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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: Agreement between the European Union and the Swiss Confederation on Switzerland's Regular financial contribution towards reducing economic and social disparities in the European Union

AGREEMENT
BETWEEN THE EUROPEAN UNION
AND THE SWISS CONFEDERATION
ON SWITZERLAND'S REGULAR FINANCIAL CONTRIBUTION
TOWARDS REDUCING ECONOMIC AND SOCIAL DISPARITIES
IN THE EUROPEAN UNION

THE EUROPEAN UNION, hereinafter referred to as the "Union",

and

THE SWISS CONFEDERATION, hereinafter referred to as "Switzerland",

hereinafter referred to as the "Contracting Parties";

CONSIDERING the close links between the Contracting Parties;

CONSIDERING the broad bilateral package between the Contracting Parties aimed at stabilising and developing their bilateral relations, including Switzerland's participation in the internal market;

CONSIDERING in that context the importance of actions contributing to reducing the economic and social disparities in the Union, which should be aimed at encouraging the continuous and balanced strengthening of economic and social relations between the Union and its Member States, of the one part, and Switzerland, of the other part, while responding to important common challenges;

CONSIDERING that the cooperation between Switzerland and partner States in the context of Switzerland's regular financial contribution is founded on, and guided by, common values, principles of good governance and a common commitment to zero tolerance towards corruption,

HAVE AGREED AS FOLLOWS:

PART I

GENERAL PROVISIONS

ARTICLE 1

Objectives

In the context of the broad bilateral package, the Contracting Parties share the overall objective of contributing to the reduction of economic and social disparities in the Union. Accordingly, Switzerland's regular financial contribution shall be aimed at encouraging the continuous and balanced strengthening of economic and social relations between the Union and its Member States and Switzerland while responding to important common challenges.

ARTICLE 2

Subject matter

1. This Agreement establishes the legal basis for Switzerland's regular financial contribution towards the objectives laid down in Article 1.
2. Switzerland's regular financial contribution shall complement the Union's and its Member States' measures in the area of cohesion and their response to important common challenges.

ARTICLE 3

Definitions

For the purposes of this Agreement, the following definitions apply:

- (a) "List of instruments" means the following instruments:
 - (i) 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, done at Luxembourg on 21 June 1999;
 - (ii) Agreement between the European Community and the Swiss Confederation on air transport, done at Luxembourg on 21 June 1999;
 - (iii) Agreement between the European Community and the Swiss Confederation on the carriage of goods and passengers by rail and road, done at Luxembourg on 21 June 1999;
 - (iv) Agreement between the European Community and the Swiss Confederation on trade in agricultural products, done at Luxembourg on 21 June 1999;
 - (v) Agreement between the European Community and the Swiss Confederation on mutual recognition in relation to conformity assessment, done at Luxembourg on 21 June 1999;

- (vi) Agreement between the European Union and the European Atomic Energy Community, of the one part, and the Swiss Confederation, of the other part, on the participation of the Swiss Confederation in Union Programmes;
 - (vii) Agreement between the European Union and the Swiss Confederation on the terms and conditions for the participation of the Swiss Confederation in the European Union Agency for the Space programme;
 - (viii) Agreement between the European Union and the Swiss Confederation on electricity;
 - (ix) Agreement between the European Union and the Swiss Confederation on health; and
 - (x) Protocol to the Agreement between the European Community and the Swiss Confederation on trade in agricultural products establishing a common food safety area;
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- (b) "contribution period" means the timeframe to which a given financial contribution by Switzerland is attributed;
 - (c) "implementation period" means the timeframe during which a given financial contribution by Switzerland has to be implemented and the funds disbursed;
 - (d) "Partner State" means a Member State of the Union that is benefitting from Switzerland's regular financial contribution in a given contribution period;

- (e) "Partner States in the area of cohesion" means Member States of the Union with a gross national income (hereinafter referred to as "GNI") per capita, measured in purchasing power standards, of less than 90 % of the Union's average GNI per capita in purchasing power standards for the same reference period;
- (f) "support measure" means a programme or project carried out with the support of a given financial contribution by Switzerland.

The duration of each implementation period as referred to in point (c) shall be of at least ten years.

For the purposes of point (e), the reference period for the data to be used shall be the same as that used to determine the eligibility of Member States of the Union under the Cohesion Fund of the Union in force on the start date of the relevant contribution period.

ARTICLE 4

Framework governing Switzerland's regular financial contribution

1. Switzerland's regular financial contribution shall be structured on the basis of consecutive contribution periods.

Each contribution period shall begin two years after the start of the period covered by the Union's multiannual financial framework (hereinafter referred to as "MFF") and shall run for a period equal to the number of years covered by the MFF to which it relates.

2. For each contribution period, the following shall apply:
 - (a) Switzerland undertakes to provide a financial contribution determined on the basis of Annex I;
 - (b) for the purposes of point (a), the Contracting Parties shall conclude a legally non-binding memorandum of understanding (hereinafter referred to as "MoU") at the latest 12 months before the end of the ongoing contribution period;
 - (c) for the purposes of point (b), the Joint Committee shall start discussions at the latest 36 months before the end of that contribution period.
3. Each MoU shall specify the following elements:
 - (a) the amount of the given financial contribution by Switzerland determined on the basis of paragraph 1 of Annex I;
 - (b) country-specific allocations of funds in the area of cohesion pursuant to Appendix 2 of Annex I;
 - (c) the thematic areas for the given financial contribution by Switzerland in the area of cohesion;
 - (d) where a share of a given financial contribution by Switzerland is to be used to respond to other important common challenges:
 - (i) the identified important common challenges;
 - (ii) the respective thematic areas of the identified important common challenges;

- (iii) the criteria for the selection of Partner States affected by the identified important common challenges; and
 - (iv) the breakdown between the funds allocated to the area of cohesion and the funds allocated to the identified important common challenges, pursuant to paragraph 2 of Annex I;
- (e) a general description of the intended content of the country-specific agreements between Switzerland and the Partner States (hereinafter referred to as "country-specific agreements");
- (f) the duration of the implementation period pursuant to point (c) of Article 3.

4. If the MoU is not concluded within the timeframe referred to in point (b) of paragraph 2 of this Article, Article 16 shall apply. If, in this event, a dispute is submitted to the arbitral tribunal in accordance with Article 16(2), the arbitral tribunal shall verify whether the Contracting Parties acted in good faith during the discussions referred to in point (c) of paragraph 2 in order to fulfil the commitment referred to in point (a) of that paragraph.

ARTICLE 5

Country-specific agreements and further support measures

1. In accordance with point (a) of Article 4(2) and Part II, and in line with the elements set out in the MoU pursuant to Article 4(3), Switzerland shall conclude country-specific agreements with the Partner States and, if applicable, prepare further support measures under its management or in the form of contributions to relevant funding instruments.

2. The country-specific agreements shall take into consideration the Union policies and national strategic frameworks for Union cohesion policy investments approved by the European Commission (hereinafter referred to as the "Commission").

3. The country-specific agreements shall set out, in particular, the following:

- (a) the distribution of funds among thematic areas;
- (b) the support measures;
- (c) the structures for management and control;
- (d) the applicable conditions;
- (e) the competent authorities in the Partner State concerned; and
- (f) specific rules concerning the procedure and the measures referred to in Article 13(5).

