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European Union

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DECISION authorising the opening of negotiations with the Swiss Confederation on institutional provisions in agreements between the European Union and the Swiss Confederation related to the internal market, on an agreement on the Swiss Confederation's participation in Union programmes and on an agreement that forms the basis for the Swiss Confederation's permanent contribution to the Union's cohesion

COUNCIL DECISION (EU) 2024/...

of ...

**authorising the opening of negotiations with the Swiss Confederation
on institutional provisions in agreements between the European Union
and the Swiss Confederation related to the internal market,
on an agreement on the Swiss Confederation's participation in Union programmes
and on an agreement that forms the basis for the Swiss Confederation's
permanent contribution to the Union's cohesion**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 217, in conjunction with Article 218(3) and (4) thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, in particular Article 101 thereof,

Having regard to the recommendation from the European Commission,

Whereas:

- (1) Over the years, relations between the Union and the Swiss Confederation ('Switzerland') have developed towards a higher degree of integration between them. Switzerland has been given access to a number of sectors linked to the internal market and negotiations were authorised with a view to widening Switzerland's participation in the internal market.
- (2) Council Decision of 6 May 2014¹ authorised the opening of negotiations between the Union and Switzerland on an institutional framework agreement governing bilateral relations ('institutional framework agreement').
- (3) In November 2018, the Commission and Switzerland finalised the draft text of an institutional framework agreement.
- (4) In May 2021, Switzerland unilaterally terminated negotiations on an institutional framework agreement.
- (5) In February 2022, the Swiss Federal Council presented an alternative way forward consisting of a broad package of measures relating to the bilateral relationship between the Union and Switzerland, including a new approach regarding the institutional elements. The institutional elements would be included in each bilateral agreement related to the internal market rather than in a horizontal agreement.

¹ Council Decision of 6 May 2014 authorising the opening of negotiations on an agreement between the European Union and the Swiss Confederation on an institutional framework governing bilateral relations.

- (6) In light of the outcome of the exploratory talks that have been held between the Commission and Switzerland since March 2022, and building on the 2014 mandate for an institutional framework agreement as well as on earlier mandates for agreements on electricity, health, food safety and the participation of Switzerland in the European Union Agencies for the Space Programme and for Railways, the Commission recommended that negotiations be opened with Switzerland on a broad package which would encompass institutional provisions, to be included in existing and future agreements related to the internal market, that provide for dynamic alignment with the Union *acquis*, uniform interpretation and application of those agreements and the Union *acquis*, and dispute resolution, as well as State aid provisions to be included in existing and future agreements related to the internal market. That package would also include new agreements on electricity, health and food safety; an agreement providing for Switzerland's participation in Union programmes; an agreement providing for Switzerland's participation in the European Union Agency for the Space Programme; a legally binding mechanism ensuring Switzerland's permanent financial contribution to the reduction of economic and social disparities in the Union, and other elements, such as Switzerland's financial contribution for its access and use of Union information systems.
- (7) Continued participation of Switzerland in the internal market and the possible widening of that participation presuppose that rules applicable to relations with Switzerland in the fields covered by agreements between the Union and Switzerland related to the internal market (the 'agreements related to the internal market') are the same as those which apply in the internal market.

- (8) In order to ensure homogeneity in, and a level playing field for operators within, the internal market, the agreements related to the internal market and the Union acts referred to therein should be applied in accordance with the case-law of the Court of Justice of the European Union. This should cover all case-law established both prior and subsequent to the conclusion of the negotiations.
- (9) Moreover, homogeneity requires that current and future Union law in the fields covered by the agreements related to the internal market is incorporated into them as it is adopted, or as it develops or changes. To that end, an incorporation procedure, including a maximum time-limit for implementation, should be provided for.
- (10) An independent arbitral tribunal should be set up to settle disputes. The arbitral tribunal should refer questions where the application of provisions of the agreements related to the internal market involves concepts of Union law, including possible exceptions and safeguards, to the Court of Justice of the European Union for a binding decision.

- (11) Identical institutional provisions should be included in all existing and future agreements related to the internal market in order to facilitate their coordinated and consistent application. Those institutional provisions would be introduced, in particular, in the following existing agreements: 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 Persons² ('Agreement on the Free Movement of Persons'), Agreement between the European Community and the Swiss Confederation on Air Transport³ ('Agreement on Air Transport'), Agreement between the European Community and the Swiss Confederation on the Carriage of Goods and Passengers by Rail and Road⁴ ('Agreement on the Carriage of Goods and Passengers by Rail and Road'), Agreement between the European Community and the Swiss Confederation on Mutual Recognition in Relation to Conformity Assessment⁵, and Agreement between the European Community and the Swiss Confederation on Trade in Agricultural Products⁶, all signed in Luxembourg on 21 June 1999. Those institutional provisions would also be included in future agreements on electricity and on food safety. They should apply, by analogy, to a future agreement on health, where that agreement provides for the participation of Switzerland in Union mechanisms and networks.
- (12) With the aim of ensuring a level playing field for competition in the internal market, State aid rules applicable to Member States and to Switzerland should be included in the existing Agreement on Air Transport and the existing Agreement on the Carriage of Goods and Passengers by Rail and Road, as well as in future agreements related to the internal market, including an agreement on electricity. Furthermore, the review of any State aid in Switzerland should be based on substantive and procedural rules equivalent to the ones applied within the Union.

