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EU-Switzerland Institutional Framework Agreement

European Parliament recommendation of 26 March 2019 to the Council, the Commission and the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy concerning the Institutional Framework Agreement between the European Union and the Swiss Confederation (2018/2262(INI))

The European Parliament,

– having regard to Article 218 of the Treaty on the Functioning of the European Union,

– having regard to the Council decision of 6 May 2014 authorising negotiations on an agreement between the EU and Switzerland on an institutional framework governing bilateral relations, and the start of negotiations on 22 May 2014,

– having regard to the Council conclusions of 28 February 2017 on EU relations with the Swiss Confederation,

– having regard to the Council conclusions of 14 December 2010 and 20 December 2012 on EU relations with EFTA countries,

– having regard to the Agreement on the European Economic Area (EEA) of 1 January 19941,

– having regard to the Swiss people’s rejection of the popular vote on participation in the EEA by 50.3 % in December 1992, the initiative ‘EU membership negotiations: let the people decide’ by 74 % in June 1997, and the initiative ‘Yes to Europe!’ by 77 % in March 2001,

– having regard to the EU-Swiss Confederation Agreement on Emissions Trading, signed on 23 November 20172,

– having regard to the European Defence Agency (EDA) and Switzerland Framework for Cooperation, signed on 16 March 2012,
– having regard to the agreement between Switzerland and Eurojust on judicial cooperation, which was signed on 27 November 2008 and entered into force on 22 July 2011,

– having regard to the agreement between Switzerland and Europol on cooperation between police authorities in the prevention of and fight against serious and organised international crime and terrorism, which was signed on 24 September 2004 and entered into force on 1 March 2006, and to the enlargement of the area of application thereunder of 1 January 2008,

– having regard to the Agreement of 21 June 1999 between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons¹, and in particular Annex I on the free movement of persons and Annex III on the mutual recognition of professional qualifications,

– having regard to the Protocol of 27 May 2008 to the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons regarding the participation, as contracting parties, of the Republic of Bulgaria and Romania pursuant to their accession to the European Union²,

– having regard to the Agreement of 25 June 2009 between the European Community and the Swiss Confederation on the simplification of inspections and formalities in respect of the carriage of goods and on customs security measures³,

– having regard to the Swiss federal popular initiative of 9 February 2014, where 50.3 % of Swiss people supported proposals to reintroduce quotas on immigration with the European Union, to national preference when filling job vacancies, and to restrict immigrants’ rights to social benefits,

– having regard to the 1972 EU-Switzerland Free Trade Agreement⁴, which has been adapted and updated over the years,

– having regard to the European Community-Swiss Confederation Agreement on Air Transport, which entered into force on 1 June 2002⁵,

– having regard to the European Community-Swiss Confederation Agreement on the Carriage of Goods and Passengers by Rail and Road, which entered into force on 1 June 2002⁶,

– having regard to the negotiations on agreements between the EU and the Swiss Confederation on electricity, and on food safety, product safety and public health,

– having regard to Commission Implementing Decision (EU) 2018/2047 of 20 December 2018 on the equivalence of the legal and supervisory framework applicable to stock

⁵ OJ L 114, 30.4.2002, p. 73.
exchanges in Switzerland in accordance with Directive 2014/65/EU of the European Parliament and of the Council¹,

– having regard to the 37th EU-Switzerland inter-parliamentary meeting, held in Brussels on 4 and 5 July 2018,

– having regard to its resolutions on Switzerland, in particular of 9 September 2015 on EEA-Switzerland: Obstacles with regard to the full implementation of the internal market², and to the draft motion for a resolution of its Committee on the Internal Market and Consumer Protection on the same topic of 24 April 2018,

– having regard to its resolution of 15 February 2017 on the Annual Report on the Single Market Governance within the European Semester 2017³,

– having regard to Rules 108(4) and 52 of its Rules of Procedure,

– having regard to the report of the Committee on Foreign Affairs and the opinions of the Committee on International Trade and the Committee on the Internal Market and Consumer Protection (A8-0147/2019),

