

October 2, 2020

## EU challenges looming in the coming months

On September 27, Swiss voters made some wise choices. Most important for the Swiss economy and the members of the Swiss-American Chamber of Commerce, the falsely named "Initiative for a Measured Immigration", also known as the "Limitation Initiative" or "the Swiss Brexit" was soundly rejected with 62% no to 38% yes. This was a loud confirmation of the Swiss people's support of the Bilateral Way between Switzerland and the EU. Thank you to all the members who have supported this battle by informing their employees, friends, families, and contacts. Your support was of great importance! We needed a result above 60% to demonstrate the support of the Swiss population in the continuation of the Bilateral Way.

But as we all know from football/soccer: After the game is before the game. Many hurdles are still awaiting us this year. On November 29, Swiss voters will make a decision on the so-called Corporate Responsibility Initiative. Background and the very important reasons to say "no" to this initiative will follow in a separate memorandum. More important, and more complex, are the challenges confronting the continued relationship between Switzerland and the EU.

### How is the Bilateral Way structured?

In 1992, Swiss voters voted against Switzerland's adhesion to the European Economic Area, leaving the Swiss-EU relationship in limbo. Over the next 7 years, Switzerland and the EU negotiated a package of treaties (Bilaterals 1) to normalize the relationship. Over the following years, a large number of treaties and agreements were added. Today, the Bilateral Relationship is governed by approx. 120 important treaties and some 350 additional agreements, leading to a very complicated operational structure. Discovering that Switzerland was not likely to join the EU anytime soon, the EU set out to streamline this contractual Rubik's Cube by demanding negotiations regarding dynamic development of the relevant laws and a conflict resolution mechanism. Two reasonable demands! After 7 years of preliminary discussions and 5 years of negotiations, the so-called Framework Agreement was finalized in December 2018, nearly 2 years ago. Diverging from standard procedure, the Swiss negotiator Roberto Balzaretto, was not allowed to initialize the final version. Since Dec 2018, Switzerland did not move the treaty into the ratification procedure. It comes to no surprise that the EU is getting impatient with the Swiss process and, after the positive outcome on the vote on the Limitation Initiative, now demands fast action.

### What are the open issues?

From the start, three issues were raised:

1. The protection of the so-called Flanking Measures which protect the (very high) salary levels in Switzerland from salary pressure from EU workers.
2. The protection of certain state subsidies, especially the government guarantees for Cantonal Banks
3. The Union Citizen Right ("Unionsbürgerrechte") with which Switzerland could potentially in the future be obliged to accept additional people into its social system

Regarding these three points, the EU has indicated early on that certain specifications could be agreed upon in a side-letter. In the last weeks, however, many players in Switzerland have made clear that the resistance is going much further. On Saturday September 19, former Federal Councilor Johann Schneider-Ammann, surprised everybody with an op-ed in NZZ declaring the Framework Agreement to be totally insufficient and demanding a complete rework with additional guarantees for the Swiss sovereignty. Schneider-Ammann was Federal Councilor and Minister of Economy throughout the negotiations, which makes this opinion all the more surprising. Brussels certainly took note! Since then, the Swiss unions and the association of SMEs have jointly declared the draft contract to be unacceptable. Gerhard Pfister, the President of CVP, the fourth largest Swiss party, has termed the Framework Agreement the “largest living lie of the Swiss Federal Council”. From the EU, Union Council President Charles Michel and EU Commission President Ursula van der Leyen, have made clear that participation in the economic union required adherence to the same rules and that renegotiation was completely out of question. Swiss right-wing party SVP has for a long-time taken the position that anything with the “EU label” needs defeating. The title page of the Tages-Anzeiger showed the Framework Agreement in form of a coffin.

All this seems to be a bad starting position for the “final step” towards a Framework Agreement!

### **What are the consequences if the Framework Agreement fails?**

Throughout the last two years, the EU has made it clear that as long as there are no positive steps towards the signing of a Framework Agreement, no new agreements or renewals will be undertaken with Switzerland. In June 2019, the EU refused to renew the Stock Market Equivalency, even though from a technical point of view Swiss stock markets were deemed fully equivalent. But political considerations took precedence.

Currently, a large number of issues are under considerations:

- Multilateral Recognition Agreements (MRA) which eliminate technical trade barriers. These are of utmost import for many manufacturing companies based in Switzerland.
- Data Equivalency (DE) which allows for an easy transfer of data between Switzerland and the EU. With the passage of the new Swiss Data Protection Law on September 25, 2020, Switzerland is now technically equivalent to the EU data protection. But see above point on the stock market equivalency. Political arguments may win. For European or global Headquarters of international companies, a lack of data equivalency would be a major handicap and a reason to reevaluate the business location.
- Switzerland’s participation in the research program Horizon Europe (Horizon), the largest and most prominent research program in Europe. On September 28, the EU Commission decided to stop Switzerland’s role as an Associated Partner and treat Switzerland as normal third country. This would be a major blow for our research universities, most prominently ETH and EPFL who are today among the world’s leading technical universities! It is unclear if the EU decision can be changed.
- Switzerland’s participation in the European education exchange program Erasmus. In the coming months, the EU Commission will decide on Switzerland’s possibility to join this program.
- Energy Agreement: This agreement is key to the Swiss’ energy turnaround to sustainable energy. This agreement has been put on ice by the EU for the last years, pending progress with the Framework Agreement.
- Many other agreements are waiting for the EU’s willingness to continue developing the Bilateral Way.

A big issue is timing! MRAs run out end of the year, DE runs out on May 21, 2021, and on Erasmus and Horizon key decisions will be taken before the end of the year. Timing is critical.



### **What needs to be done?**

Decisions on next steps need to be taken by the Federal Council. There is no easy solution! The left wants no weakening of the Flanking Measures, the right wants no softening of the defense against the Union Citizen Rights, many sectors fear the potential EU push against state subsidies. Too many people play defense in the hope of keeping the Status Quo. Only problem: The EU has made it consistently clear that the Status Quo is not on offer.

We all need to make our priorities clear to the political establishment. It is important to look at the risks with evidence-based facts and explain the risks for your companies and for the Business Location Switzerland. Please call and write to the Federal Councilors, the members of the Cantonal governments, the Federal and cantonal Parliamentarians, the media, anybody you have contact with. We need to make “our” case clear. Otherwise, the future will not be so bright.

Thank you for your support

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