



EUROPEAN
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ANNEX 12

ANNEX

to the

Proposal for a Council Decision

on the signing, on behalf of the European Union, of a broad package of agreements to consolidate, deepen and expand the bilateral relations with the Swiss Confederation, and on the provisional application of the Agreement on the terms and conditions for the participation of the Swiss Confederation in the European Union Agency for the Space Programme

Declarations referred to in Articles 2(2) of the Council Decision on the conclusion,
on behalf of the Union, of a broad package of agreements to consolidate,
deepen and expand the bilateral relations with the Swiss Confederation

Joint Declarations accompanying the 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:

JOINT DECLARATION ON UNION CITIZENSHIP

The concept of Union citizenship as introduced by the Treaty of Maastricht (now Article 9 of the Treaty on European Union and Article 20(1) of the Treaty on the Functioning of the European Union) has no equivalent in the Agreement on the free movement of persons.

It follows that the integration of Directive 2004/38/EC into the Agreement, subject to the exceptions set out in the Agreement, shall be without prejudice to the evaluation of the relevance for the Agreement of future Union legislation as well as case law of the Court of Justice of the European Union, prior or subsequent to the signature of the Agreement, based on the concept of Union citizenship. That relevance shall be determined, in accordance with the Agreement on the free movement of persons, including the provisions of the Institutional Protocol to the Agreement.

The Agreement does not provide a legal basis for political rights of nationals of the Member States and Switzerland.

JOINT DECLARATION
ON PREVENTING AND ACTING AGAINST ABUSE OF RIGHTS
CONFERRED BY DIRECTIVE 2004/38/EC

The Contracting Parties confirm the common objective of preventing and acting against abuse of rights conferred by Directive 2004/38/EC¹, in accordance with Article 35 of that Directive, notably in relation to access to social assistance.

JOINT DECLARATION
ON REFUSING SOCIAL ASSISTANCE AND TERMINATING RESIDENCE
PRIOR TO THE ACQUISITION OF PERMANENT RESIDENCE

The Contracting Parties share the view that Union citizens and Swiss nationals should not become an unreasonable burden on the social assistance systems of, respectively, Switzerland and the Member States. For this reason, the Parties:

- (i) may, during the first three months of residence, refuse access to social assistance to persons who are not workers, self-employed persons, or persons who retain worker or self-employed status and their family members without carrying out an individual assessment of the person's situation;
- (ii) may refuse to grant social assistance to economically inactive persons who do not comply with the requirement to possess sufficient resources for themselves and the members of their family;

¹ Directive 2004/38/EC (OJ L 158, 30.4.2004, p. 77), as applicable according to Annex I to the Agreement.

- (iii) may, for first-time jobseekers and persons who do not retain worker or self-employed status, refuse to grant social assistance without carrying out an individual assessment of the person's situation.

In accordance with Article 14 and Article 15 of Directive 2004/38/EC¹, Switzerland and the Member States may expel persons who no longer satisfy the requirements for a right of residence, such as persons who no longer retain worker or self-employed status and do not enjoy residence rights based on other provisions of the Directive. To retain worker status, workers or self-employed persons, other than those who are temporarily unable to work as a result of an illness or accident, who have become involuntarily unemployed must register as jobseekers with the relevant employment offices and fulfil the requirements to continue to be registered as jobseekers with the public employment services, provided these requirements are not discriminatory. In this context, the host State may take into account, on a case-by-case basis and by applying the same standard to its own nationals, whether a jobseeker is genuinely cooperating in good faith with the relevant office with a view to re-entering the job market. The objective of this cooperation is for the jobseeker to find a job in a reasonable period of time.

This should be applied in accordance with the principle of proportionality.

¹ Directive 2004/38/EC (OJ L 158, 30.4.2004, p. 77), as applicable according to Annex I to the Agreement.

JOINT DECLARATION
ON THE NOTIFICATION OF THE TAKING UP OF EMPLOYMENT

The Contracting Parties share the view that the dynamic alignment by Switzerland with legal acts of the Union in the area of free movement of persons should be without prejudice to the application of proportionate and non-discriminatory administrative obligations on employers to notify the authorities of the taking up of employment, such as the Swiss notification procedure for work-related short-term stays, intended to enable the relevant authorities to conduct efficient labour market controls.

Any such administrative obligations should not affect the person's right of residence, including for the purpose of acquiring permanent residence.

