

Sachdokumentation:

Signatur: DS 1733

Permalink: www.sachdokumentation.ch/bestand/ds/1733



Nutzungsbestimmungen

Dieses elektronische Dokument wird vom Schweizerischen Sozialarchiv zur Verfügung gestellt. Es kann in der angebotenen Form für den Eigengebrauch reproduziert und genutzt werden (private Verwendung, inkl. Lehre und Forschung). Für das Einhalten der urheberrechtlichen Bestimmungen ist der/die Nutzer/in verantwortlich. Jede Verwendung muss mit einem Quellennachweis versehen sein.

Zitierweise für graue Literatur

Elektronische Broschüren und Flugschriften (DS) aus den Dossiers der Sachdokumentation des Sozialarchivs werden gemäss den üblichen Zitierrichtlinien für wissenschaftliche Literatur wenn möglich einzeln zitiert. Es ist jedoch sinnvoll, die verwendeten thematischen Dossiers ebenfalls zu zitieren. Anzugeben sind demnach die Signatur des einzelnen Dokuments sowie das zugehörige Dossier.

Bilateralism on the verge:

*A provision within the institutional
framework between Switzerland
and the European Union*

foraus-Policy Brief / November 2018
Program Europe

Negotiations on the institutional framework agreement between Switzerland and the European Union (EU) have been dragging on for the past five years. Demands for such an agreement have been around even longer. The current logjam is mainly over the Swiss labor rules. However, the EU has made it clear that “time is pressing, and the window of opportunity is closing...”¹. It is clear; the current debate is entirely about the institutional framework agreement. However, in the words of Swiss Foreign Minister Ignazio Cassis, it is “written in the stars”², whether a breakthrough is possible by the end of the year. In this context, little thought has been put into the question; what happens after a potential agreement? Indeed, there is a real danger that nothing will happen after the conclusion of the institutional framework agreement. At the same time, it is in the Swiss economic interest to have a relatively seamless transition from the negotiations to the institutional framework agreement to market access negotiations. This policy brief proposes the inclusion of a provision whereby both parties pledge to continue negotiations on new market access agreements ex post conclusion of the institutional framework agreement without further delay.

¹ Michael Shields, Philip Blenkinsop (28.9.2018) “Swiss on collision course with EU as treaty talks stall”, Reuters <https://www.reuters.com/article/us-swiss-eu/swiss-on-collision-course-with-eu-as-treaty-talks-stall-idUSKCN1M81S5>

² Ibid.

Die Verhandlungen über das institutionelle Rahmenabkommen zwischen der Schweiz und der Europäischen Union (EU) ziehen sich seit fünf Jahren hin, wobei Forderungen nach einer solchen noch länger im Raum stehen. Die aktuelle Blockade der Verhandlungen besteht vor allem in Unstimmigkeiten bezüglich dem Schweizer Arbeitsrecht. Die EU hat jedoch deutlich gemacht, dass “die Zeit drängt und das Fenster der Möglichkeiten sich schliesst...”.¹ Eines ist klar, die aktuelle Debatte dreht sich ausschliesslich rund um die Frage des institutionellen Rahmenabkommens. Wobei es, in den Worten des Schweizer Aussenministers Ignazio Cassis, “in den Sternen geschrieben steht”², ob bis Ende des Jahres ein Durchbruch möglich ist. In diesem Kontext ist bisher wenig Gedankengut in die Frage gesteckt worden; was kommt danach? So besteht eine reelle Gefahr, dass nach dem Abschluss des institutionellen Rahmenabkommens erst einmal gar nichts passiert. Es ist jedoch im Interesse der Schweizer Wirtschaft einen relativ nahtlosen Übergang von den Verhandlungen zum institutionellen Rahmenabkommen zu Marktzugangsverhandlungen zu haben. Dieser Policy Brief schlägt vor, eine Bestimmung aufzunehmen, in welcher sich beide Parteien verpflichten, die Verhandlungen über neue Marktzugangsvereinbarungen nach Abschluss des institutionellen Rahmenabkommens ohne weitere Verzögerung fortzusetzen.

¹ Ibid.

² Ibid.

