

European Parliament

Delegation for Northern cooperation and for relations with Switzerland and Norway and to the EU-Iceland Joint Parliamentary Committee and the European Economic Area (EEA) Joint Parliamentary Committee

January 18, 2023

Agenda Item: State of Play of Swiss-EU Negotiations

Thomas Cottier

Speaking Notes

Distinguished Chairperson, dear Dr Schwab,

Dear Members of the European Parliament:

I truly wish to thank you for the invitation to discuss Swiss-EU relations today with you. Upon the breaking up of negotiation on May 26, 2021 by the Swiss Government, consultations have been resuming gradually. They are conducted behind closed doors, and our discussions today necessarily take place on a foggy ground – hardly comparable to the transparency developed in CETA or TTIP negotiations by the EU in recent years. We are not fully informed. The more so, your offer to discuss with two academics, and the chair of [La Suisse en Europe](#) is deeply appreciated. We also hope that you will be able to engage in the same vein and officially with Swiss MPs, following up the work of MEP Schwab in rebuilding trust, mutual information and defining common goals and avenues. And perhaps, today, we can contribute a view further down the road.

We shall raise a few points at the outset. Professor Oesch will address issues of cooperation programmes (Horizon Europe, Erasmus) and dispute settlement, in particular the role of the CJEU in arbitration. I shall start by addressing the overall approach, the sticky points of subsidies, of exceptions to free movement of persons, and the issue of security of sustainable electricity production and cyber security.

1. OVERALL APPROACH

There seems to be agreement to work towards a third package of bilateral agreements with each of them entailing institutional provisions modelled after the 2018 Draft Institutional Framework Agreement. While in my view the Framework Agreement was most suitable to Swiss interests, the new approach allows the Swiss Government to sell institutional issues linked to specific policy and trade issues which are of prime interest to voters and the economy. It entails decision-shaping, dynamic adoption of EU law and legal dispute settlement while leaving voters the right to decide over time which policies areas should be subject to closer integration. The latter is the main difference to the EEA, and also EU membership. It accommodates Swiss traditions of direct democracy. The approach suggested by Dr Schwab in his non-paper dated October 24, 2022 therefore in principle is a viable one and reflects common ground achieved. It is also broadly in line with the [Road Map](#) which *La Suisse en Europe* circulated in December 2021, and which I circulated today with you.

2. SUBSIDIES AND STATE AID

EU rules on state aid in Switzerland often are misunderstood. It is assumed that state aid no longer would be possible in different areas. It explains main opposition to include and update of the 1972 FTA in the negotiations. The main difference of introducing such disciplines, however, mainly results in transparency and oversight which has been weak. The opposition of the Cantons, in my view, is mainly motivated by preserving policy space in a competitive environment (tax breaks, investment promotion and local support) and to exclude oversight by the Federal Government and the Courts. In terms of proceedings, it would be suitable, in my view, to adopt the approach on the basis of Article 8 of the [Agreement on certain Aspects of Government Procurement](#), subject to legal dispute settlement. The agreement requires Switzerland to operate a supervising body which is competent to receive complaints. It was implemented by Article 59 of the [Federal Government Procurement Act](#). It consists of a joint committee of Cantons and the Federal Government. Additional powers should include the review of, and advice on, subsidy programmes and recommendations to Governments and Parliaments, and the power to file law suits for violation of treaty and domestic law. It could be served by the Secretariat of the Competition Authority. We also note that private parties under Swiss law can challenge subsidies for non-compliance with the treaty, which is given direct effect by Courts of law in Switzerland.

On substance, the question arises whether EU disciplines on subsidies and state aid, based on rules and exceptions in Articles 107-109 TFEU are still up to date in light of the Green Deal and increasing industrial policies, also in response to the US return to Hamiltonian industrial policies under the Inflation Reduction Act (IRA). It would be necessary to include dynamic alignments with EU law in an agreement, as these rules may need to be revised in coming years.