JOINT DECLARATION
ON THE CONVENTION OF THE RECOGNITION OF QUALIFICATIONS

The Contracting Parties note that all Member States and Switzerland are parties to the Convention on the Recognition of Qualifications concerning Higher Education in the European Region and confirm that they comply with it, as in force at the date of signature of the Amending Protocol, in the implementation of the Agreement.

JOINT DECLARATION ON JOB VACANCIES

The Swiss dynamic alignment to the EURES acquis should not interfere with national legislation implementing Article 121a of the Swiss Federal Constitution, which foresees an obligation for Swiss employers to register vacancies of specific professions with above-average level of unemployment with the regional employment centre (RAV) before the vacancies go public and are transmitted to the EURES portal.

JOINT DECLARATION ON COMMON OBJECTIVES REGARDING THE FREEDOM TO PROVIDE SERVICES UP TO 90 WORKING DAYS AND ENSURING POSTED WORKERS' RIGHTS

Switzerland and the Union share the common objective of granting their citizens as well as their economic operators fair conditions for the freedom to provide services for up to 90 days of actual work per calendar year (which includes the posting of workers) while fully ensuring the rights of workers.

Switzerland and the Union share the view that proportionate and non-discriminatory controls are necessary to ensure the freedom to provide services and the correct and effective application of the rules protecting workers by preventing abuse and circumvention.

JOINT DECLARATION
ON EFFECTIVE CONTROL SYSTEMS
INCLUDING SWITZERLAND'S DUAL ENFORCEMENT SYSTEM

The Contracting Parties declare that the control systems put in place by Switzerland and the Member States should be suitable, effective and non-discriminatory. The competent enforcement bodies under national law should carry out effective controls on their territory in order to ensure compliance with the applicable rules and regulations. The responsibility for conducting effective controls to ensure compliance with the applicable rules and regulations lies with the designated authorities and other relevant monitoring and enforcement bodies under national law, which, as in the case of Switzerland, can include social partners, in accordance with Switzerland's dual enforcement system. This arrangement ensures that the control and sanction powers of these entities are upheld and respected. Controls should be carried out in a proportionate and non-discriminatory manner, taking into account that the Agreement limits the freedom to provide services to 90 days of actual work per calendar year.

JOINT DECLARATION ON THE PRINCIPLE
OF "EQUAL PAY FOR EQUAL WORK IN THE SAME PLACE"
AND ON A PROPORTIONATE AND ADEQUATE LEVEL
OF PROTECTION OF POSTED WORKERS

Considering their common objective of upholding the principle of "equal pay for equal work in the same place" and that Switzerland has been applying this principle since the entry into force of the Agreement on 1 June 2002 and has strengthened its implementation in recent years on the basis of an objective risk analysis and the proportionality of controls, Switzerland and the Union both can guarantee a proportionate and adequate level of protection. Their aim is to guarantee the freedom to provide services while ensuring the fair and effective enforcement of regulations, thereby preventing any instances of abuse or circumvention.

JOINT DECLARATION
ON THE PARTICIPATION OF SWITZERLAND
IN THE ACTIVITIES OF THE EUROPEAN LABOUR AUTHORITY

Switzerland should be able to continue participating in the meetings and deliberations of the Management Board of the European Labour Authority as observer, without prejudice to working arrangements the Authority could establish with Switzerland in line with Article 42 of Regulation (EU) 2019/1149¹.

¹ Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a European Labour Authority, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344 (OJ L 186, 11.7.2019, p. 21), including any subsequent amendments.

JOINT DECLARATION
ON THE DECLARATORY REGISTRATION SYSTEM
OF FRONTIER WORKERS

The Contracting Parties agree that, should Switzerland consider registering frontier workers for declaratory purposes in accordance with Article 7a of the Agreement, it should address this with the neighbouring Member States in the relevant bilateral fora. Such discussions should not result in any differentiated treatment between frontier workers under the Agreement and are without prejudice to the rights and obligations of the frontier workers under the Agreement.

JOINT DECLARATION
CONCERNING THE INCLUSIONS OF TWO EU LEGAL ACTS
IN ANNEX I TO THE AGREEMENT

The Contracting Parties share the view that Regulation (EU) 2024/2747¹ falls partly under the scope of the Agreement. They agree that the Joint Committee shall take the measures necessary to ensure the integration of this Regulation into Annex I to the Agreement immediately following the entry into force of the Amending Protocol to the Agreement. The integration shall take into account the Regulation's horizontal character and potential links to other bilateral agreements between the Contracting Parties.