Les négociations sur l'accord-cadre entre l'UE et la Suisse végètent depuis cinq ans, tandis que les discussions autour dudit accord sont sur la table depuis plus de dix ans. Le droit du travail suisse constitue aujourd'hui une pierre d'achoppement. Pourtant, l'UE a été claire : "le temps presse et la fenêtre d'opportunité se referme..."³. Le ministre suisse des affaires étrangères, Ignazio Cassis, a récemment ajouté que les possibilités de sortir de cette impasse "sont écrites dans les étoiles"⁴. Alors que toute l'attention se porte sur le débat concernant cet accord-cadre institutionnel, l'incertitude règne quant à la poursuite des relations. En effet, il existe un risque de décalage entre la conclusion de l'accord-cadre institutionnel et le lancement de nouvelles négociations sur l'accès bilatéral aux marchés, crucial pour l'économie suisse. Dans ce contexte, ce Policy Brief propose d'inclure une disposition selon laquelle les deux parties s'engagent, sans plus tarder, à poursuivre les négociations en vue de nouveaux accords d'accès bilatéral aux marchés suite à la conclusion de l'accord-cadre institutionnel.

³ Ibid.

⁴ Ibid.

Authors



Wailea Zülch

Wailea Zülch is co-head of the Europe Programme at *foraus*. Her academic background is in International Relations, more precisely European Politics and External Relations. She currently works for the Swiss Television (SRF) and for a start-up in the travel industry. Out of a passion for international relations and open debate formats, she participated in the *foraus* policy lab of which this paper is a product.



Renaud Vuignier

Passionate about exchanging innovative ideas, Renaud Vuignier is an active member of *foraus*. He took part in the policy lab and is co-head of the Financial Hub program. After experiences at the European Commission and the Swiss Embassy in the United States, he worked as a researcher in Switzerland, Canada, and Colombia. He is now working for the Swiss State Secretariat of Economic Affairs.



Nessim Ben Salah

Public policy specialist, Nessim Ben Salah has been working for over eight years in the public sector for the Swiss Federal Department of Finance. He recently accomplished a CAS in public governance at the ETH Zurich under the guidance of Prof. Dr. Michael Ambühl. His strong interest in Switzerland's foreign affairs led him to join *foraus* and participate in the policy lab.

Copyright

Citation:

foraus-Forum Aussenpolitik, 2018, *Bilateralism on the verge: A provision within the institutional framework between Switzerland and the European Union*, *foraus*-Policy Brief, Zürich.

Disclaimer:

The views and opinions expressed in this policy brief are those of the authors and do not reflect the official position of *foraus* or any other organization. Responsibility for the content lies entirely with the authors.

Acknowledgements:

The authors warmly thank the *foraus* policy lab organizers and participants for giving them the opportunity to gather, think, reflect and debate intensively. Their thanks also go to Vera Muster who took part in the team during the policy lab, and Cenni Najy for his highly valuable collaboration as an expert on the topic.

1. Introduction.....1

2. Swiss – EU relations and the institutional framework agreement.....3

3. From the institutional framework to a market access agreement.....5

4. Mutual commitment: a clause for the institutional agreement.....7

5. Conclusion: purpose and expected effects.....8

6. Bibliography.....9

7. Appendix.....10

Table Of Contents

1. Introduction

The never-ending story is approaching its moment of truth. The institutional framework agreement between Switzerland and the European Union (EU) has now been discussed for over a decade. The Federal Council has set itself the goal of finally reaching an agreement by the end of 2018¹. A swift conclusion of the institutional framework agreement would consolidate Switzerland's access to the single market of the EU². Two recent developments have strongly stressed the importance of constructive and reliable bilateral relations for Switzerland's economic and financial actors: the delay in the update of the agreement on mutual recognition in relation to conformity assessment (MRA) and the 1-year limitation of the Swiss Stock Exchange Equivalence³.

The institutional framework agreement has long been fiercely opposed by numerous influential socio-economic actors in Switzerland. After many

years of on-off negotiations, it seems as if Swiss and European negotiators have made significant progress on a number of sensitive issues⁴. Even though there is no solution to the major bone of contention, the Swiss labor rules protecting high Swiss wages from cross-border contractors, the Swiss cabinet continues intense high-level negotiations with the goal to wrap up an accord by the end of the year.⁵

A swift conclusion of the institutional framework agreement would consolidate Switzerland's access to the single market of the EU.