A. whereas Switzerland’s current relationship with the EU is based on a complex set of some 20 main sectoral bilateral agreements and around 100 other agreements; whereas Switzerland only partially participates in all four freedoms; whereas while these agreements have deepened EU-Switzerland cooperation in the past in the fields of the internal market, internal security and asylum, transport and tax matters, in the future this complex set of agreements could become outdated, making their implementation less relevant, unless an overarching framework is agreed upon;

B. whereas according to Eurostat data, in 2017 Switzerland was the EU’s third-biggest partner in terms of export of goods and its fourth biggest in terms of import of goods;

C. whereas the Council has stated that an overarching institutional agreement with Switzerland should aim to protect the homogeneity of the internal market and ensure legal certainty for authorities, citizens and economic operators;

D. whereas the Swiss Federal Council wishes to conclude an institutional agreement with the EU that ensures legal certainty in the area of market access and preserves Swiss prosperity, independence and legal system⁴; whereas the Swiss Federal Council has announced a stakeholder consultation on the basis of the text agreed between the negotiators on 23 November 2018;

E. whereas a well-functioning and effective single market, based on a highly competitive social market economy, is needed to boost growth and competitiveness and create jobs to revitalise the European economy; whereas single market legislation must be properly transposed, implemented and enforced if the Member States and Switzerland are to reap the full benefits;

F. whereas Switzerland has expressed its wish to leave binding material provisions on State aid for a future market access agreement and have access to the single market for electricity;

G. whereas on 28 September 2018 the Federal Council approved the second Swiss contribution to a number of EU Member States of CHF 1.3 billion over ten years and is now awaiting a positive decision of the Federal Assembly;

H. whereas Switzerland is member of the European Environment Agency;

I. whereas Switzerland has ratified its participation in the European satellite navigation programmes Galileo and EGNOS;

J. whereas Switzerland’s participation in the EU’s Horizon 2020 research framework programme and its predecessor Framework Programme 7 (FP7) has been valuable to all parties involved owing to the high quality of proposals;

K. whereas Switzerland and the EU signed an additional protocol to the Taxation and Savings Income Agreement on 27 May 2015, which requires that both parties automatically exchange information (AEI) on the financial accounts of each other’s residents from September 2018; whereas the EU listed Switzerland among ‘non-cooperative jurisdictions for tax purposes’ in Annex II to the Council conclusions of 5 December 2017 concerning countries that have committed to implementing tax good governance principles to address issues relating to transparency, fair taxation and anti-BEPS (base erosion and profit shifting) measures;

L. whereas Switzerland cooperates in select parts of the Common Foreign and Security Policy (CFSP) and has participated in the civil and military peace missions of the Common Security and Defence Policy (CSDP), notably in Ukraine and Mali; whereas the EDA-Switzerland Framework for Cooperation, which was signed on 16 March 2012, enables exchange of information and provides for joint activities in research and technology and armament projects and programmes;

M. whereas Switzerland has been part of the Schengen area since the start of its Swiss implementation in December 2008;

N. whereas Switzerland participates in the Schengen Information System (SIS), the Visa Information System (VIS) and the Eurodac EU asylum fingerprint database, and will participate in the future Entry/Exit System (EES), which will record crossings of the EU’s external borders, and the European Travel Information and Authorisation System (ETIAS), which provides pre-travel security and irregular migration screening of visa-exempt non-EU nationals;

O. whereas based on the Dublin association agreement, Switzerland is associated to parts of the EU asylum acquis; whereas Switzerland has contributed financially and operationally to Frontex since 2010;

P. whereas in 2017, the Swiss population of 8.48 million included 2.13 million foreign nationals, 1.4 million of whom came from Member States of the EU and European Free Trade Association (EFTA); whereas 320 000 EU citizens commute to Switzerland every day; whereas 750 000 Swiss nationals live abroad, of which 450 000 live in the EU;
Q. whereas in 2009, Switzerland agreed to continue the 1999 bilateral EU-Switzerland Agreement on the Free Movement of Persons (FMPA), which confers upon Swiss and EU citizens alike the right to freely choose their place of employment and residence within the national territories of the contracting parties;

R. whereas foreign companies are obliged to respect Swiss minimum working conditions when posting foreign workers to Switzerland; whereas the main contractor has the legal responsibility to ensure that that subcontractors observe Swiss labour market regulations;

