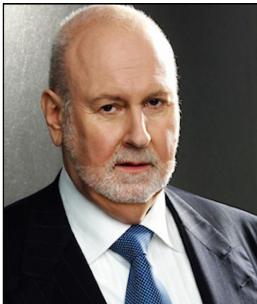


Switzerland–EU

With the new EU agreements, Switzerland is being relegated to the level of developing and emerging countries

by Carl Baudenbacher,* Zurich/Luxembourg



Carl Baudenbacher
(Picture <https://baudenbacher-law.com>)

The idea of a framework agreement was originally a Swiss invention. The dispute settlement model, on the other hand, is inspired by EU's agreements with former Soviet republics. The chronicle of a capitulation.

After the rejection of the EEA on 6 December 1992, Switzerland succeeded in concluding two packages of institution-free (with the exception of the air transport agreement) bilateral sectoral treaties with the EU. This secured preferential access to the single market for its industry, but in return it had to accept the free movement of persons.

The desirability of a “framework agreement” with the EU had been discussed in Swiss politics since 2005.¹ However, the originator, the then CVP member of the Council of States *Philipp Staehelin*, can be credited with the fact that he probably could not have imagined what the FDFA would make of his initiative. The Union took up the ball in 2008² and called for the establishment of a supranational monitoring and judicial mechanism.

The EU subsequently made a generous proposal: Switzerland should “dock” onto the institutions of the EFTA pillar in the EEA. This would have meant that Switzerland, while retaining its sectoral approach, would have subjected its agreements with the EU to the supervision of the EFTA Surveillance Authority and the jurisdiction of the EFTA Court, with one representative in each institution.

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And in the end, the ECJ decides ... A session of the Court of Justice – Grand Chamber. (Picture European Union)

The Federal Council rejected this proposal in 2013 at the instigation of Foreign Minister *Didier Burkhalter* and State Secretary *Yves Rossier*. The FDFA had conducted a *campaign*³ of false claims about the CJEU on the one hand and the EFTA Court on the other. The most serious false statements were that judgments of the EFTA Court were not binding on the EU and that the CJEU would only provide “expert opinions” to the Joint Committee.

EU accession through the back door

It is clear that the FDFA wanted to set a “point of no return” on the path to EU accession. This goal could no longer be openly pursued since a *failed popular initiative*⁴ in 2001. Negotiations on subordination to the Commission and the CJEU began in 2014. The institutional core was to consist of three elements: firstly, Switzerland's obligation to dynamically adopt EU law; secondly, the European Commission's right to unilaterally, i.e. without Switzerland's consent, bring Switzerland before the CJEU in the event of a conflict; and thirdly, the CJEU's monopoly on the interpretation of bilateral law.

The institutional framework was to cover the five existing sectoral agreements on the free movement of persons, land transport, air transport, agriculture and mutual recognition of con-

formity assessments, plus a new agreement on electricity.

The “arbitration tribunal” is just a smokescreen

From 2015 onwards, influential parliamentarians and ultimately the Federal Council became convinced that the CJEU approach would have no chance in a referendum. The European Commission subsequently proposed the dispute settlement model that the EU had developed for four post-Soviet developing and emerging countries seeking accession – Armenia, Georgia, Moldova and Ukraine – and which was also intended for the countries of North Africa. According to this model, conflicts were to be formally decided by a parity-based arbitration tribunal, which, however, always had to request a binding interpretative ruling from the CJEU when EU law (or agreement law with the same content) was involved.

It was perfectly clear that this mechanism was a trick to conceal the transfer of sovereignty to the EU. It had nothing to do with an arbitration tribunal in the true sense of the word. In the case of Switzerland, there was, of course, a special feature: for *historical reasons*,⁵ the term “arbitration tribunal” has a particularly positive connotation in the country of *William Tell*. With the changing alliances of the cantons in the Old Swiss Confederacy, a canton that was not involved was appointed as an arbitrator. Added to this is the country’s current reputation as a leading venue for commercial arbitration.

In March 2018, the negotiating mandate was adjusted accordingly. The Federal Council did not respond to a request by then-Member of the Council of States *Karin Keller-Sutter*⁶ to examine the possibility of joining the EFTA Court. The EU offered the same model of monitoring and dispute resolution to the *Brexit Brits*,⁷ who gave it the name “Ukraine Model” or “Ukraine Mechanism”. They rejected it as “judicial imperialism” for the Trade and Cooperation Agreement with the EU and withdrew from the single market.

At the end of 2018, the EU declared the negotiations on the “Institutional Framework Agreement” (InstA for short) to be over. The Federal Council claimed that it had achieved most of its objectives, but did not sign because it considered the agreement to be at risk due to three substantive provisions: weakened wage protection against cross-border workers, the EU Citizenship Directive and state aid control. The *Federal*

*Council*⁸ had no objections to the “Ukraine model”. As a result, only the aforementioned side issues were haggled over.