To our understanding, such an agreement would not only have to consolidate but also improve existing market access.

In order to increase the likelihood of ratification by all influential socio-economic Swiss actors, Swiss Foreign Minister Ignazio Cassis coined the institutional framework the 'market access agreement' at the beginning of 2018.⁶ To our understanding, such an agreement would not only have to consolidate but also improve existing market access. While the institutional framework agreement is generally agreed to consolidate existing market access in different areas⁷, it remains unclear whether the institutional framework agreement will lead to an

1 Gafafer T. (4.7.2018), "Die unendliche Geschichte des Rahmenabkommens geht weiter", NZZ, <https://www.nzz.ch/schweiz/chronologie-die-unendliche-geschichte-des-rahmenabkommens-ld.1398081>. Swiss officials involved in the negotiations informally confirmed to *foraus* on 20 September 2018 that they still expect to reach an agreement by the end of the year.

2 SRF (5.3.2018), 'Das Protokoll der Medienkonferenz zum Nachlesen. Cassis zur Europapolitik', <https://www.srf.ch/news/schweiz/cassis-zur-eu-politik-das-protokoll-der-medienkonferenz-zum-nachlesen>.

3 Najy, C. & Hungerbühler, L. (2018). Last-Minute Christmas Gift With a Catch: Swiss Stock Exchange Equivalence With 1-Year Limitation, *foraus blog*, <https://www.foraus.ch/2018/01/19/last-minute-christmas-gift-with-a-catch-swiss-stock-exchange-equivalence-with-1-year-limitation/>.

4 For example, the dispute settlement issue is about to be solved. See Najy, C. (2018), Pour la conclusion d'un rapport conjoint sur les progrès de la négociation institutionnelle entre la Suisse et l'UE, <https://www.foraus.ch/2018/07/20/pourlaconclusiondunrapportconjoint/>.

5 Michael Shields, Philip Blenkinsop (28.9.2018) "Swiss on collision course with EU as treaty talks stall", Reuters <https://uk.reuters.com/article/uk-swiss-eu/swiss-on-collision-course-with-eu-as-treaty-talks-stall-idUKKCN1M81RZ>.

6 For example, the Swiss Foreign Minister Ignazio Cassis said "Nennen wir doch das Kind beim Namen: wir wollen ein „Marktzugangsabkommen“ in his speech at the 30. Albigüetli-Tagung on January 19, 2018.

7 It is unclear what the scope of the institutional framework agreement will be. The theoretical idea of such an agreement would imply that all bilateral agreements fall under its umbrella. However, the Swiss side indicated its desire to limit it, at least at first, to five agreements (free movement of people, air transport, land transport, agriculture products, trade technical obstacles).

expanded access to the EU single market in the short term.

Informal sources state that the electricity agreement is ready to be signed⁸, which, in a nutshell, would consist in an access to the EU energy market. The abolition of roaming charges appears as another logical next step highly beneficial to Swiss consumers, however, Swiss providers fear the foreign competition. In this light, it is currently a matter of internal debate what other market access agreements could get domestic support in Switzerland. A plethora of topics is possible, at least on a theoretical level. Just to name a few; an agreement on financial services (incl. asset management) may well be a topic of discussion in the near future, the participation of Switzerland to the 9th EU research framework programme (after HORIZON 2020) and a bilateral agreement on chemical safety (the REACH agreement)⁹ as well as full participation of Switzerland to the Creative Europe (MEDIA/Culture) programme to support the audiovisual and cultural sectors could and should also be considered. Due to the scope of this policy brief, we cannot evaluate the myriad possible issue areas.

This policy brief presents one concrete idea with a twofold aim: On the one hand, consolidating long-term bilateralism between Switzerland and the EU, on the other hand, ensuring a strong basis for future market access.

