

Position paper<sup>1</sup>

## Demands with regard to Switzerland's European policy

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### 1. Economic policy aspects of European policy

scienceindustries judges Switzerland's European policy **from the economic policy perspective**. That point of view is appropriate because the member companies of scienceindustries have close economic ties with the countries of the European Union:

- **Foreign trade:** Around 60% of their exports go to EU Member States while over 80% of their imports come from those countries.
- **Movement of persons:** The EU countries are an important region for the recruitment by member companies of highly qualified staff in research, production and distribution. Around 45% of the 70,000 employees of the member companies in Switzerland are citizens of an EU Member State.
- **Business site:** The EU Member States have been important research, production and distribution sites for the member companies for over a century. More than 120,000 people work in EU branch establishments of scienceindustries member companies. Some 35% of global sales are achieved in the EU.
- **De facto extraterritorial effect of EU legislation:** Because of the economic importance of the EU internal market for the companies based in Switzerland, the EU internal market legislation has become de facto an important yardstick for Swiss economic legislation. Swiss stipulations that depart from that base cause additional expenditure for companies based in Switzerland which deal with the EU and have to be compensated by increased global competitiveness.

### 2. Global competitiveness as the main target of Swiss European policy

**As part of its general economic policy, Swiss European policy must help to strengthen the global competitiveness of industry based in Switzerland.** Care must be taken here to safeguard the competitiveness not just of our dealings with the EU countries but also of trade with all countries worldwide.

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<sup>1</sup> Further development and updating of the position papers of 17 June 1999, 5 December 2009 and 27 June 2013 (available in German only)

**Given that objective, from the point of view of scienceindustries, at present neither the accession of Switzerland to the European Union nor joining the European Economic Area (EEA) is a meaningful European policy option.** The complete and total acceptance of the whole existing body of EU legislation required by EU accession would damage the global competitiveness of the Swiss economy because the comparatively less business-friendly tax, labour market, social, competition, consumer protection and monetary policies would also have to be adopted. The acceptance of the entire legislation governing the EU internal market which would be necessary in the event of EEA accession would likewise diminish Swiss competitiveness in some areas.

### 3. Lines of European policy action to improve competitiveness

To enable Swiss European policy to strengthen the competitiveness of companies based in Switzerland in their dealings with all countries worldwide it must follow three main lines of action:

#### **1. Secure access to selected areas of the EU domestic market free from discrimination (external economic relations).**

Companies based in Switzerland, their products and services require legally safeguarded access free from discrimination to the relevant part of the EU internal market. For that purpose, the EU internal market freedoms (free movement of goods, services, capital and persons) must also be extensively implemented and protected by international treaties in selected areas (covered by the bilateral agreements) in relations between Switzerland and the EU. This presupposes acceptance of the relevant EU internal market law in the areas concerned because otherwise bilateral agreements with the EU are impossible as experience shows.

#### **2. Ensure a high degree of European compatibility of Swiss economic legislation must be ensured in selected areas (internal economy).**

Companies based in Switzerland, their products and services must not suffer discrimination compared to their EU competitors. To that end adjustments must be made to the relevant EU stipulations but only insofar as they encourage the global competitiveness of the companies concerned. Complete acceptance of the relevant EU internal market law is neither necessary nor expedient. Consequently, Swiss special solutions which impair Swiss competitiveness by imposing extra costs must always be avoided. The aim is to achieve differentiated compatibility of Swiss regulations with European requirements.

#### **3. Preserve independent Swiss legislation (autonomous freedom of action).**

Lines of action 1 and 2 restrict Swiss legislation. In future, Switzerland must use its remaining freedom of action consistently in order to strengthen the global competitiveness of the Swiss economy.

#### 4. Strategy: Pragmatic bilateral cooperation

**scienceindustries advocates a pragmatic European policy for bilateral cooperation in selected areas and is opposed to the institutional integration of Switzerland (e.g. by joining the EEA or the EU).**

This strategy of pragmatic bilateral cooperation is based on the **reciprocity of the economic benefits** of selective cooperation founded on EU internal market law. The existing bilateral agreements between the EU and Switzerland<sup>2</sup> are the tangible outcome and evidence of the success of this strategy. Alongside the free trade agreement and the agreement on the movement of goods, the agreement on the freedom of movement of persons and the agreement on technical barriers to trade<sup>3</sup> are of vital economic importance.

#### 5. Present challenges of this strategy

Pragmatic bilateral cooperation requires an ongoing assessment of the situation **and presumably also repeated negotiations** between the contracting parties. Treaties which have been signed must be adapted from time to time by the contracting states to take account of changed circumstances and needs. New agreements may become necessary in order to eliminate residual or newly occurring economic obstacles to Swiss enterprises.