S. whereas Switzerland introduced ‘flanking measures’ in 2002 with the stated aim of protecting Swiss wages, working conditions and social standards, which the EU considers to be not in compliance with the FMPA;

T. whereas the implementation of the Citizens’ Rights Directive (2004/38/EC) and EU citizens’ rights to social welfare benefits and rights of establishment have caused concerns in Switzerland;

U. whereas Switzerland has been a member of EFTA since 1960 and of the United Nations since 2002;

V. whereas the ‘Swiss law, not foreign judges’ vote (known as the Self-Determination Initiative) was rejected by popular vote by 66% and by all cantons on 25 November 2018;

W. whereas Switzerland is committed to political neutrality and as such has played host to a number of international negotiations aiming to reach peaceful solutions to armed conflicts around the world;

X. whereas the Commission in late 2018 extended for six months its decision to recognise trading venues in Switzerland as eligible for compliance with the trading obligation for shares set out in the Markets in Financial Instruments Directive (2004/39/EC) and Regulation ((EU) No 600/2014);

Y. whereas the Inter-Parliamentary Union (IPU) is based in Geneva;

Z. whereas Switzerland hosts the worldwide headquarters of 25 major international organisations and conferences, most of which are based in Geneva;

AA. whereas hundreds of international non-governmental organisations are based in Switzerland, providing advice to the UN and other non-governmental organisations;

AB. whereas Switzerland plans to hold federal elections on 20 October 2019;

I. Recommends the following to the Council, the Commission and the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy:

(a) highlights that Switzerland and the EU enjoy a close, broad and comprehensive partnership, which is mutually beneficial and based on joint cultural history and shared values, and that economic, political, social, environmental, scientific and people-to-people ties and links are exemplary, recalling the unique cultural and geographical proximity between the two;
(b) stresses that Switzerland is highly integrated with the EU, is a similarly-minded partner and shares European regional and global challenges with the EU; welcomes the Swiss statement that it is in their interest to renew and consolidate the bilateral approach and to forge an ever-closer relationship;

(c) notes that the EU is Switzerland’s main trading partner, accounting for 52% of its exports and over 71% of its imports, and that the trade in goods under the current bilateral trade agreements amounts to no less than CHF 1 billion per day\(^1\); whereas Switzerland is the EU’s third-largest trading partner, accounting for 7% of its trade; considers that Switzerland’s significant degree of integration with the EU internal market is a key factor for economic growth, making the EU Switzerland’s most important economic and trading partner;

(d) highlights that the EU has shown great flexibility in the negotiations for the Institutional Framework Agreement (IFA) and that this must be recognised by all parties concerned;

(e) urges the conclusion of the bilateral IFA as soon as possible with the aim of bringing coherence to the existing complex set of bilateral agreements including establishing a dispute settlement mechanism; welcomes the agreement by the negotiators on the final text of the agreement; calls on the Swiss Federal Council to take a decision to conclude the agreement as soon as the consultation of stakeholders has been positively concluded in this respect;

(f) recalls that the establishment of a common institutional framework for existing and future agreements that enable Switzerland’s participation in the EU single market, in order to ensure homogeneity and legal certainty for citizens and businesses, remains a precondition for the further development of a sectoral approach; stresses that after four years of negotiations, the time has come to conclude the IFA; considers that the agreement’s conclusion will enable the EU-Swiss comprehensive partnership to develop to its full potential;

(g) acknowledges the need for an IFA, as the EU-Switzerland relationship is based on a complex system of 120 sector-specific agreements, and additional coherence and legal certainty would benefit all parties;

(h) calls on the parties to organise as soon as possible an interparliamentary meeting of legislators from both the EU and Switzerland in order to discuss all matters related to this agreement;

(i) expresses its regret at the fact that the Commission only transmitted the negotiated text of the EU-Switzerland IFA to the Committees on Foreign Affairs and International Trade on 6 February 2019, despite the fact that it was finalised in November 2018;

(j) acknowledges that the strong relations between the EU and Switzerland go beyond economic integration and the extension of the single market, contributing to stability and prosperity to the benefit of all citizens and businesses, including small and medium-sized businesses (SMEs); underlines the importance of ensuring the proper functioning of the single market in order to create a level playing field and create jobs;