However, given the variety of dossiers that would relate to market access¹⁰ and potentially fall under the umbrella of the institutional framework agreement, we do support the idea of considering this

agreement as a ‘market access agreement’. This being said, we not only understand the necessity of the institutional framework agreement but also encourage it to be named a ‘market access agreement’.

It represents a critical opportunity to consolidate and expand existing access as well as reinforcing collaboration in various economic sectors at a European level.

In this light, this policy brief presents one concrete idea with a twofold aim: On the one hand, consolidating long-term bilateralism between Switzerland and the EU, on the other hand, ensuring a strong basis for future market access. After a more detailed analysis of the context, we propose a simple and clear provision¹¹ to be added to the final institutional framework agreement. With it, both parties commit to continue negotiations *ex post* the conclusion of the institutional framework agreement to improve Swiss market access without delay.

⁸ Newspaper articles show it was already supposed to be “ready to be signed” in 2011. Informal sources confirm it is in standby because the conclusion of the institutional agreement is considered a precondition. An agreement in the field of public health is also on hold for the same reason, but to the best of our knowledge this agreement does not exist in market access.

⁹ The Federal Council adopted a negotiation mandate for a bilateral agreement on chemical safety (the REACH agreement) in 2010 but decided in 2015 that it should not be actively pursued for the time being.

¹⁰ Strictly defined market access refers to the possibility for economic actors of a country to be active in another country’s market, for example, to sell goods and services across borders. In a broader sense, it can refer to a very close collaboration that allows actors from both sides to benefit from the economic opportunities as if they were active in the same market.

¹¹ A provision is a condition in a legal document that refers to “arrangements for future eventualities or requirements,” according to the Oxford dictionaries (<https://premium.oxforddictionaries.com>).

2. Swiss – EU relations and the institutional framework agreement

Switzerland and the EU have around 120 bilateral agreements, 20 main and 100 secondary agreements, which are mostly run by officials from Bern and Brussels, who meet in consensus-based Joint Committees. The agreements between Switzerland and the EU do not include the typical provisions for a regularised and multi-faceted political dialogue. In other words, Switzerland's political dialogue with the EU has only a few institutionalized features and lacks any kind of overarching framework agreement.¹² The EU has been highlighting the limits of the current static approach for the past decade. The 2008 EU Council Conclusions on EU relations with EFTA countries demonstrated a commitment to the sectoral approach, and at the same time, clearly spelled out the EU's demand for a homogenous and simultaneous application and interpretation of the constantly evolving *acquis*¹³, meaning a framework agreement. Switzerland accepted the EU's overall objective of homogeneity, given that the incorporation of the *acquis* was not to be automatic and

A window of opportunity has been identified by both negotiation parties for 2018, *ex ante* EU elections, the reshuffle of the European Commission and Swiss elections in 2019.

that Switzerland, on the same terms as EEA states, would be included in the decision-making process¹⁴.

In his 2013 speech on the so-called 'bilateral path' of Switzerland, the former Swiss Foreign Affairs Minister Didier Burkhalter not only demonstrated a commitment to continuing the current path as the only way to reconcile Switzerland's prosperity and independence but also identified a first window of opportunity to reach an agreement with the EU¹⁵.

The Swiss government obtained a mandate from its parliament to negotiate an institutional framework agreement in 2013. Notwithstanding the commitment from both parties, negotiations were contested by the anti-mass migration popular initiative adopted on 9 February 2014.¹⁶

A window of opportunity has been identified by both negotiation parties for 2018, *ex ante* EU elections, the reshuffle of the European Commission and Swiss elections in 2019¹⁷. The EU has put additional pressure on the Swiss to come to a swift

¹² Gstöhl, S. (2015) 'Models of external differentiation in the EU's neighbourhood: an expanding economic community?', *Journal of European Public Policy*, 22:6, 854-870, p. 860.

¹³ "the internal market requires a homogenous and simultaneous application and interpretation of the constantly evolving *acquis*" (05/12/2008 Council conclusions on EU relations with EFTA countries). The same ideas is also mentioned in 14/12/2010 Council conclusions on EU relations with EFTA countries' and 28/02/2017 Council conclusions on EU relations with the Swiss Confederation.

¹⁴ Gstöhl, S. (2015). *Ibid.*, p. 861.