² OJ L 114, 30.4.2002, p. 6.

³ OJ L 114, 30.4.2002, p. 73.

⁴ OJ L 114, 30.4.2002, p. 91.

⁵ OJ L 114, 30.4.2002, p. 369.

⁶ OJ L 114, 30.4.2002, p. 132.

- (13) Without prejudice to the obligation to incorporate current and future Union law in the Agreement on the Free Movement of Persons and to interpret such Union law in accordance with the case-law of the Court of Justice of the European Union, and respecting the principles of non-discrimination between Member States and of reciprocity, specific provisions that, irrespective of future Union law, reserve for Switzerland the possibility to adopt or maintain certain measures may be agreed. Those measures should not result in a reduction of rights currently enjoyed by Union citizens under the Agreement on the Free Movement of Persons.
- (14) Without prejudice to the obligation to incorporate current and future Union law in the area of posting of workers in the Agreement on the Free Movement of Persons and to interpret such Union law in accordance with the case-law of the Court of Justice of the European Union, specific provisions that, irrespective of future Union law, reserve for Switzerland the possibility to adopt or maintain certain measures in order to take account of the specificities of the Swiss labour market and to ensure the application of the Agreement on the Free Movement of Persons may be agreed.
- (15) Without prejudice to the obligation to incorporate current and future Union law in the fields covered by the Agreement on the Carriage of Goods and Passengers by Rail and Road and to interpret such Union law in accordance with the case-law of the Court of Justice of the European Union, specific provisions that, irrespective of future Union law, reserve for Switzerland the possibility to adopt or maintain certain measures may be agreed. Those measures should not alter the scope of the Agreement on the Carriage of Goods and Passengers by Rail and Road, which includes international passenger transport, with the exception of Swiss transport which is purely domestic, that is, national long-distance, regional and local transport.

- (16) With the objective of consolidating and deepening the long-standing and successful cooperation between the Union and Switzerland, in particular in research and innovation, education, training, youth, sport and culture, as well as other areas of common interest, an agreement that enables more systematic participation by Switzerland in Union programmes in the future should be negotiated. That agreement would set the general terms and conditions of Switzerland's participation in any Union programme. Specific terms and conditions regarding Switzerland's participation in Union programmes for the period 2021-2027, in particular the research and innovation programmes, the activities of the European Joint Undertaking for ITER and the Development of Fusion Energy, the Digital Europe Programme, Erasmus⁺, the Creative Europe Programme, the EU4Health Programme and Copernicus, should also be agreed.
- (17) In light of Switzerland's participation in the Union's internal market and in order to encourage the continuous and balanced strengthening of economic and social relations between the Union and Switzerland, they should establish a new legally binding mechanism to provide for a regular, mutually agreed and fair financial contribution by Switzerland towards reducing economic and social disparities between their regions. That new legally binding mechanism should be ready for the next Union multiannual financial framework.

- (18) Without prejudice to the current scope of the negotiations referred to in this Decision, should Switzerland express an interest in widening the agreed scope, it would be in the interest of the Union to cover other areas, such as scoping, modernisation and evolution of the Agreement between the European Economic Community and the Swiss Confederation, signed on 22 July 1972⁷, which deals with free trade, in particular with regard to processed agricultural products. Such widening of the scope of the negotiations would need to be authorised in accordance with the relevant procedures, in particular as it entails an assessment by the Union as to whether such widening of the scope of the negotiations still reflects the Union's interests at the relevant time,

HAS ADOPTED THIS DECISION:

⁷ Agreement between the European Economic Community and the Swiss Confederation (OJ L 300, 31.12.1972, p. 189).

Article 1

1. The Commission is hereby authorised to open negotiations, on behalf of the Union, for a broad package of measures related to bilateral relations with the Swiss Confederation, comprising of:
 - institutional provisions in, and, where necessary, specific adaptations to, bilateral agreements;
 - an agreement on Switzerland's participation in Union programmes;
 - a legally binding mechanism to provide for mutually agreed and fair financial contributions by Switzerland towards reducing economic and social disparities between regions; and
 - provisions on Switzerland's financial contribution for its access and use of certain Union information systems.
2. The negotiations shall be conducted on the basis of the negotiating directives of the Council set out in the addendum to this Decision.

Article 2

The negotiations shall be conducted in consultation with the Working Party on the European Free Trade Association (EFTA), acting as special committee in accordance with Article 218(4) TFEU, and on the basis of the directives set out in the addendum to this Decision.

Article 3

This Decision replaces and repeals Council Decision of 6 May 2014 authorising the opening of negotiations on an agreement between the European Union and the Swiss Confederation on an institutional framework governing bilateral relations.

Article 4

The Decision is addressed to the Commission.

Done at ...,

For the Council

The President