4. For each contribution period, the country-specific allocations in the area of cohesion shall be formally committed to the Partner States upon the conclusion of the respective country-specific agreements, at the latest, two years after the beginning of the contribution period to which they relate.

5. Where a share of a given financial contribution by Switzerland is to be used to respond to other important common challenges, the country-specific allocations in the area of the identified common challenges shall be formally committed to the Partner States upon the conclusion of the respective country-specific agreements, at the latest, five years after the beginning of the contribution period to which they relate.

6. If the country-specific agreements referred to in paragraphs 4 and 5 of this Article are not concluded within the timeframes referred to therein, Article 16 shall apply. If, in this event, a dispute is submitted to the arbitral tribunal in accordance with Article 16(2), the arbitral tribunal shall verify whether Switzerland and the respective Partner State acted in good faith during the negotiation of the country-specific agreement.

7. Funds of a given financial contribution by Switzerland may be used only until the end of the respective implementation period.

ARTICLE 6

Communication between Switzerland and the Commission

1. Switzerland shall inform the Commission about the country-specific agreements referred to in Article 5(1) within one month of their publication in the Official Compendium of Swiss Federal Law.

2. Switzerland and the Commission shall communicate at technical level with each other on a yearly basis, or whenever the need arises, as regards the implementation of Switzerland's regular financial contribution.

ARTICLE 7

Co-financing rates

With respect to support measures for which the Partner States have implementation responsibility, Switzerland's co-financing rates for its regular financial contribution shall be the same as the Union co-financing rates under the Union's cohesion policy instruments and other relevant instruments, unless Switzerland and the Partner State concerned agree otherwise.

ARTICLE 8

State aid and public procurement

The implementation of support measures shall comply with the applicable rules on state aid and public procurement.

ARTICLE 9

Liability

The responsibility of Switzerland is limited to providing funds according to the country-specific agreements and further support measures. Accordingly, Switzerland does not assume any liability to third parties.

ARTICLE 10

Changes in the membership of the Union

1. In the event of a change in the membership of the Union involving a State whose GNI per capita, measured in purchasing power standards, is less than 90 % of the Union's average GNI per capita in purchasing power standards, Switzerland's financial contribution shall be adjusted proportionally as from the date on which the change of the membership takes effect.

The reference period for the data to be used shall be the same as that used for the Cohesion Fund of the Union in force on the start date of the respective contribution period, or, if not available, the latest three-year period for which data are available.

2. The amount of the adjustment referred to in paragraph 1 shall be determined by the Contracting Parties.

PART II

IMPLEMENTATION AND MANAGEMENT OF THE FUNDS

ARTICLE 11

Common values

The implementation of Switzerland's regular financial contribution shall be based on the common values of respect for human rights, democracy, the rule of law, human dignity and equality.

ARTICLE 12

Management of Switzerland's regular financial contribution

1. Switzerland shall be responsible for the overall management of its regular financial contribution.
2. Switzerland's management costs shall be covered by the total amount of a given financial contribution laid down in the MoU referred to in point (b) of Article 4(2).

ARTICLE 13

Principles for implementation

1. The country-specific agreements shall be negotiated and implemented in a spirit of equal partnership between the Partner States and Switzerland.
2. The implementation of the agreed support measures referred to in point (b) of Article 5(3) shall be the responsibility of the Partner States, which shall provide for appropriate management and control systems in order to ensure sound implementation and management.
3. The further support measures directly implemented by Switzerland referred to in Article 5(1) shall be the responsibility of Switzerland, which shall provide for appropriate management and control systems in order to ensure sound implementation and management.
4. The implementation of all support measures shall comply with the common values referred to in Article 11 as well as the principles of good governance and sound financial management, and shall ensure transparency, non-discrimination, efficiency, and accountability.

That implementation shall be based on the common commitment of Switzerland and the Partner States to fight all forms of corruption in the implementation of Switzerland's financial contribution and provide for effective measures and procedures to prevent, identify, and address any acts which jeopardise the proper use of funds, taking into account the risks identified.

5. In the event of a violation of an obligation set out in paragraph 4 which affects or risks affecting the sound implementation of a specific support measure, Switzerland, following an assessment and a procedure that guarantees the effective right of the Partner State to be heard, may take appropriate, proportionate, and effective measures regarding the specific support measure concerned.

6. Switzerland may carry out controls according to its internal requirements. The Partner States shall provide all necessary assistance, information, and documentation to that end.

7. When carrying out audits, the Swiss audit authorities shall take due account of the principles of single audit and proportionality in relation to the level of risk, in order to avoid duplication of audits and management verifications of the same expenditure, with the objective of minimising the cost of management verifications and audits, and the administrative burden on beneficiaries.

PART III

INSTITUTIONAL PROVISIONS

ARTICLE 14

Joint Committee

1. A Joint Committee is hereby established.

The Joint Committee shall be composed of representatives of the Contracting Parties.

2. The Joint Committee shall be co-chaired by a representative of the Union and a representative of Switzerland.
3. The Joint Committee shall:
 - (a) ensure the proper functioning and the effective administration and application of this Agreement;
 - (b) provide a forum for mutual consultation and a continuous exchange of information between the Contracting Parties, in particular with a view to finding a solution to any difficulty of interpretation or application of this Agreement in accordance with Article 16;
 - (c) make recommendations to the Contracting Parties in matters pertaining to this Agreement;
 - (d) adopt decisions where provided for in this Agreement; and
 - (e) exercise any other competence granted to it in this Agreement.
4. The Joint Committee shall act by consensus.

Decisions shall be binding on the Contracting Parties, which shall take all necessary measures to implement them.

5. The Joint Committee shall meet at least once a year, in Brussels and Bern alternately, unless the co-chairs decide otherwise. It shall also meet at the request of either Contracting Party.

The co-chairs may agree that a meeting of the Joint Committee be held by videoconference or teleconference.

6. The Joint Committee shall adopt its rules of procedure at its first meeting.

7. The Joint Committee may decide to set up any working party or group of experts that can assist it in carrying out its duties.

ARTICLE 15

Exclusivity principle

The Contracting Parties undertake not to submit a dispute regarding the interpretation or application of the Agreement to any method of settlement other than those provided for in this Agreement.

ARTICLE 16

Procedure in the event of difficulty of interpretation or application

1. In the event of difficulty of interpretation or application of the Agreement, the Contracting Parties shall consult each other within the Joint Committee in order to find a mutually acceptable solution. To that end, all useful elements of information shall be provided to the Joint Committee to enable it to make a detailed examination of the situation. The Joint Committee shall examine all possibilities that allow the proper functioning of the Agreement to be maintained.
2. If the Joint Committee is not able to find a solution to the difficulty referred to in paragraph 1 of this Article within three months of the date on which the difficulty was submitted to it, either of the Contracting Parties may request that an arbitral tribunal settle the dispute in accordance with the rules laid down in the Protocol on the arbitral tribunal (hereinafter referred to as "the Protocol").
3. When settling a dispute between the Contracting Parties under this Agreement, the arbitral tribunal shall have jurisdiction to interpret this Agreement. In determining the consistency of a measure with this Agreement, the arbitral tribunal may consider, as appropriate, the law of each Contracting Party other than this Agreement, as a matter of fact. In doing so, the arbitral tribunal shall follow the prevailing interpretation given to the law of each Contracting Party other than this Agreement by the courts and the authorities of the respective Contracting Party as well as, where applicable, by competent international dispute resolution bodies. Any meaning given by the arbitral tribunal to the law of a Contracting Party other than this Agreement shall not be binding upon the courts or the authorities of that Contracting Party.
4. The arbitral tribunal shall not have jurisdiction in disputes related to the implementation of the country-specific agreements.