¹⁵ Burkhalter, D (2013). 'Der bilaterale Weg der Schweiz: Erneuerung – statt Erosion', speech delivered in Bern and Zurich. Swiss Government Press Material, <https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-50567.html>.

¹⁶ The popular initiative obliged the Federal Council and Parliament to limit the inflow of people by means of ceilings and quotas, violating the Swiss-EU Free Movement of People Agreement (FMOPA). The latter in turn is legally bound to other market access agreements from the 'Bilaterals one' package deal. Unilateral termination of the FMOPA would potentially have cost Switzerland parts of the highly valuable preferential access to the EU single market. At the moment of writing, the anti-mass migration popular initiative has successfully been implemented without putting the Swiss economy at risk.

¹⁷ SRF (2018). Cassis ist optimistisch: 'EU-Rahmenabkommen soll bis im Sommer stehen', available at <https://www.srf.ch/news/schweiz/cassis-ist-optimistisch-eu-rahmenabkommen-soll-bis-im-sommer-stehen>.

conclusion by conditioning the renewal of the significant stock exchange equivalence to significant advances in institutional framework negotiations by the end of 2018. This being said, the motivation to come to a swift conclusion of the institutional framework by the Swiss Federal Council stems mostly from their aim to consolidate and possibly improve Swiss market access¹⁸. As mentioned above, the current Swiss Foreign Minister Cassis has therefore coined the institutional framework agreement as the ‘market access agreement’ in striving to improve the agreements’ domestic standing.

While the institutional framework agreement certainly consolidates current market access, it is unclear whether the institutional framework agree-

While the institutional framework agreement certainly consolidates current market access, it is unclear whether the institutional framework agreement leads to improved access in the short term too.

The asymmetry of interest in market access agreements might cause a delay after the signature of the institutional agreement.

ment leads to improved access in the short term too. The asymmetry of interest in market access agreements might cause a delay after the signature of the institutional agreement. In contrast to Switzerland, the EU is first and foremost interested in the conclusion of the institutional framework agreement to ensure homogeneity in the parts of the single market.¹⁹ Moreover, precedents have shown that it takes time to open new negotiations. In point of fact, negotiations between the first and second bilateral package deals were halted for a period of two years. After the signature of the first so-called ‘bilateral package deal’ (1999)²⁰, the EU waited for the Swiss referendum before starting a new round of negotiations in 2001. The second bilateral package was concluded in 2004, five years after the first one.

¹⁸ See for instance the live ticker from SRF: Bischoff, V & Roscher, O. (2018). ‘Das Protokoll der Medienkonferenz zum Nachlesen. Cassis zur Europapolitik.’ <https://www.srf.ch/news/schweiz/cassis-zur-eu-politik-das-protokoll-der-medienkonferenz-zum-nachlesen>.

¹⁹ 28/02/2017 Council conclusions on EU relations with the Swiss Confederation.

²⁰ This package includes – with the exception of the Research Agreement – conventional market access agreements: Free movement of persons (FMOPA), Technical barriers to trade (Mutual Recognition Agreement MRA), Public procurement markets, Agriculture, Overland transport, Civil aviation, Research.

3. From the institutional framework to a market access agreement

As outlined above, history indicates the possibility of a risk of a gap between negotiations with the EU. This would not be in Switzerland's favor. In addition, in the current context, the risk of a gap is reinforced by Brexit. In the event of a possible No-Deal Brexit in March 2019, UK-EU relations may well overshadow Swiss-EU relations²¹. Regardless, the European Commission is very careful to provide no ammunition to Brexiteers, taking a tougher stance vis a vis Switzerland.²²

All in all, at this point and time and despite the potential risk, negotiators seem to downplay the risk of a gap between the institutional agreement and further bilateral agreements²³. However, the perception may well change in the near future, plus a low-risk should never prevent from getting a good insurance. In point of fact, the argument of a low-risk is precisely why the feasibility and acceptance of introducing a provision within the institutional agreement may be higher.