¹ Regulation (EU) 2024/2747 of the European Parliament and of the Council of 9 October 2024 establishing a framework of measures related to an internal market emergency and to the resilience of the internal market and amending Council Regulation (EC) No 2679/98 (Internal Market Emergency and Resilience Act) (OJ L, 2024/2747, 8.11.2024).

The Contracting Parties share the view that Directive (EU) 2024/2841¹ falls under the scope of the Agreement. They agree that the Joint Committee shall take the measures necessary to ensure the integration of this Directive into Annex I to the Agreement immediately following the entry into force of the Amending Protocol to the Agreement.

JOINT DECLARATION
ACCOMPANYING THE STATE AID PROTOCOL
TO THE AGREEMENT BETWEEN THE EUROPEAN COMMUNITY
AND THE SWISS CONFEDERATION ON AIR TRANSPORT

If the European Commission grants financial support, in any form whatsoever, which is not subject to State aid rules under this Protocol, and which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods and affects trade between the Contracting Parties within the scope of the Agreement, Switzerland may request consultations to discuss the matter.

¹ Directive 2024/2841 of the European Parliament and of the Council of 23 October 2024 establishing the European Disability Card and the European Parking Card for persons with disabilities (OJ L, 2024/2841, 14.11.2024).

JOINT DECLARATION
ACCOMPANYING THE AMENDING PROTOCOL
TO THE AGREEMENT BETWEEN THE EUROPEAN COMMUNITY
AND THE SWISS CONFEDERATION ON THE CARRIAGE OF GOODS
AND PASSENGERS BY RAIL AND ROAD

1. The Contracting Parties note that applicable EU law allows independent national capacity allocation bodies to be competent to allocate train paths in a non-discriminatory manner.

The Contracting Parties note that in accordance with Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (OJ L 343, 14.12.2012, p. 32), the traffic management remains within the competence of national infrastructure managers.

2. The Contracting Parties note that, subject to the respective competition rules, applicable EU law does not preclude international groupings from operating international services, including international services that are partly composed of services which participate in the interval-service timetable.
3. The Contracting Parties endeavour to prolong the transitory measures to maintain smooth rail traffic between Switzerland and the European Union provided by Decision n°2/2019 of the Community/Switzerland Inland Transport Committee (OJ EU L 13, 17.1.2020, p. 43) at three-year intervals, subject to the respective decisions of the Joint Committee.

JOINT DECLARATION
ACCOMPANYING THE 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

If the European Commission grants financial support, in any form whatsoever, which is not subject to State aid rules under this Protocol, and which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods and affects trade between the Contracting Parties within the scope of the Agreement, Switzerland may request consultations to discuss the matter.

JOINT DECLARATION
ACCOMPANYING THE AGREEMENT
BETWEEN THE EUROPEAN UNION
AND THE SWISS CONFEDERATION ON ELECTRICITY

If the European Commission grants financial support, in any form whatsoever, which is not subject to State aid rules under this Agreement between the European Union and the Swiss Confederation on Electricity and which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods and affects trade between the Contracting Parties within the scope of the Agreement, Switzerland may request consultations to discuss the matter.

Declarations referred to in Articles 2(3) of the Council Decision on the conclusion,
on behalf of the Union, of a broad package of agreements to consolidate,
deepen and expand the bilateral relations with the Swiss Confederation

DECLARATION BY SWITZERLAND
ON MEASURES TO BE TAKEN IN RESPECT OF SELF-EMPLOYED PERSONS
IN THE CONTEXT OF THE NOTIFICATION PROCEDURE
FOR WORK-RELATED SHORT-TERM STAYS

Switzerland declares that, in the light of the solutions on the posting of workers described in Annex I to the Agreement and the Joint Declaration on the notification of the taking up of employment, it will, if necessary, take measures to ensure that self-employed persons do not circumvent these rules.

Declaration accompanying the Agreement
between the European Union and the Swiss Confederation on health

DECLARATION
BY THE SWISS CONFEDERATION REGARDING
THE INCLUSION OF THE INSTITUTIONAL ELEMENTS BY ANALOGY
IN THE AGREEMENT ON HEALTH

The Swiss Confederation declares that the institutional elements common to the agreements in the fields related to the internal market in which Switzerland participates are only included by analogy in this Agreement, as this is necessary for the functioning of the cooperation set out therein. This does not constitute a precedent as regards future agreements that are not in the fields related to the internal market in which Switzerland participates.