5. Each Contracting Party shall take all measures necessary to comply in good faith with the arbitral tribunal's decision.

The Contracting Party that has been found by the arbitral tribunal not to have complied with the Agreement shall inform the other Contracting Party through the Joint Committee of the measures it has taken to comply with the arbitral tribunal's decision.

ARTICLE 17

Compensatory measures

1. If the Contracting Party that has been found by the arbitral tribunal not to have complied with the Agreement does not inform the other Contracting Party, within a reasonable time period set in accordance with Article IV.2(6) of the Protocol, of the measures it has taken to comply with the arbitral tribunal's decision, or if the other Contracting Party considers that the measures communicated do not comply with the arbitral tribunal's decision, that other Contracting Party may adopt proportionate compensatory measures within the framework of the Agreement or any agreement that is part of the list of instruments defined in point (a) of Article 3 (hereinafter referred to as "compensatory measures") in order to remedy a potential imbalance. That other Contracting Party shall notify the Contracting Party that has been found by the arbitral tribunal not to have complied with the Agreement of the compensatory measures, which shall be specified in the notification. Those compensatory measures shall take effect three months from the date of the notification.

2. If, within one month of the date of the notification of the intended compensatory measures, the Joint Committee has not taken a decision to suspend, amend or annul those compensatory measures, either Contracting Party may submit to arbitration the question of the proportionality of those compensatory measures, in accordance with the Protocol.

3. The arbitral tribunal shall decide within the time limits laid down in Article III.8(4) of the Protocol.

4. Compensatory measures shall not have retroactive effect. In particular, the rights and obligations already acquired by individuals and economic operators before the compensatory measures take effect shall be preserved.

PART IV

FINAL PROVISIONS

ARTICLE 18

Switzerland's first financial contribution under this Agreement and one-time additional financial commitment

1. Switzerland undertakes to provide its first financial contribution under this Agreement (hereinafter referred to as "first financial contribution") from 1 January 2030 to 31 December 2036 in accordance with Annex II and a one-time additional financial commitment covering the period between the end of 2024 and the end of 2029 in accordance with Annex III.

2. To the extent that the elements of the first financial contribution are not laid down in Annex II, the Contracting Parties shall conclude a legally non-binding MoU in order to fulfil the commitment undertaken in paragraph 1 of this Article within 12 months of the date of entry into force of this Agreement. To that end, the Joint Committee shall start discussions swiftly after the date of entry into force of this Agreement.
3. To the extent that the elements of the one-time additional financial commitment are not laid down in Annex III, the Contracting Parties shall conclude a legally non-binding MoU in order to fulfil the commitment undertaken in paragraph 1 of this Article within 12 months of the date of entry into force of this Agreement. To that end, the Joint Committee shall start discussions swiftly after the date of entry into force of this Agreement.
4. The country-specific allocations of the first financial contribution in the area of cohesion and one-time additional financial commitment shall be formally committed to the Partner States upon the conclusion of the respective country-specific agreements, at the latest, three years from the date of entry into force of this Agreement.
5. The country-specific allocations of the first financial contribution in the area of migration shall be formally committed to Partner States upon the conclusion of the respective country-specific agreements, at the latest, five years from the beginning of the contribution period.
6. If the MoUs referred to in paragraphs 2 and 3 of this Article are not concluded within the timeframe referred therein, Article 4(4) shall apply *mutatis mutandis*.
7. If the country-specific agreements referred to in paragraphs 4 and 5 of this Article are not concluded within the timeframes referred to in therein, Article 5(6) shall apply *mutatis mutandis*.

ARTICLE 19

Protocol, Annexes and Appendixes

The Protocol, Annexes and Appendixes to this Agreement shall form an integral part thereof.

ARTICLE 20

Entry into force

1. This Agreement shall be ratified or approved by the Contracting Parties in accordance with their own procedures. The Contracting Parties shall notify each other of the completion of the internal procedures necessary to the entry into force of this Agreement.
2. This Agreement shall enter into force on the first day of the second month following the last notification regarding the following instruments:
 - (a) Institutional Protocol 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;
 - (b) Amending Protocol 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;
 - (c) Institutional Protocol to the Agreement between the European Community and the Swiss Confederation on air transport;

- (d) Amending Protocol to the Agreement between the European Community and the Swiss Confederation on air transport;
- (e) State Aid Protocol to the Agreement between the European Community and the Swiss Confederation on air transport;
- (f) Institutional Protocol to the Agreement between the European Community and the Swiss Confederation on the carriage of goods and passengers by rail and road;
- (g) Amending Protocol to the Agreement between the European Community and the Swiss Confederation on the carriage of goods and passengers by rail and road;
- (h) State Aid Protocol to the Agreement between the European Community and the Swiss Confederation on the carriage of goods and passengers by rail and road;
- (i) Amending Protocol to the Agreement between the European Community and the Swiss Confederation on trade in agricultural products;
- (j) Institutional Protocol to the Agreement between the European Community and the Swiss Confederation on mutual recognition in relation to conformity assessment;
- (k) Amending Protocol to the Agreement between the European Community and the Swiss Confederation on mutual recognition in relation to conformity assessment;
- (l) Agreement between the European Union and the European Atomic Energy Community, of the one part, and the Swiss Confederation, of the other part, on the participation of the Swiss Confederation in Union programmes;

- (m) Agreement between the European Union and the Swiss Confederation on the terms and conditions for the participation of the Swiss Confederation in the European Union Agency for the Space Programme.

ARTICLE 21

Termination

Each Contracting Party may terminate this Agreement by notifying the other Contracting Party. The Agreement shall cease to apply six months after receipt of the notification.

This Agreement is drawn up in duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each text being equally authentic.

IN WITNESS WHEREOF, the undersigned, duly authorised thereto, have signed this Agreement.

Done at ... this day of ... in the year ...

For the European Union

For the Swiss Confederation

ELEMENTS FOR
SWITZERLAND'S REGULAR FINANCIAL CONTRIBUTION
REFERRED TO IN POINT (a) OF ARTICLE 4(2)
FOR SUBSEQUENT CONTRIBUTION PERIODS

1. The amount of Switzerland's financial contribution for a given contribution period is established on the basis of the following elements:
 - (a) the amount of Switzerland's financial contribution for the previous contribution period adjusted *pro rata temporis* to the duration of the given contribution period, including, where relevant, the adjustment in accordance with Article 10 of the Agreement, adjusted *pro rata temporis* to the duration of the given contribution period;
 - (b) an increase or decrease in the amount resulting from the application of point (a) in accordance with the method set out in the Appendix 1, based on the following factors:
 - (i) inflation in Switzerland, as measured by the Harmonised Index of Consumer Prices (hereinafter referred to as "HICP") in Switzerland, and
 - (ii) an adjustment factor addressing any divergence between inflation in Switzerland and the inflation incurred in the Partner States in the area of cohesion to the extent that it is not offset by the development of the exchange rate, to maintain the purchasing power of Switzerland's regular financial contribution;

- (c) an increase or decrease in the amount established on the basis of points (a) and (b) in view of political considerations. Such an increase or decrease shall not go beyond 10 % of the amount established on the basis of points (a) and (b).
- 2. The share of Switzerland's financial contribution for a given contribution period dedicated to the area of cohesion shall be at least 90 % of the amount determined in accordance with paragraph 1.
- 3. The share of Switzerland's financial contribution for a given contribution period in the area of cohesion assigned to country-specific agreements shall be at least 90 % of the amount of Switzerland's financial contribution dedicated to that area determined in accordance with paragraph 2.
- 4. The amount assigned to country-specific agreements in the area of cohesion shall be allocated to Partner States in accordance with the allocation key set out in Appendix 2.