To be clear and precise, the problem of a gap is that

any time lost is disadvantageous for Switzerland in the sense of missed opportunities for its export-oriented economy. Switzerland's most important trading partner is the EU, accounting for 62% of total foreign trade.²⁴ From an economic perspective, Switzerland needs a consolidation of the bilateral relations. Opinions differ, but as briefly outlined above, there are a number of important sectors that not only agree that the reinvigoration of existing agreements is crucial but also that further market access agreements should be concluded without further delay.

The provision we propose is supposed to bring the current debate closer to the people, highlighting the core raison d'être of the agreement: market access in various areas.

The reaction of economic and financial sectors to both the delay in the update of MRA and the

limited stock exchange equivalence strongly support this point. The list of "mandates and dossiers" provided by the Swiss Department of Foreign Affairs as well as potential new domains (see Appendix) show the vast array of common areas of interest Switzerland and the EU have. However, discussions around the institutional framework agreement currently focus mainly on legal and technical aspects. The provision we propose is supposed to bring the current debate closer to the people, highlighting the core raison d'être of the agreement: market access in various areas. In this direction, we theoretically support the idea of a third 'bilateral package' that would include a variety of agreements arising from a balance of interests from both sides. However,

²¹Talks with EU officials, experts on EU-Swiss relations, spring 2018 in Brussels.

²² Michael Shields, Philip Blenkinsop (28.9.2018) "Swiss on collision course with EU as treaty talks stall", Reuters <https://www.reuters.com/article/us-swiss-eu/swiss-on-collision-course-with-eu-as-treaty-talks-stall-idUSKCN1M81S5>.

²³Talks with EU officials, experts on EU-Swiss relations, spring 2018 in Brussels.

²⁴ Swiss State Secretariat for Economic Affairs (2018). Swiss Foreign Economic Policy Report 2017. https://www.seco.admin.ch/seco/en/home/Publikationen_Dienstleistungen/Publikationen_und_Formulare/Aussenwirtschafts/Berichte_zur_Aussenwirtschaftspolitik/awb_2017.html.

such an agreement does not seem politically feasible at the moment.²⁵ There are a number of obstacles, first and foremost is the difficulty to synchronize the different dossiers. For example, ready-to-be-signed agreements of economic importance for Switzerland would be delayed by other less advanced dossiers. Given that with such packages “nothing is agreed until everything is agreed”²⁶, the final signature of the whole would place a “sword of Damocles” on negotiators. This apparent change of approach in

We focus on a simple and feasible idea: a commitment from both sides, materialized through a provision in the institutional framework agreement, to pursue negotiations on various topics.

comparison with past experiences (the bilateral packages signed in 1999 and in 2004) may well be subject to further analysis, but in the current paper, we focus on a simple and feasible idea: a commitment from both sides, materialized through a provision in the institutional framework agreement, to pursue negotiations on various topics. The next section specifies the idea and discusses the expected effects.

²⁵ According to informal discussions with federal civil servants and business representatives (interviews carried out in April and May 2018).

²⁶ This expression echoes current debates on Brexit.

4. Mutual commitment: a clause for the institutional agreement

Building on the current state of affairs, we argue that the institutional framework agreement should effectively move from a technical to a market access vision. In other words, naming the institutional agreement ‘market access agreement’ cannot be only rhetoric, but must become substantial.

A provision, which should be binding and take the form of an independent article of the agreement and not only mentioned in the preamble, may bring substance and be formulated as follows: “Both parties confirm hereby their firm commitment to preserve and further strengthen sectoral cooperation. Therefore, after the signature of the present agreement, the parties commit to negotiating further market access agreements within the next year.”

The provision we propose is key to ensure ongoing negotiations between the parties on multiple issues. The interest for the institutional framework agreement appears to be greater on the EU side, therefore, we believe that Switzerland has

enough bargaining power to demand the inclusion of such a provision.

It is worth to highlight that similar articles or provisions have been included in such agreements before. To be more precise, the 1992 transit agreement between Switzerland and the EU included a commitment by both sides to negotiate further bi-

lateral sectoral agreements.²⁷ Internal exchanges of letters among EU authorities prove

that the provision has been concretely used by diplomats.

A note by the European Commission (EC) for the attention of members of the Council indicates (EC 1993, 10): “In the road sector, the Swiss side would appear to consider that the EC is obliged to begin negotiations based on the text of Annex 8 of the Transit Agreement referred to above.”

