example, send their employees to a guest country. The law on sent employees and additional accompanying measures (in part, at the cantonal level) ensure that these employees are not employed in Switzerland upon conditions that are worse than those of domestic employees.

Employment agency activities and employee leasing are excepted from this deregulation.

III. Overview of the remaining six agreements

1. Civil aviation

Through the civil aviation agreement, Swiss airline companies receive free access to the member states of the EU. They may fly to all destinations in the EU members states and combine these destinations without restriction, i.e., serve connections within the EU. They will also be able to become majority shareholders in other EU airlines. In this

manner, Swiss airline companies will be placed on virtually the same footing as those of the EU states. This is the substance of the so-called 1st – 7th freedoms. Only the access to purely domestic flights in a foreign country (8th freedom) is excepted and will have to be negotiated by the parties following a transitional period.

2. Overland transport

By today, Switzerland does not permit trucks of more than 28 tons to be driven within its territory. Through the overland transport agreement, Switzerland will be required to admit trucks with a maximum weight of 40 tons following a transitional period. In return, it will be entitled to levy a heavy goods vehicle tax on transit crossings through Switzerland in the average amount of CHF 325.-. This tax will already come into force on January 1st 2001. Moreover, the agreement provides free access for the railways to the railway networks of the contracting parties. In the law on the transfer of traffic, Switzerland has adopted accompanying measures in order to support the transfer of transalpine traffic to the rail.

3. Agriculture

Through the agricultural agreement, the regulations in the areas of biological products, veterinary medicine, plant protection and seeds and the quality standards for fruit and vegetables will be mutually recognized. Moreover, the agreement gradually effects a complete deregulation of the trade in cheese and a reduction of tariffs in connection with numerous additional agricultural products, particularly in sectors in which the Swiss agricultural market is traditionally strong. Switzerland remains free in terms of its domestic agricultural policy.

4. Public procurement

The agreement on public procurement effects improvements in connection with the opening of public procurement. It extends the rules of the agreement on public pro-

curement markets, which already apply within the scope of the World Trade Organization (WTO), in particular, to the local level and to additional services. This provides the Swiss economy an improved access to public contracts within the EU.

5. Technical barriers to trade

The agreement governs the mutual recognition of product requirements for technical equipment and machines. In connection therewith, the conformity tests of the majority of industrial products will be mutually recognized. Therefore, in the future, the Swiss certificate will in most cases also suffice for an export to the EU and vice versa.

6. Research

The agreement on research enables Swiss universities, research institutes and specialized small-to-medium-sized enterprises to participate without restriction in EU research programs as equal partners. In return, researchers from the EU are also entitled to participate in Swiss projects. In contrast to the other agreements, the term of the agreement on research is limited until the end of 2002 and must subsequently be renewed on the basis of mutual consensus. The remaining agreements will not be affected by a possible non-renewal of this agreement.

Please direct your questions and comments to

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In connection with this topic, cf. also the current publication of Tobias Jaag, "Die Beziehungen zwischen der Schweiz und der Europäischen Union - Eine Bestandesaufnahme nach der Zustimmung zu den sektoriellen Abkommen von 1999" [*The Relationships Between Switzerland and the European Union – An Assessment Following the Approval of the Sector Agreements of 1999*], in: "Zeitschrift für Schweizerisches Recht", Vol. 119 I, Basle 2000, pp. 223 et seq.