METHOD
FOR THE DETERMINATION OF THE ADJUSTMENT
REFERRED TO IN POINT (b) OF PARAGRAPH 1 OF ANNEX I

The increase or decrease referred to in point (b) of paragraph 1 of Annex I, shall be calculated in accordance with the following method:

1. The amount resulting from the application of point (a) of paragraph 1 of Annex I shall be multiplied by the indexation factor referred to in paragraph 2 of this Appendix.
2. The indexation factor shall be the product of:
 - (a) inflation in Switzerland, as measured by the HICP in Switzerland, between the last year, calculated as the arithmetic average of the last available 12 months at the date of calculation, and the first year of the previous contribution period, calculated as the 12-month arithmetic average of that calendar year; and
 - (b) an adjustment factor, measured by the ratio of the real exchange rate of the group of the Partner States in the area of cohesion in the previous contribution period vis-à-vis Switzerland between the last year and the first year of the previous contribution period, reflecting the real appreciation or depreciation experienced by that group over the period.

For the purposes of the calculation of the indexation factor the following applies:

- (i) the real exchange rate of the group of Partner States in the area of cohesion in the previous contribution period shall consist of those Partner States' nominal exchange rate vis-à-vis the Swiss franc multiplied by those Partner States' HICP-based aggregate and divided by the Swiss HICP.

A real appreciation for that group of Partner States shall involve an increase in the real exchange rate, and a real depreciation for that group of Partner States shall involve a decrease in the real exchange rate;

- (ii) the HICP-based aggregate for those Partner States shall be constructed as the 12-month arithmetic average of the HICP index for that group of Partner States, using the HICP methodology as provided for in the Agreement between the European Community and the Swiss Confederation on the cooperation in the field of statistics, done at Luxembourg on 26 October 2004, but where the weights shall be the allocation key set out in Appendix 2;
- (iii) the Partner States' nominal exchange rate vis-à-vis the Swiss franc shall be constructed as the weighted arithmetic average of the nominal exchange rates of those Partner States vis-à-vis the Swiss franc, where the weights shall be the allocation key set out in Appendix 2. The nominal exchange rates used in the calculation for a given year shall be the 12-month average of the monthly data for that year derived from the daily exchange rates.

The Commission shall calculate the adjustment factor under point (b) of paragraph 2 of this Appendix. The Commission shall share the calculation with Switzerland through the Joint Committee one month after obtaining it.

3. If data are not available for a given year, the data to be used for that year shall be the data from the last available 12 months at the date of calculation.
4. The HICP and exchange rate data used for the calculation of the indexation factor shall be obtained from the Statistical Office of the Union (hereinafter referred to as "Eurostat"), based on statistics published by Eurostat, with due regard to the Agreement between the European Community and the Swiss Confederation on the cooperation in the field of statistics, done at Luxembourg on 26 October 2004. Where necessary, data on the exchange rates shall be obtained from public databases from the European Central Bank, the central banks of the Partner States, and/or the Swiss National Bank.

ALLOCATION KEY FOR
SWITZERLAND'S REGULAR FINANCIAL CONTRIBUTION
IN THE AREA OF COHESION

Each Partner State's allocation of Switzerland's financial contribution in the area of cohesion for a given contribution period shall correspond to a percentage of Switzerland's financial contribution in the area of cohesion obtained by applying the following steps:

- (a) calculating the arithmetical average of the Partner State's population and surface area shares of the total population and surface area of all the Partner States. If, however, a Partner State's share of total population exceeds its share of total surface area by a factor of five or more, reflecting an extremely high population density, only the share of the total population shall be used for this step;
- (b) decreasing or increasing the percentage figures obtained as a result of the calculation in accordance with point (a) by a coefficient representing one third of the percentage by which that Partner State's GNI per capita, measured in purchasing power standards exceeds or falls below the average GNI per capita of all the Partner States (average expressed as 100 %); and
- (c) rescaling the shares obtained as a result of the calculation in accordance with point (b) so that their sum is equal to 100 %.

The reference period for the data to be used shall be the same as that which is used for the Cohesion Fund of the Union in force on the start date of the respective contribution period, or, if not available, the latest three-year period for which data are available.

SWITZERLAND'S FIRST FINANCIAL CONTRIBUTION
UNDER THIS AGREEMENT FOR THE PERIOD 2030 – 2036

1. Switzerland's first financial contribution under this Agreement (hereinafter referred to as "first financial contribution") for the period of 1 January 2030 to 31 December 2036 (hereinafter referred to as "contribution period") shall amount to CHF 350 000 000 for each year of that period.
2. Of the amount referred to in paragraph 1 for each year of the contribution period, CHF 308 000 000 shall be allocated for cooperation in the area of cohesion and CHF 42 000 000 for cooperation in the area of migration.
3. Switzerland's first financial contribution shall contribute to the objectives laid down in Article 1 of this Agreement.
4. Switzerland's first financial contribution shall be implemented over a period of ten years (hereinafter referred to as "implementation period"), starting on the same date as the contribution period.
5. The share of the financial contribution in the area of cohesion assigned to country-specific agreements shall be at least 90 % of the amount allocated to that area.
6. Up to 5 % of the respective amounts for cooperation in the areas of cohesion and of migration shall be available to Switzerland to cover management costs, and up to 2 % shall be available to share Swiss expertise (Swiss Expertise and Partnership Fund).

7. Partner States for cooperation in the area of cohesion shall be Member States of the Union whose GNI per capita, measured in purchasing power standards, is less than 90 % of the Union's average GNI per capita in purchasing power standards for the same reference period. The reference period for the data to be used shall be the same as that used to determine the eligibility of Member States of the Union under the Cohesion Fund of the Union in force on the start date of the contribution period.
8. Potential Partner States in the area of migration are Member States of the Union facing particular migration pressure and/or where Switzerland and a given Member State agree on the need to strengthen migration governance.
9. In the areas of cooperation of cohesion and migration, the Contracting Parties may reach a mutual understanding to set aside a specific amount for a fund dedicated to a specific topic (cohesion) and a rapid response fund (migration). If applicable, the elements shall be set out in the MoU in accordance with Article 18(2) of the Agreement.
10. The thematic areas for cooperation under Switzerland's first financial contribution shall build on the successful cooperation under the previous Swiss contribution to selected Member States of the Union. They shall complement cohesion and migration management efforts of the Union at the time of the start of the contribution period.
11. In accordance with Article 18(2) of the Agreement, the Contracting Parties shall specify in the MoU the areas of focus among the following thematic areas:
 - (a) cohesion:
 - (i) inclusive human and social development;