Amateurish approach

On 26 May 2021,⁹ the Federal Council broke off negotiations, but based on an allegedly new concept, it resumed non-public “exploratory talks” with the EU in spring 2022. In the past, a “horizontal” approach had been taken, with the framework agreement serving as an institutional umbrella for the individual sectoral agreements. Now the intention was to switch to a “vertical” model. Institutional issues were to be regulated separately in each individual agreement. This was (allegedly) intended to enable the negotiation of exceptions to institutionalisation. At the same time, the aim was to conclude new agreements in the areas of electricity, health and food safety.

On 15 December 2023, both sides presented a de facto binding “*Common Understanding*”,¹⁰ which was again based institutionally on the principle of dynamic adoption of law and the “Ukraine mechanism”. There was no negotiating mandate – everything had already been agreed behind closed doors.

From March 2024 onwards, negotiations again focused only on secondary issues. The conclusion of the negotiations was set in advance for the end of 2024 – presumably to please the outgoing Federal President *Viola Amherd*. Businesspeople know, of course, that such an approach is suboptimal, to say the least.

On 20 December 2024, the Federal Council took note of the material outcome of the negotiations on the minor points “with satisfaction” and approved it, even though it had *not seen*¹¹ the text that existed at the time and even though the negotiations had not been formally concluded. All that was available were fact sheets written by the federal administration, which contained quite a few incorrect statements and semantic manipulations on crucial points. In the months that followed, the treaties were finalised. I am not aware of any other case in which such a procedure was followed when concluding an international treaty.

Concealed origin

This was followed by the formal conclusion of the negotiations and the charade surrounding the secrecy of the treaties. These were first

made available to a member of the Council of States who had changed his opinion on the CJEU, then to all parliamentarians.

On 13 June 2025, the consultation process was opened with the publication of the treaties and an “*explanatory report*”.¹² Among other things, the report conceals the origin of the dispute settlement mechanism in the EU's treaties with the former Soviet republics. It also makes the untenable and misleading claims that the arbitration tribunal decides independently whether to send the case to the CJEU, that the CJEU cannot influence the proceedings, and that the arbitration tribunal alone is entitled to make the final decision.

I am not aware of any independent foreign specialist who has failed to recognise the true function of the arbitration tribunal. This has been reflected in characterisations such as “a means of concealing submission to the CJEU” (*Guillaume van der Loo*), “a Trojan horse with the CJEU in its belly” (*Joë Lemmer*), “a fig leaf for the CJEU” (*Beth Oppenheim*), “letterbox” and “rubber stamp” (*Martin Howe*), “judicial imperialism” (*Franklin Dehousse*), “poor man's EEA” (*Mads Andenas*) or “extraterritorial extension of the jurisdiction of the CJEU” (*Nikos Lavranos*). The latter term is also reminiscent of the extraterritorial courts of the imperialist powers in 19th-century China and Japan, which were imposed on Asian states through unequal treaties.

Source: <https://schweizermonat.ch/mit-den-neuen-eu-vertraegen-steigt-die-schweiz-auf-die-stufe-von-entwicklungs-und-schwellenlaendern-ab/>, 19 November 2025

¹ <https://www.blick.ch/politik/er-ist-schuld-am-eu-poker-ex-cvp-praesident-hat-uns-das-rahmenabkommen-einge-brockt-id16248866.html>

² <https://data.consilium.europa.eu/doc/document/ST-16651-2008-REV-1/en/pdf#:~:text=%28EFTA%29%20held%20during%20the%20second%20half%20of%202008,Council%20conclusions%20on%20EU%20relations%20with%20EFTA%20countries.>

³ <https://www.amazon.de/Das-Schweizer-EU-Komplott-Carl-Baudenbacher-ebook/dp/B0881QC258>

⁴ <https://www.bk.admin.ch/ch/d/pore/vi/vis254.html>

⁵ <https://hls-dhs-dss.ch/de/articles/009602/2021-06-21/>

⁶ <https://www.tagblatt.ch/schweiz/inszenierung-des-chef-unterhandlers-ist-nur-ein-grosser-bluff-des-bundesrates-ld.1712535>

⁷ <https://www.ucl.ac.uk/european-institute/events/2017-18/efta-president-lecture>

⁸ <https://www.news.admin.ch/de/nsb?id=73292>

⁹ <https://www.europa.eda.admin.ch/de/informationen-und-dokumente-zum-institutionellen-abkommen>

¹⁰ https://commission.europa.eu/publications/common-understanding-concluding-exploratory-talks-bilateral-eu-switzerland-relationship_en

¹¹ <https://www.nebelspalter.ch/themen/2024/12/bundes-rat-stimmt-einem-vertrag-zu-den-er-nicht-kennt>

¹² <https://backend.europa.eda.admin.ch/fileservice/sdweb-docs-prod-europaedach-files/files/2025/06/13/5109b-b29-c0e4-45bf-ba19-8eda506ef7b8.pdf>