²⁷ Provision included in the 1992 transit agreement between Switzerland and the EU: Federal Council (1992). “Accord entre la Confédération suisse et la Communauté économique européenne sur le transport de marchandises par route et par rail”, conclu le 2 mai 1992, Art. 13 and Appendix 8, Art. 13 Accès au marché “En matière d’accès au marché des transports, les deux parties contractantes déclarent leur intention de se l’accorder dans le cadre de l’accord sur l’Espace économique européen ou, le cas échéant, selon des modalités à définir dans le cadre d’un accord bilatéral (Cf. annexe 8).”: Annexe 8 Echange de lettres concernant l’accès au marché: Déclaration conjointe au procès-verbal: “La Communauté et la Suisse saisissent l’occasion de la conclusion des négociations sur les transports terrestres pour souligner l’importance d’une coopération fructueuse et d’une libéralisation dans le domaine des transports aériens. Elles sont d’avis qu’il faudra parvenir dès que possible à une solution satisfaisante sur la base de l’acquis communautaire.”

5. Conclusion: purpose and expected effect

The aim of the provision is multifold. Globally speaking, we want to ensure that signing the institutional agreement is not a goal in of itself, but a means to consolidate bilateral relations between Switzerland and the EU in the future too.²⁸ The provision allows both parties to refer to a formal commitment to justify the need to pursue negotiations. It symbolically legitimates bilateralism as a third way between EU membership and “*Alleingang*”, officially recognized by both parties.

Moreover, to relate back to the aforementioned current state of affairs, the provision gives

substance to Swiss Foreign Minister Ignazio Cassis’ promise to negotiate a ‘market access agreement’. This, in turn, may increase the domestic acceptance of the institutional framework agreement. We expect the conversion from some sceptics by having a clear and simple pledge from the EU that the conclusion of the institutional framework agreement is only the beginning of further negotiations on issues of Swiss interest.

In sum, we believe that our simple and easily feasible idea of a provision within the institutional framework agreement would bring substance to the Swiss Foreign Minister’s idea to name the institutional framework agreement a ‘market access agreement’, increase the likelihood of ratification and consequently assure fruitful bilateral relations in the future too.

²⁸ From another idea from *foraus* in this direction see Stern M. & Naef T. (2017) Wir brauchen ein neues Betriebssystem für die Bilateralen. *Tages Anzeiger Politblog* <https://blog.tagesanzeiger.ch/politblog/index.php/67329/wir-brauchen-ein-neues-betriebssystem-fuer-die-bilateralen/>

6. Bibliography*

Gafafer, T. (2018). Die unendliche Geschichte des Rahmenabkommens geht weiter, NZZ.

Gstöhl, S. (2015). Models of external differentiation in the EU's neighbourhood: an expanding economic community?, *Journal of European Public Policy*, 22:6, 854-870. doi.org/10.1080/13501763.2015.1020834

Knöpfel, L. & Najy, C. (2018). Breaking the Deadlock. A Proposal for a Genuine Arbitration Mechanism to solve Disputes between Switzerland and the European Union, *foraus* Policy Brief.

Shields, M. & Blenkinsop, P. (2018). Swiss on collision course with EU as treaty talks stall, Reuters.

Najy, C. (2018). Pour la conclusion d'un rapport conjoint sur les progrès de la négociation institutionnelle entre la Suisse et l'UE, Bilan / *foraus* blog.

Najy, C. & Hungerbühler, L. (2018). Last-Minute Christmas Gift With a Catch: Swiss Stock Exchange Equivalence With 1-Year Limitation, *foraus* blog.

Oesch, M. (2018). Switzerland and the European Union: General Framework. Bilateral Agreements. Autonomous Adaptation, Zurich: Dike Verlag (in partnership with Nomos Verlag, Baden-Baden).

Schwok, R. (2015). Suisse - Union européenne : l'adhésion impossible ? (3rd edition), Lausanne : Presses polytechniques et universitaires romandes, Le savoir suisse : 35.