- (ii) sustainable and inclusive economic development;
 - (iii) green transition; and
 - (iv) democracy and participation.
- (b) migration.
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SWITZERLAND'S ONE-TIME ADDITIONAL FINANCIAL COMMITMENT
COVERING THE PERIOD BETWEEN
THE END OF 2024 AND THE END OF 2029

1. In accordance with Article 18 of this Agreement, Switzerland undertakes to provide a one-time additional financial commitment covering the period between the end of 2024 and the end of 2029 reflecting Switzerland and the Union's level of partnership and cooperation in that period. That one-time additional financial commitment shall amount to CHF 130 000 000 per year until the entry into force of the agreements referred to in Article 20(2) of this Agreement, and to CHF 350 000 000 per year for the period between the entry into force of the agreements referred to in Article 20(2) of this Agreement and the end of 2029. For the year in which the agreements referred to in Article 20(2) of this Agreement enter into force, the amount of the one-time additional commitment shall be calculated *pro rata temporis*.
2. Switzerland's one-time additional financial commitment shall be implemented over a period of ten years (hereinafter referred to as "implementation period"), starting on the same date as the contribution period of Switzerland's first financial contribution.
3. The one-time additional financial commitment shall be used for cooperation in the area of cohesion.
4. The share of the one-time financial commitment assigned to country-specific agreements shall be at least 90 % of the amount of Switzerland's one-time additional financial commitment.

5. Up to 5 % of the amount of the one-time financial commitment shall be available to Switzerland to cover management costs, and up to 2 % shall be available to share Swiss expertise (Swiss Expertise and Partnership Fund).
6. Partner States for cooperation shall be Member States of the Union whose GNI per capita, measured in purchasing power standards, is less than 90 % of the Union's average GNI per capita in purchasing power standards for the same reference period. The reference period for the data to be used shall be the same as that used to determine the eligibility of Member States of the Union under the Cohesion Fund of the Union in force on the start date of the implementation period of the one-time additional financial commitment.
7. The Contracting Parties may reach a mutual understanding to set aside a specific amount for a fund dedicated to a specific topic in the area of cohesion. If applicable, the elements shall be set out in the MoU in accordance with Article 18(3) of the Agreement.
8. The objectives and rules for implementation of Switzerland's regular financial contribution laid down in the Agreement shall apply *mutatis mutandis* to the one-time additional financial commitment, unless otherwise provided for in Article 18 of this Agreement and this Annex.
9. The thematic areas for cooperation under Switzerland's one-time additional financial commitment shall build on the successful cooperation under the previous Swiss contribution to selected Member States of the Union. They shall complement the cohesion efforts of the Union at the time of the start of the implementation period of the one-time additional financial commitment.

10. In accordance with Article 18(3) of the Agreement, the Contracting Parties shall specify in the MoU the areas of focus among the following thematic areas:

- (i) inclusive human and social development;
 - (ii) sustainable and inclusive economic development;
 - (iii) green transition; and
 - (iv) democracy and participation.
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PROTOCOL
ON THE ARBITRAL TRIBUNAL

CHAPTER I

PRELIMINARY PROVISIONS

ARTICLE I.1

Scope

If one of the Contracting Parties (hereinafter referred to as the "parties") submits a dispute for arbitration in accordance with Article 16(2) or Article 17(2) of the Agreement, the rules set out in this Protocol shall apply.

ARTICLE I.2

Registry and secretarial services

The International Bureau of the Permanent Court of Arbitration at the Hague (hereinafter referred to as the "International Bureau") shall fulfil the functions of registry and provide the necessary secretarial services.

ARTICLE I.3

Notices and calculation of time limits

1. Notices, including communications or proposals, may be sent by any means of communication that certifies their transmission, or enables them to be certified.
2. Such notices may be sent electronically only if an address has been designated or authorised by a party specifically for this purpose.
3. Such notices served on the parties shall be sent, for Switzerland, to Switzerland's Europe Division of the Federal Department of Foreign Affairs and, for the Union, to the Commission's Legal Service.
4. Any time limit laid down in this Protocol shall run from the day after an event occurs or an action takes place. If the last day for delivery of a document falls on a non-working day of the institutions of the Union or of the government of Switzerland, the time period for the delivery of the document shall end on the first following working day. Non-working days that fall within the time period shall be counted.

ARTICLE I.4

Notice of arbitration

1. The party taking the initiative to use arbitration (hereinafter referred to as the "applicant") shall send to the other party (hereinafter referred to as the "defendant") and to the International Bureau a notice of arbitration.
2. Arbitration proceedings shall be deemed to commence on the day after that on which the notice of arbitration is received by the defendant.
3. The notice of arbitration shall include the following information:
 - (a) the demand that the dispute be referred to arbitration;
 - (b) the names and contact details of the parties;
 - (c) the name and address of the applicant's agent(s);
 - (d) the legal basis of the proceedings (Article 16(2) or Article 17(2) of the Agreement) and:
 - (i) in the cases referred to in Article 16(2) of the Agreement, the question causing the dispute as officially entered, for resolution, on the agenda of the Joint Committee in accordance with Article 16(1) of the Agreement; and

- (ii) in the cases referred to in Article 17(2) of the Agreement, the decision of the arbitral tribunal, any implementation measures mentioned in Article 16(5) of the Agreement and the disputed compensatory measures;
 - (e) the designation of any rule causing the dispute or related to it;
 - (f) a brief description of the dispute; and
 - (g) the designation of an arbitrator or, if five arbitrators are to be appointed, the designation of two arbitrators.
4. Any claims on the sufficiency of the notice of arbitration shall not prevent the constitution of the arbitral tribunal. The dispute shall be decided definitively by the arbitral tribunal.

ARTICLE I.5

Response to the notice of arbitration

1. Within 60 days of receiving the notice of arbitration, the defendant shall send a response to the notice of arbitration to the applicant and the International Bureau, which shall include the following information:
- (a) the names and contact details of the parties;
 - (b) the name and address of the defendant's agent(s);

(c) a response to the information given in the notice of arbitration in accordance with points (d), (e) and (f) of Article I.4(3); and

(d) the designation of an arbitrator or, if five arbitrators are to be appointed, the designation of two arbitrators.

2. The lack of, or an incomplete or late, response from the defendant to the notice of arbitration shall not prevent the constitution of an arbitral tribunal. The dispute shall be decided definitively by the arbitral tribunal.

3. If the defendant requests that the arbitral tribunal consist of five arbitrators in its response to the notice of arbitration, the applicant shall designate an additional arbitrator within 30 days of receipt of the response to the notice of arbitration.

ARTICLE I.6

Representation and assistance

1. The parties shall be represented before the arbitral tribunal by one or more agents. The agents may be assisted by advisers or lawyers.

2. Any change to the agents or their addresses shall be notified to the other party, the International Bureau and the arbitral tribunal. The arbitral tribunal may, at any time, on its own initiative or at the request of a party, request evidence of the powers conferred on the agents of the parties.

CHAPTER II

COMPOSITION OF THE ARBITRAL TRIBUNAL

ARTICLE II.1

Number of arbitrators

The arbitral tribunal shall be composed of three arbitrators. If the applicant in its notice of arbitration or the defendant in its response to the notice of arbitration so request, the arbitral tribunal shall be composed of five arbitrators.