(k) considers that securing an IFA with Switzerland is of great importance, since it would guarantee legal certainty for both Switzerland and the EU, dynamic incorporation of the EU acquis, enhanced access to the internal market for Switzerland to the benefit of both sides, and the jurisdiction of the Court of Justice of the European Union in the event of unresolved disputes relating to the application or interpretation of the IFA;

(l) Welcomes the Commission’s decision of 20 December 2018 to recognise trading venues in Switzerland as eligible for compliance with the trading obligation for shares set out in the Markets in Financial Instruments Directive\(^1\) and Regulation\(^2\) (MiFID II/MiFIR); stresses that this equivalence is limited to 30 June 2019, but can be extended provided that progress has been made towards the signature of an agreement establishing that common institutional framework;

(m) stresses, alongside the Council, that the free movement of persons is a fundamental and non-negotiable pillar of EU policy and the internal market, and that the four freedoms of the internal market are indivisible; expresses regret at the disproportionate one-sided ‘flanking measures’ of Switzerland, which have been in force since 2004; invites Switzerland, which considers that the flanking measures are important, to seek a solution which is fully compatible with the relevant EU instruments; calls on Switzerland also to consider shortening the period of application of the transitional measures concerning workers from Croatia, bearing in mind benefits of the free movement of persons between the EU and Switzerland;

(n) notes the implementation of the ‘domestic preference light’ initiative, and that the Council considers that the resultant text adopted on 16 December 2016 by the Swiss Federal Assembly can be implemented in a manner compatible with the rights of EU citizens under the FMPA if the necessary implementing ordinance clarifies outstanding open issues, such as the right to information as regards vacancies and respect for frontier workers’ rights; recalls, however, that the question of migration of citizens from third countries should not be confused with the free movement of persons as enshrined in the Treaties; underlines the need to monitor the implementation of the ordinance closely with a view to assessing its compliance with the FMPA;

(o) underlines that Switzerland strongly benefits from democratic and competitive development throughout its European neighbours and that its financial contributions to programmes such as the Cohesion Fund are therefore in its own interest and should be continued, and welcomes the positive results of the contribution in the receiving Member States; recalls that Switzerland draws significant benefits from participating in the single market; stresses that the future Swiss contribution to EU cohesion is essential and should be stepped up considerably, in line with the example set by the EEA/Norway;

(p) welcomes the intense internal debate on cooperation with the EU that is taking place in Switzerland; suggests, however, that Switzerland try to even better communicate to its citizens the many tangible benefits of having access to the internal market and the need for closer cooperation with the EU;

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2 OJ L 173, 12.6.2014, p. 84.
urges that once concluded, the IFA be submitted without delay to the European Parliament, the Member States, and the Swiss Parliament for approval, and to the Swiss electorate in a referendum, in accordance with the Swiss constitution;

notes that 1.4 million EU citizens live in Switzerland, whereas over 450 000 Swiss nationals live in the EU;

recalls that following the referendum of 9 February 2014, the Swiss Parliament passed an amendment to the Foreign Nationals Act in 2016 for the implementation of Article 121a of the Federal Constitution, with entry into force on 1 July 2018; stresses that it is essential that the Federal Council pay careful attention to implementing Article 121a so as to not jeopardise the right of EU citizens to free movement;

regrets any cantonal or national initiative that could have the effect of restricting access to the Swiss labour market for EU workers, in particular cross-border workers, thereby undermining the rights of EU citizens under the FMPA and cooperation between the EU and Switzerland;

strongly welcomes the political declaration of intent to modernise the Agreement on Government Procurement and the 1972 EU-Switzerland Free Trade Agreement, and supports the ambition of achieving a revised trade partnership that includes areas such as services that are beyond the scope of the IFA and only partially covered through the Agreement on the Free Movement of Persons (FMPA), including digital aspects, intellectual property rights, trade facilitation, mutual recognition of conformity assessments and public procurement, in addition to a chapter on trade and sustainable development; requests further cooperation in order to better protect geographical indications and expand the modern and reliable State-to-State dispute settlement mechanism included in the draft IFA to cover the future bilateral trade relationship and efficiently resolve trade irritants between the parties;

is aware that there is no comprehensive services agreement in place between the EU and Switzerland and that services are only partially covered through the FMPA, showing that there is potential for further development;