3. FREE MOVEMENT OF PERSONS AND EXCEPTIONS

Main opposition in Switzerland relates to enlarging free movement of persons by adopting social rights for EU nationals, commensurate with Directive 2004/38. It is feared that, given relatively high levels of immigration into Switzerland, social systems will be undermined and abused. Trade Unions fear that salaries will be undermined even under new Directive 2018/957 on detached labour which recognises the principle of equal pay of equal work at the same place. Despite new instruments of cooperative enforcement and concessions made by the EU in the Framework Agreement, they insist to exclude the field from negotiations.

Both concerns induced the call for exceptions. It seems that the Swiss Government continues to insist on detailed exceptions in a future agreement. The point I wish to make is that safeguards need not be addressed in detail in the agreement itself, but should be left to domestic legislation. Thresholds should be defined in domestic law which in extremis may trigger non-compliance with EU law. The system of dispute settlement, subject to review of proportionality of countermeasures allows for specific opt-outs, should real problems occur. A popular initiative ([Europa Initiative](#)), calling for enhanced participation in European integration in Art. 54a of the Federal Constitution, and submitting this approach in constitutional law, is currently being prepared in Switzerland by civil society groups.

Swiss insistence on detailed exceptions in the treaty beyond concessions made in the Framework Agreement by the EU itself risks delay (certainly in an election year) and even renewed abortion of negotiations. I cannot see that the EU could grant specific exceptions to

Switzerland, while not to Member States and EEA countries, or the UK. Insistence thus merely serves the protectionist and nationalist interests of those who do not wish an agreement at all under the guise of national sovereignty. Instead, it suffices that the agreement recognises the possibility of limited unilaterally defined opt-outs and safeguard measures in times of distress, and places those measure under legal dispute resolution. A general safeguard clause is sufficient, in line with the proposal of Dr Schwab.

4. ELECTRICITY AND CYBER SECURITY

The most urgent file before us clearly is electricity. Regulation 2019/943 will limit transport capacities to third countries to 30% by the end of 2025. Switzerland will thus not be able to procure sufficient imports of electricity in winter times. An agreement is imperative from the Swiss side, and may overshadow all objections to other files. The point, however, I wish to make today is that such an agreement is of equal importance to the European Union, and in particular the neighbouring countries of Switzerland. The Swiss grid physically is fully part of the European grid and cannot be detached. The lack of information on flows of electricity results in instability which also threatens instability and black-outs in Member States. Switzerland has more than 200 barrages and 16 pump stations which operate an alpine water reservoir and thus a battery of more than 10 Mio m³. This battery will be further beefed up by new alpine solar plants which fully operate in winter well above the foggy midlands. These installations, if properly linked to the high voltage European grid, can make an important contribution to stabilise base flows in Europe and thus secure sustainable electricity in coming decades. You find all this detailed in the paper of January 13, 2023, entitled [*The Contribution of Switzerland to European Stability and Sustainability of Electricity*](#) which I circulated today.

The security of electricity is also closely linked to cyber security which is essential to secure critical infrastructure in Europe. Cyber security depends upon close cooperation and exchange of information. Efforts in the EU and Switzerland therefore need to be coordinated and mutually supported in close cooperation. The file is a complex one, and Swiss efforts, but also issues and points for negotiations, are included in the second paper by Philippe Nell entitled [*Conséquences pour la Suisse de la stratégie numérique de l'Union Européenne*](#), also circulated today.

5. FINAL REMARK

The issue of security shows that needs are not limited any longer to market access and conditions of competition – the essential framework of the EEA and existing agreements with Switzerland. Current negotiations and linking trade and non-trade concerns risk missing the boat on important areas for European security. Cooperation and integration needs to go beyond the internal market upon which the Framework Agreement was exclusively aligned to. We need a broader framework. The war in Ukraine shows that such cooperation also needs to entail PESCO in the context of partnership with the Common Security and Defence Policy (CSPP).

It should be secured that these new areas are not upheld by negotiations focusing on the internal market only. The same holds true for other programmes which my colleague will now address.

Thank you for your attention.