ARTICLE II.2

Appointment of arbitrators

1. If three arbitrators are to be appointed, each of the parties shall designate one of them. The two arbitrators appointed by the parties shall select the third arbitrator, who shall be the chair of the arbitral tribunal.
2. If five arbitrators are to be appointed, each of the parties shall designate two of them. The four arbitrators appointed by the parties shall select the fifth arbitrator, who shall be the chair of the arbitral tribunal.

3. If, within 30 days of the designation of the last arbitrator appointed by the parties, the arbitrators have not reached agreement on the selection of the chair of the arbitral tribunal, the chair shall be appointed by the Secretary-General of the Permanent Court of Arbitration.

4. To assist in the selection of arbitrators to compose the arbitral tribunal, an indicative list of persons possessing the qualifications referred to in paragraph 6, which shall be common to all bilateral agreements in the fields related to the internal market in which Switzerland participates as well as the Agreement between the European Union and the Swiss Confederation on health (hereinafter referred to as the "Agreement on health"), the Agreement between the European Community and the Swiss Confederation on trade in agricultural products, done at Luxembourg on 21 June 1999 (hereinafter referred to as the "Agreement on trade in agricultural products") and the Agreement between the European Union and the Swiss Confederation on Switzerland's regular financial contribution towards reducing economic and social disparities in the European Union (hereinafter referred to as the "Agreement on Switzerland's regular financial contribution"), shall be established and updated when necessary. The Joint Committee shall adopt and update that list by a decision for the purposes of the Agreement.

5. Where a party fails to designate an arbitrator, the Secretary-General of the Permanent Court of Arbitration shall appoint that arbitrator from the list referred to in paragraph 4. In the absence of such a list, the arbitrator shall be appointed by lot by the Secretary-General of the Permanent Court of Arbitration from the individuals who have been formally proposed by one party or both parties for the purposes of paragraph 4.

6. The persons constituting the arbitral tribunal shall be highly qualified persons, with or without ties to the parties, whose independence and lack of conflicts of interest is guaranteed, along with a wide range of experience. In particular, they shall have demonstrated expertise in law and the matters covered by this Agreement; they shall not take instructions from either party; and they shall serve in their individual capacities and not take instructions from any organisation or government with regard to matters related to the dispute. The chair of the arbitral tribunal shall also have experience in dispute settlement procedures.

ARTICLE II.3

Arbitrators' declarations

1. When a person is being considered for appointment as an arbitrator, that person shall report all circumstances likely to give rise to legitimate doubts as to his or her impartiality or independence. From the appointment and throughout the entire arbitration proceedings, an arbitrator shall report such circumstances to the parties and to the other arbitrators without delay, if the arbitrator has not already done so.
2. Any arbitrator may be dismissed if circumstances exist that could give rise to legitimate doubts about his or her impartiality or independence.
3. A party may only request the dismissal of an arbitrator that it has appointed for a reason that becomes known to it after that appointment.
4. If an arbitrator fails to act or if it is impossible *de jure* or *de facto* for an arbitrator to fulfil his or her role, the procedure for the dismissal of arbitrators laid down in Article II.4 shall apply.

ARTICLE II.4

Dismissal of arbitrators

1. Any party wishing to dismiss an arbitrator shall make a request for dismissal within 30 days of the date on which it is notified of the appointment of that arbitrator or within 30 days of the date on which it becomes aware of the circumstances referred to in Article II.3.
2. The request for dismissal shall be sent to the other party, to the dismissed arbitrator, to the other arbitrators and to the International Bureau. It shall set out the reasons for the request for dismissal.
3. When a request for dismissal has been made, the other party may accept the request for dismissal. The arbitrator in question may also step aside. The acceptance or stepping aside does not imply acknowledgement of the reasons for the request for dismissal.
4. If, within 15 days of the date of the notification of the request for dismissal, the other party does not accept the request for dismissal or the arbitrator in question does not step aside, the party requesting the dismissal may ask the Secretary-General of the Permanent Court of Arbitration to take a decision on the dismissal.
5. Unless the parties agree otherwise, the decision referred to in paragraph 4 shall indicate the reasons for that decision.

ARTICLE II.5

Replacement of an arbitrator

1. Subject to paragraph 2 of this Article, if it is necessary to replace an arbitrator during the arbitration proceedings, a replacement shall be appointed or selected in accordance with the procedure laid down in Article II.2 applicable to the appointment or selection of the arbitrator to be replaced. That procedure shall apply even if one party had not exercised its right to appoint or to participate in the appointment of the arbitrator to be replaced.
2. In the event of replacement of an arbitrator, the procedure shall resume at the stage where the replaced arbitrator ceased to perform his or her functions, unless the arbitral tribunal decides otherwise.

ARTICLE II.6

Exclusion of liability

Except in cases of intentional wrongdoing or gross negligence, the parties renounce, to the maximum extent permitted by the applicable law, any action against the arbitrators for any act or omission related to the arbitration.

CHAPTER III

ARBITRATION PROCEEDINGS

ARTICLE III.1

General provisions

1. The date of establishment of the arbitral tribunal shall be the date on which the last arbitrator has accepted his or her appointment.
2. The arbitral tribunal shall ensure that the parties are treated equally and that, at an appropriate stage of the proceedings, each of them has sufficient possibility to assert their rights and present their case. The arbitral tribunal shall conduct the proceedings in such a way as to avoid delays and unnecessary expenditure and to ensure the dispute between the parties is settled.
3. A hearing shall be organised, unless the arbitral tribunal decides otherwise, having heard the parties.
4. When a party sends a communication to the arbitral tribunal, it shall do so through the International Bureau and shall send a copy to the other party at the same time. The International Bureau shall send a copy of that communication to each of the arbitrators.

ARTICLE III.2

Place of arbitration

The place of arbitration is The Hague. The arbitral tribunal may, if exceptional circumstances so require, meet at any other place that it considers appropriate for its deliberations.

ARTICLE III.3

Language

1. The languages of the proceedings shall be French and English.
2. The arbitral tribunal may order all documents enclosed with the statement of claim or the statement of defence and all further documents produced during the proceedings, submitted in their original language, to be accompanied by a translation in one of the languages of the proceedings.

ARTICLE III.4

Statement of claim

1. The applicant shall send its statement of claim in writing to the defendant and to the arbitral tribunal through the International Bureau, within the time limit set by the arbitral tribunal. The applicant may decide to deem its notice of arbitration referred to in Article I.4 a statement of claim, provided that it also meets the conditions in paragraphs 2 and 3 of this Article.

2. The statement of claim shall include the following information:
 - (a) the information set out in points (b) to (f) of Article I.4(3);
 - (b) a statement of facts submitted in support of the claim; and
 - (c) the legal arguments put forward in support of the claim.
3. The statement of claim shall, as far as possible, be accompanied by any documents and other evidence mentioned by the applicant or shall refer to them.

ARTICLE III.5

Statement of defence

1. The defendant shall send the statement of defence in writing to the applicant and to the arbitral tribunal through the International Bureau, within the time limit set by the arbitral tribunal. The defendant may decide to deem the response to the notice of arbitration referred to in Article I.5 a statement of defence, provided that the response to the notice of arbitration also meets the conditions in paragraph 2 of this Article.
2. The statement of defence shall respond to the points in the statement of claim indicated in accordance with points (a), (b) and (c) of Article III.4(2) of this Protocol. It shall, as far as possible, be accompanied by any documents and other evidence mentioned by the defendant or shall refer to them.

