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

(Status June 2007)

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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.

Following a delay caused by the national ratification procedures in certain EU member states, the bilateral agreements entered into force in Switzerland and in the 15 EU member states on June 1, 2002. The revised EFTA Convention, which extends the essential legal substance of the new bilateral agreements to the EFTA countries, as well

as numerous Swiss federal statutes and ordinances related to the new agreements, also entered into effect on June 1, 2002.

## **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**

On **June 1, 2007**, implementation of the agreement on the free movement of persons entered into a new phase. Persons from states that belonged to the EC or the EFTA at the time of the signing of the agreement on the free movement of persons on June 21, 1999 (Austria, Belgium, Denmark, Germany, Great Britain, Greece, Finland, France, Iceland, Ireland, Italy, Luxembourg, The Netherlands, Norway, Portugal, Spain and Sweden) as well as Cyprus and Malta are entitled to full freedom of movement.

As from June 1, 2007, residence permits for citizens of the above-referenced countries wishing to engage in an economic activity in Switzerland are no longer subject to quotas. The former border zones for cross-border workers will likewise be completely abolished on June 1, 2007. For citizens of the EU member states that acceded on May 1, 2004 (EU-8), a transitional rule will continue to apply.

In detail, the following applies:

- **Employed persons** must present a job confirmation. Depending on the duration of the employment relationship, a short-term residence permit (permit L EC/EFTA) or a residence permit (permit B EC/EFTA) will be issued.
- **Self-employed persons** must produce evidence of their self-employment already upon submission of the application. If the residence conditions are met, a five-year residence permit will be issued; the former six-month adjustment period has been revoked. Self-employed citizens of the EU-8 member states likewise benefit from this new rule. If they subsequently wish to engage in an economic activity as employee, the determinative transitional provisions of the agreement on the free movement of persons will apply. The authority may also review at a later point in time whether the prerequisites of an economic activity that is active and ensures one's livelihood are fulfilled; if not, the permit will be withdrawn.

Within the scope of a special safeguard clause, Switzerland can reintroduce quotas 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 measures can be reintroduced on a unilateral basis and without danger of retaliatory measures on the part of the EU.

**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 EU/EFTA member 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.

## **5. Free movement of persons not pursuing an economic activity**

Persons not pursuing an economic activity - including retirees and students as well as the other persons not engaged in a gainful activity (e.g., persons of independent means) - who wish to move to Switzerland for more than three months will continue to require a permit. They are now entitled to issuance of a permit, however, if they dispose over sufficient financial means for the entire duration of the stay and are comprehensively insured against illness and accident. The financial means will be deemed to be sufficient if Swiss nationals in the same situation could not apply for any social assistance.

As a rule, the first-time residence permits for persons not pursuing an economic activity will be valid for a duration of five years. The competent authorities, however, may limit the permit in the individual case to two years if they deem it necessary. In the case of students, the residence permit is valid in each case for only one year. It will be renewed up until the ordinary completion of the education if the conditions for issuance of the permit continue to be met.

## **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 1<sup>st</sup> – 7<sup>th</sup> freedoms. Only the access to purely domestic flights in a foreign country (8<sup>th</sup> 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 1<sup>st</sup> 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 procurement 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. Because the agreement on research (in contrast to the other agreements) already expires on December 31, 2002, it is not possible for the financial provisions of this agreement - which were scheduled to take effect on January 1<sup>st</sup> of the year following the effective date of the bilateral agreements - to enter into force. The agreement, however, contemplates the possibility of being renewed with a view to a full participation of Switzerland in the sixth EU framework programs (2003-2006). Therefore, renewal negotiations between Switzerland and the EU will be commenced after the effective date of the agreement.

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 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.