The **willingness of the EU to negotiate tailored solutions with Switzerland has diminished** in recent years for several reasons. The growing number of EU Member States, the increasing trend towards package solutions covering a whole range of areas within the EU and the forthcoming challenges facing the EU countries because of the debt crisis render future negotiations more difficult.

Against that background, the demand made by the EU for an **overall institutional solution for all existing and future bilateral agreements and their ongoing development** seems realistic. Jointly agreed mechanisms in the areas of the convergence of laws, supervision, interpretation and conflict resolution should help to permit the efficient application of the market access treaties.

Last but not least, the **decision of the Swiss people to limit immigration into Switzerland from 2017 onwards and to adjust the agreement on the freedom of movement with the EU** has decisively changed the starting basis for negotiations.

#### 6. Continuation of the selective bilateral route

**Against the background of these challenges, scienceindustries advocates continuation of the selective bilateral route. For this purpose, Art. 121a BV must be implemented in a manner that is as business-friendly and compatible with Europe as possible and an institutional solution must be negotiated for all the bilateral treaties which are equivalent in terms of legal certainty to the institutional rules prevailing in the EEA.**

For the **implementation of Art. 121a BV**, provision must be made for an autonomous safeguard clause mechanism which would impose quotas on residence permits above an activation threshold. Short-term residents for up to one year, frontier workers and students should be exempt from the quotas. The law on foreigners must be formulated in such a way that the highly qualified workers

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<sup>2</sup> Annex "Overview of the key existing agreements between Switzerland and the EU"

<sup>3</sup> Cf. scienceindustries fact sheet "Core economic content of the bilateral treaties" dated 15.12.2014 (German)

from third countries for whom an urgent need exists in our economy can continue to be recruited in adequate numbers. There is no need for any further extension of the flanking measures. Moreover, implementation must be accompanied by suitable measures designed to ensure that better use is made of the existing domestic population potential.

The **future institutional solution** must ensure that the existing bilateral provisions continue to be determined jointly by the EU and Switzerland without any automatic acceptance of the whole existing body of EU legislation. Independent institutions must be responsible for supervision, interpretation and conflict resolution.

All future agreements should apply the **most flexible possible procedure for the transposition of laws**<sup>4</sup>. As a matter of priority, the convergence principle must be applied. This seeks to achieve economic equivalence of the legal systems and operates without institutional incorporation into the EU legal system. As a result, barriers to trade in dealings with the EU can be largely prevented and the competitiveness of Swiss companies safeguarded. At the same time, EU provisions whose acceptance would have a negative impact on global competitiveness can be averted. The limits of the acceptance of legal provisions must be defined unambiguously from the outset in the individual treaties.

## 7. Positions on current European policy dossiers

### **Pharmaceuticals**

External economic relations: To enable the licensing of a pharmaceutical to be simplified, Swissmedic needs access assured by international treaties to the evaluation reports of the foreign licensing authorities.

Internal economy: The legal basis for simplified Swissmedic licensing procedures already exists (HMG Art. 14). Pharmaceutical licences already granted by comparable foreign authorities (in particular the European Medicines Agency) must be given greater consideration when licensing is required in Switzerland (HMG Art. 13), to shorten the authorisation procedure for the same pharmaceutical product.

### **Electricity**

External economic relations: International treaty agreements (at EU level or possibly at that of individual EU Member States) should help to safeguard the security of supply. For this purpose, grid access for cross-border power transport must be regulated and safety standards for the transit networks harmonised. Long-term power supply contracts must remain possible.

Internal economy: Safeguarding power supplies together with internationally competitive electricity prices for the long-term are central concerns of industry in the Energy Strategy 2050.

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<sup>4</sup> Cf. scienceindustries working paper "European policy and transposition of laws: homogeneity, equivalence, convergence and autonomy" dated 31.01.2014 (German)

### **Trade in greenhouse gas emission certificates**

External economic relations: The mutual recognition of Swiss and EU emission rights for greenhouse gases must enable Swiss companies to sell surplus emission rights in the EU or to purchase necessary credits in the EU.

Internal economy: The CO<sub>2</sub> law creates the basis for a link-up of the two emission trading systems.

### **EU framework research programs "Horizon 2020"**

External economic relations: The EU framework research programs are the most important source of public funding for research and development in Switzerland, second only to the Swiss National Fund. The main beneficiaries of promotional funds in Switzerland are the ETH establishments and the cantonal universities.