Stern M. & Naef T. (2017). Wir brauchen ein neues Betriebssystem für die Bilateralen, Tages Anzeiger Politblog.

Tobler, C. & Beglinger, J. (2017). Tobler/Beglinger Brevier zum Institutionellen Abkommen Schweiz-EU.

**quoted sources and additional literature*

7. Appendix

Negotiations afoot: List of mandates and dossiers “in the pipeline”²⁹

Dossiers		Description	Negotiation mandates Switzerland (FC)	Negotiating mandates EU (Council)
1.	Electricity	Switzerland participation in EU electricity market	17.5.2006 (last modified on 17.9.2010)	5.10.2006
2.	Cabotage in air transport	Deregulation of cabotage rights in aviation	16.6.2011	22.1.2011
3.	Participation in the European Union Agency for Railways	Amendment to the Over-land Transport Agreement (Bilaterals I)	20.5.2015	22.1.2018
4.	Public Regulated Service (PRS)	Switzerland access to PRS data	13.3.2009 (Galileo)	<i>Decision pending</i>
5.	GNSS Agency (GSA)	Switzerland participation in the European Global Navigation Satellite Systems Agency		20.11.2017 (draft stage)
6.	Public health	Cooperation in public health	27.8.2008	1.8.2008
7.	Food security	Extension of the agricultural agreement to all foodstuffs (Bilaterals I)	(Last updated on 17.9.2008 for public health)	
8.	MEDIA/culture	Switzerland participation in future EU framework programme	13.9.2013 for MEDIA 16.4.2014 for Culture	7.11.2014 for current programme Decision on future programme pending
9.	Financial equivalencies	EU regulations MiFIR 23, MiFIR 46 and AIFMD	19.10.2016 (strategy based on recognising equivalencies)	Decisions on case-by-case basis
10.	Research (post HORIZON 2020: 9th framework program FP9 2021-2027)	Switzerland participation in future EU framework programme	Negotiating mandate in due course	Decision on future programme pending

²⁹ Published on March 5, 2018 by the Swiss Foreign Affairs Department, available at <https://www.eda.admin.ch/dea/en/home/europapolitik/ueberblick.html>.

Potential other topics of interest for one or both parties³⁰

- Roaming (as part of an *arrangement* or an agreement)
- Asset Management (as part of a more global agreement on financial services)
- Development beyond equivalence for EU MiDIR (Markets in Financial Instruments Regulation), MiFID (Markets in Financial Instruments Directive) and AIFMD (Alternative Investment Fund Managers Directive)
- Digital Market

³⁰ From the authors, based on informal discussions with various stakeholders and experts (interviews carried out in April and May 2018).

Become part of the global *foraus* network

as a member

A membership in our unique network and a voluntary involvement at *foraus* is open to everyone. We offer you access to an extraordinary network, fascinating personalities, and the possibility to bring your academic know-how into the public debate.

as an author

foraus enables you to tackle the challenges in Swiss and international foreign policy and offers you a platform where you are invited to publish your innovative ideas in the form of a discussion paper, a short analysis or a blog.

as a benefactor

Our circle of benefactors, the «Cercle des Donateurs», contributes to the dissemination of the sponsorship, and offers interested personalities the possibility to support and promote *foraus*.

Most recent publications

foraus-Policy Brief

Breaking the deadlock, A proposal for a genuine arbitration mechanism to solve disputes between Switzerland and the European Union

foraus-Diskussionspapier Nr. 37

Nach ihr die Sintflut: Die «Selbstbestimmungsinitiative» Folgen für die Aussen- und Staatspolitik der Schweiz

foraus-Diskussionspapier Nr. 36

Rüstungsbeschaffung in der Schweiz, Vier Optimierungsvorschläge

www.foraus.ch

Zürich | *foraus* – Forum Aussenpolitik | Röschibachstrasse 24 | 8037 Zürich
office@foraus.ch | +41 44 501 68 65

Genève | *foraus* – Forum de politique étrangère | c/o Organisation Météorologique Mondiale
CP N°2300 | 7bis Avenue de la Paix | CH-1211 Genève
bureau_romandie@foraus.ch | +41 22 273 86 16

IBAN: CH06 0900 0000 6017 6892 9