3. In the statement of defence, or at a later stage in the arbitration proceedings if the arbitral tribunal decides that a delay is justified by circumstances, the defendant may make a counterclaim provided that the arbitral tribunal has jurisdiction in respect of it.
4. Article III.4(2) and (3) shall apply to a counterclaim.

ARTICLE III.6

Arbitral jurisdiction

1. The arbitral tribunal shall rule on whether it has jurisdiction on the basis of Article 16(2) or Article 17(2) of the Agreement.
2. In the cases referred to in Article 16(2) of the Agreement, the arbitral tribunal shall have a mandate to examine the question causing the dispute as officially entered, for resolution, on the agenda of the Joint Committee in accordance with Article 16(1) of the Agreement.
3. In the cases referred to in Article 17(2) of the Agreement, the arbitral tribunal that heard the main case shall have a mandate to examine the proportionality of the disputed compensatory measures, including where those measures have in whole or in part been taken in any bilateral agreement that is part of the list of instruments defined in point (a) of Article 3 of the Agreement.

4. A preliminary objection of lack of jurisdiction of the arbitral tribunal shall be made at the latest in the statement of defence or, in the case of a counterclaim, in the reply. The fact that a party has appointed an arbitrator or has taken part in their appointment shall not deprive it of the right to make such a preliminary objection. The preliminary objection that the dispute would exceed the arbitral tribunal's powers shall be made as soon as the question alleged to exceed its powers is raised during the arbitration proceedings. In any event, the arbitral tribunal may allow a preliminary objection made after the time limit laid down has elapsed if it believes that the delay was for a valid reason.

5. The arbitral tribunal may rule on the preliminary objection referred to in paragraph 4 either by treating it as a preliminary question or in the decision on the substance of the case.

ARTICLE III.7

Other written submissions

The arbitral tribunal shall, after having consulted the parties, decide what other written submissions, in addition to the statement of claim and statement of defence, the parties shall or may submit and shall set the time limit for their submission.

ARTICLE III.8

Time limits

1. The time limits set by the arbitral tribunal for the communication of the written documents, including the statement of claim and the statement of defence, shall not exceed 90 days, unless the parties agree otherwise.
2. The arbitral tribunal shall take its final decision within 12 months of the date of its establishment. In exceptional circumstances of particular difficulty, the arbitral tribunal may extend that period by up to three additional months.
3. The time limits laid down in paragraphs 1 and 2 shall be halved in the following cases:
 - (a) upon request by the applicant or the defendant, if, within 30 days of that request, the arbitral tribunal rules, after hearing the other party, that the case is urgent;
 - (b) in the cases referred to in Article 4(4) and Article 18(6) of the Agreement;
 - (c) in the cases referred to in Article 5(6) and Article 18(7) of the Agreement, where no country-specific agreements have been concluded by Switzerland; or
 - (d) if the parties so agree.

4. In the cases referred to in Article 17(2) of the Agreement, the arbitral tribunal shall take its final decision within six months of the date on which the compensatory measures have been notified in accordance with Article 17(1) of the Agreement.

ARTICLE III.9

Interim measures

1. In the cases referred to in Article 17(2) of the Agreement, either party may, at any stage of the arbitration procedure, apply for interim measures consisting of the suspension of the compensatory measures.

2. An application pursuant to paragraph 1 shall state the subject matter of the proceedings, the circumstances giving rise to urgency and the pleas of fact and law establishing a *prima facie* case for the interim measures applied for. It shall contain all the evidence and offers of evidence available to justify the grant of the interim measures.

3. The party requesting the interim measures shall send its application in writing to the other party and to the arbitral tribunal through the International Bureau. The arbitral tribunal shall set a short time limit within which that other party may submit written or oral observations.

4. The arbitral tribunal shall, within one month of the submission of the application referred to in paragraph 1, adopt a decision on the suspension of the contested compensatory measures if the following conditions are met:

- (a) the arbitral tribunal is *prima facie* satisfied of the merit of the case submitted by the party requesting the interim measures in its application;
- (b) the arbitral tribunal considers that, pending its final decision, the party requesting the interim measures would suffer serious and irreparable harm absent the suspension of the compensatory measures; and
- (c) the harm caused to the party requesting the interim measures by the immediate application of the contested compensatory measures outweighs the interest in the immediate and effective application of those measures.

5. A decision taken by the arbitral tribunal in accordance with paragraph 4 shall have only an interim effect and shall be without prejudice to the decision of the arbitral tribunal on the substance of the case.

6. Unless the decision taken by the arbitral tribunal in accordance with paragraph 4 of this Article sets an earlier date for the end of the suspension, the suspension shall lapse when the final decision pursuant to Article 17(2) of the Agreement is taken.

7. For the avoidance of doubt, for the purposes of this Article, it is understood that, in considering the respective interests of the party requesting the interim measures and the other party, the arbitral tribunal shall take into account those of the individuals and economic operators of the parties, but that consideration shall not amount to granting any standing to such individuals or economic operators before the arbitral tribunal.

ARTICLE III.10

Evidence

1. Each party shall provide evidence of the facts forming the grounds of its claim or its defence.
2. On request of a party, or on its own initiative, the arbitral tribunal may seek from the parties relevant information it considers necessary and appropriate. The arbitral tribunal shall set a time limit for the parties to respond to its request.
3. On request of a party, or on its own initiative, the arbitral tribunal may seek from any source any information it considers appropriate. The arbitral tribunal may also seek the opinion of experts as it considers appropriate and subject to any terms and conditions agreed by the parties, where applicable.
4. Any information obtained by the arbitral tribunal under this Article shall be made available to the parties, and the parties may submit comments on that information to the arbitral tribunal.

5. After seeking the views of the other party, the arbitral tribunal shall adopt appropriate measures to address any questions raised by a party with regard to the protection of personal data, professional secrecy and the legitimate interests of confidentiality.
6. The arbitral tribunal shall be the judge of the admissibility, relevance and strength of the evidence submitted.

ARTICLE III.11

Hearings

1. When a hearing must take place, the arbitral tribunal, having consulted the parties, shall notify the parties sufficiently far in advance of the date, time and place of the hearing.
2. The hearing shall be public, unless the arbitral tribunal, of its own motion or on application by the parties, decides otherwise for serious reasons.
3. Minutes of each hearing shall be drawn up and signed by the chair of the arbitral tribunal. Only those minutes shall be authentic.
4. The arbitral tribunal may decide to hold the hearing virtually in accordance with the practice of the International Bureau. The parties shall be informed of this practice in a timely manner. In such cases, paragraph 1, *mutatis mutandis*, and paragraph 3 shall apply.

ARTICLE III.12

Default

1. If, within the time limit set by this Protocol or by the arbitral tribunal, without showing sufficient cause, the applicant has not submitted its statement of claim, the arbitral tribunal shall order the closure of the arbitration proceedings, unless there are outstanding questions on which a ruling may be necessary and if the arbitral tribunal considers it appropriate to do so.