takes note of the revised law on public procurement adopted in 2017 in the canton of Ticino that is to be compliant with the World Trade Organisation Agreement on Government Procurement and the relevant EU-Switzerland sectoral agreement, which entered into force in 2002; strongly encourages contracting authorities to treat EU suppliers and service providers in a non-discriminatory way, even in cases of procurement contracts below the threshold;

urges that the current practice whereby taxi firms from EU Member States can provide services in Switzerland without restriction be allowed to continue, as it has long contributed to economic development in Swiss border regions and is mutually beneficial;

takes the view that reciprocity and fairness between the EEA and Switzerland are necessary to enable both sides to benefit from their participation in the single market;

notes that in overall terms, cooperation under the EU-Switzerland agreement on mutual recognition in relation to conformity assessment (MRA) is satisfactory; welcomes the most recent update of the MRA in 2017 and hopes that forthcoming updates can be
carried out swiftly when the future institutional framework agreement has been developed to its full potential;

(aa) welcomes the new tax legislation that will restrict preferential tax regimes and bring practices closer to international standards, and hopes for a positive outcome from the upcoming popular vote in Switzerland; underlines the need to continue improving cooperation in order to fight tax avoidance and enhance tax justice;

(ab) calls on Switzerland to continue its work on the Digital Switzerland strategy, aiming to have it align with the EU digital single market;

(ac) acknowledges the contribution to the close EU-Swiss partnership that the bilateral sectoral agreements on free movement of persons, pensions, environment, statistics, judicial and police cooperation, Schengen area, asylum (Dublin), the CFSP/CSDP, satellite navigation, research, civil aviation, overland transport, reciprocal market access for agreed goods and services, processed agricultural goods, legal harmonisation, mutual recognition, the fight against fraud, and taxation and savings bring; urges, however, that it is high time to elevate the partnership and take a much more comprehensive and substantial step in bilateral relations by concluding the framework agreement as soon as possible;

(ad) welcomes the fact that, for a very long time, the promotion of peace, mediation and peaceful conflict resolution have been an important part of Swiss foreign policy; welcomes Switzerland’s strong role in peace building and its involvement in helping to find solutions to crises, dialogue-facilitation, the development of confidence-building measures and reconciliation; welcomes the Swiss role as a facilitator in implementing complex federal structures and peace-brokered, constitutional arrangements, in order to ease the coexistence of different ethnic backgrounds;

(ae) welcomes the participation of Switzerland in and its support for EU security and defence missions, such as in EUFOR ALTHEA, EULEX Kosovo, EUTM Mali and EUBAM Libya, and in the work of the European Defence Agency; welcomes the close cooperation with Switzerland on humanitarian aid, civil protection, counter-terrorism and climate change;

(af) acknowledges the Swiss contribution and cooperation in the context of mass migration to the Schengen area and in the implementation of the European Agenda on Migration; encourages Switzerland to become part of the Global Compact for Migration and expects this to happen following the debate in the Swiss Parliament;

(ag) calls on Switzerland to apply the relevant EU directives in order to maintain its current level of social protection and level of wages, when it comes to cross-border offering of services;

(ah) stresses the importance of ensuring that the IFA between the EU and Switzerland contains a tax good governance clause including specific rules on State aid in the form of tax advantages, transparency requirements regarding the automatic exchange of information on taxation and beneficial ownership, and anti-money laundering provisions;
(ai) welcomes Switzerland’s decision to join the Europol Joint Cybercrime Action
Taskforce (J-CAT) in April 2018, as a proactive step in its fight against international
cybercrime threats;

(aj) welcomes Switzerland’s association to the entire Horizon 2020 programme and hopes
for further cooperation in future research programmes;

(ak) urges Switzerland to engage in negotiating its association to the Erasmus programmes;

(al) welcomes progress in the construction of the transalpine rail link known as the ‘New
Railway Link through the Alps’ (NRLA/ NEAT), a Swiss funded investment which is
also beneficial to the EU;

2. Instructs its President to forward this recommendation to the Council, the Commission
and the Vice-President of the Commission / High Representative of the Union for
Foreign Affairs and Security Policy, and to the Federal Assembly and Federal Council
of the Swiss Confederation.