If, within the time limit set by this Protocol or by the arbitral tribunal, without showing sufficient cause, the defendant has not submitted its response to the notice of arbitration or its statement of defence, the arbitral tribunal shall order the continuation of the proceedings, without considering that default of itself to constitute acceptance of the applicant's allegations.

The second subparagraph also applies where the applicant fails to submit a reply to a counterclaim.

2. If a party, duly convened in accordance with Article III.11(1), does not appear at a hearing and does not demonstrate sufficient cause for its failure to do so, the arbitral tribunal may continue the arbitration.

3. If a party, duly invited by the arbitral tribunal to produce further evidence, fails to do so within the time limits set without showing sufficient cause for its failure to do so, the arbitral tribunal may rule on the basis of the evidence it has available.

ARTICLE III.13

Closure of the procedure

1. Where it is demonstrated that the parties have reasonably had the possibility of presenting their arguments, the arbitral tribunal may declare the closure of the proceedings.
2. The arbitral tribunal may, if it considers it necessary because of exceptional circumstances, decide on its own initiative or at the request of a party to reopen the proceedings at any time before it has taken its decision.

CHAPTER IV

DECISION

ARTICLE IV.1

Decisions

The arbitral tribunal shall strive to take its decisions by consensus. If, however, it proves impossible to take a decision by consensus, the arbitral tribunal's decision shall be taken by a majority of the arbitrators.

ARTICLE IV.2

Form and effect of the decision of the arbitral tribunal

1. The arbitral tribunal may take separate decisions on different questions at different times.
2. All decisions shall be issued in writing and shall state the reasons on which they are based. They shall be final and binding on the parties.
3. The decision of the arbitral tribunal shall be signed by the arbitrators, shall contain the date on which it was taken and state the place of arbitration. A copy of the decision signed by the arbitrators shall be communicated to the parties by the International Bureau.
4. The International Bureau shall make the decision of the arbitral tribunal public.

When making the decision of the arbitral tribunal public, the International Bureau shall respect the relevant rules on the protection of personal data, professional secrecy and the legitimate interests of confidentiality.

The rules referred to in the second subparagraph shall be identical for all bilateral agreements in the fields of the internal market in which Switzerland participates as well as for the Agreement on health, the Agreement on trade in agricultural products and the Agreement on Switzerland's regular financial contribution. The Joint Committee shall adopt and update those rules by a decision for the purposes of the Agreement.

5. The parties shall comply with all decisions of the arbitral tribunal without delay.

6. In the cases referred to in Article 16(2) of the Agreement, having obtained the opinion of the parties, the arbitral tribunal shall set a reasonable time limit in the decision on the substance of the case to comply with its decision in accordance with Article 16(5) of the Agreement taking account of the parties' internal procedures.

ARTICLE IV.3

Applicable law, rules of interpretation, mediator

1. The applicable law consists of the Agreement as well as the rules and principles of international law applicable between the parties on the interpretation of treaties.
2. Prior decisions taken by a dispute settlement body with regard to the proportionality of compensatory measures under another bilateral agreement among those referred to in Article 17(1) of the Agreement shall be binding upon the arbitral tribunal.
3. The arbitral tribunal shall not be permitted to decide as mediator or *ex aequo et bono*.

ARTICLE IV.4

Mutually agreed solution or other reasons for closure of the proceedings

1. The parties may, at any time, mutually agree a solution to their dispute. They shall jointly communicate any such solution to the arbitral tribunal. If the solution requires approval pursuant to the relevant domestic procedures of either party, the notification shall refer to that requirement, and the arbitration procedure shall be suspended. If such approval is not required, or upon notification of the completion of any such domestic procedures, the arbitration procedure shall be closed.
2. If, in the course of proceedings, the applicant informs the arbitral tribunal in writing that it does not wish to further pursue the proceedings, and if, at the date on which that communication is received by the arbitral tribunal, the defendant has not yet taken any step in the proceedings, the arbitral tribunal shall issue an order officially recording the closure of the proceedings. The arbitral tribunal shall decide on the costs, which shall be borne by the applicant, if this appears justified by the conduct of that party.
3. If, before the decision of the arbitral tribunal is taken, the arbitral tribunal concludes that the continuation of the proceedings has become pointless or impossible for any reason other than those referred to in paragraphs 1 and 2, the arbitral tribunal shall inform the parties of its intention to issue an order closing the proceedings.

The first subparagraph does not apply where there are outstanding questions on which it may be necessary to rule and if the arbitral tribunal judges it appropriate to do so.

4. The arbitral tribunal shall communicate to the parties a copy of the order closing the arbitration proceedings or of the decision taken by agreement between the parties, signed by the arbitrators. Article IV.2(2) to (5) shall apply to arbitration decisions taken by agreement between the parties.

ARTICLE IV.5

Correction of the decision of the arbitral tribunal

1. Within 30 days of receiving the decision of the arbitral tribunal, a party may, by giving notice to the other party and to the arbitral tribunal through the International Bureau, ask the arbitral tribunal to correct in the text of the decision of the arbitral tribunal any errors in computation, any clerical or typographical errors, or any errors or omissions of a similar nature. If it considers the request to be justified, the arbitral tribunal shall make the correction within 45 days of receiving the request. The request shall not have a suspensive effect on the time limit provided for in Article IV.2(6).

2. The arbitral tribunal may, within 30 days of communicating its decision, make the corrections referred to in paragraph 1 on its own initiative.

3. The corrections referred to in paragraph 1 of this Article shall be done in writing and form an integral part of the decision. Article IV.2(2) to (5) shall apply.

ARTICLE IV.6

Arbitrators' fees

1. The fees referred to in Article IV.7 shall be reasonable, taking account of the complexity of the case, the time spent on it by the arbitrators and all other relevant circumstances.
2. A list of daily compensation and maximum and minimum hours, which shall be common to all bilateral agreements in the fields related to the internal market in which Switzerland participates as well as the Agreement on health, the Agreement on trade in agricultural products and the Agreement on Switzerland's regular financial contribution, shall be established and updated when necessary. The Joint Committee shall adopt and update that list by a decision for the purposes of the Agreement.

ARTICLE IV.7

Costs

1. Each party shall bear its own costs and half of the costs of the arbitral tribunal.
2. The arbitral tribunal shall set its costs in its decision on the substance of the case. Those costs shall include only:
 - (a) the arbitrators' fees, to be stated separately for each arbitrator and to be set by the arbitral tribunal itself in accordance with Article IV.6;

(b) the travel and other expenses incurred by the arbitrators; and

(c) the fees and expenses of the International Bureau.

3. The costs referred to in paragraph 2 shall be reasonable, taking account of the amount in dispute, the complexity of the dispute, the time that the arbitrators and any experts appointed by the arbitral tribunal have spent on it and any other relevant circumstances.

ARTICLE IV.8

Deposit of costs

1. At the start of the arbitration, the International Bureau may ask the parties to deposit an equal amount as an advance for the costs referred to in Article IV.7(2).

2. During the arbitration proceedings, the International Bureau may request from the parties deposits supplementary to those referred to in paragraph 1.

3. All amounts deposited by the parties in application of this Article shall be paid to the International Bureau and paid out by it to cover the costs actually incurred, including, in particular, the fees paid to the arbitrators and to the International Bureau.

CHAPTER V

FINAL PROVISIONS

ARTICLE V.1

Amendments

The Joint Committee may adopt, by decision, amendments to this Protocol.