European research cooperation must in the first place help to safeguard the international excellence of Switzerland as a centre for public research. That is why continuation of participation in the "Excellent Science" program pillar is a priority. For a number of member companies access to and participation in the other two pillars of "Horizon 2020" are likewise essential; these programs are a highly relevant source for the formulation of new technologies, the development of new products and new applications for existing products. In addition, they are important for access to the scientific networks.

### **Institutional issues**

External economic relations: Relations between Switzerland and the EU are based upon a network of treaties which consists of some 20 central bilateral agreements and more than 100 further agreements. In the context of the institutional issues mechanisms must be created which guarantee efficient application of the treaties in the area of market access.

From the economic angle, the mechanisms for conflict resolution (docking onto the EEA or European Court of Justice solution) are less important, while the method of defining the relevant existing EU stipulations and the necessary adoption of laws take greater priority<sup>5</sup>. In the negotiations, it is important to clarify in particular who is to define the relevant existing stipulations which are to be adopted and whether these bilateral provisions are to be transposed in full on a 1:1 basis or whether exceptions from adoption in their entirety remain possible. From the economic aspect, the existing bilateral stipulations must be defined jointly by the EU and Switzerland and a purely partial adoption of laws must remain an option in future.

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<sup>5</sup> Cf. scienceindustries working paper "European policy and transposition of laws: homogeneity, equivalence, convergence and autonomy" dated 31.01.2014 (German)

## Free trade in agricultural products

External economic relations: Swiss agriculture must be liberalised to such an extent that it does not prevent further opening of the market in other economic sectors. For this purpose, the tariff (customs duties, quotas) and non-tariff barriers to trade (such as product specifications) affecting agricultural and food products must be eliminated in relations with the EU. The upstream and downstream stages of the production chain (means of production, processing, food industry and trade) must also be covered.

Internal economy: Flanking measures to cushion the pressure for adaptation of Swiss agriculture are politically inevitable. However, a special and privileged financing mechanism is not acceptable.

## Freedom of movement of persons<sup>6</sup>

The decision of the Swiss people to control and limit immigration autonomously and to adjust the agreement on freedom of movement with the EU while safeguarding the overall economic interests must be respected. Art. 121a BV must therefore be implemented in a manner which is both business-friendly and compatible with European requirements so that the bilateral treaties I are safeguarded and full use made of the freedom for implementation created by Art. 121a BV.

External economic relations: Open negotiations.

Internal economy: To implement Art. 121a BV provision must be made for an autonomous safeguard clause mechanism. For this purpose, the Federal Council would set a maximum annual limit for net immigration. Alongside this maximum net immigration, the Federal Council would also stipulate an activation threshold to serve as a safeguard threshold. Below this activation threshold there would be no quota system for EU/EFTA nationals but only an administrative record (simple residence permit system). If net immigration exceeded the activation threshold, quotas would be placed on the issue of residence permits. Short-term residents for up to one year, frontier workers and students should be exempt from these quotas. The law on foreigners would have to permit the immigration of highly qualified workers and their families from third countries on the basis of a third country quota. When priority is given to domestic citizens, no distinction must be made between Swiss nationals and foreigners holding a permanent residence permit in Switzerland. Priority for nationals should only be considered when setting the maximum numbers and quotas and not reviewed in individual cases. Verification of the wage and employment conditions which are customary in the particular location, profession and sector must be carried out as part of a summary review of an adequate basis for an independent livelihood. There is no need for any further extension of the flanking measures. Moreover, implementation must be accompanied by suitable measures for improved utilisation of the existing potential of the domestic population.

## REACH<sup>7</sup>

External economic relations: The EU REACH regulation entered into force on 1.6.2007. It covers the registration, assessment, licensing and limitation of chemicals which may be manufactured in the EU or imported into the EU. Exceptions include in particular polymers, radioactive substances, waste, non-isolated intermediates, together with substances used for research and development. Substanc-

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<sup>6</sup> Cf. scienceindustries opinion "Implementation of Art. 121a BV" dated 28.05.2015 (German)

<sup>7</sup> Updated on 06.12.2013 (see [position paper REACH](#) in German)

es which are already regulated by other legal stipulations may be either wholly or partially exempt from the REACH regulation, e.g. active pharmaceutical substances and medicines, agrochemical and biocide active substances, together with food and animal feedstuffs.

The chemical substances affected by REACH must be reviewed to determine their impact on the environment and health and must comply with more stringent protection provisions. Unlike e.g. the Swiss chemicals legislation, REACH is applicable to all chemicals that are produced and not only to those which are brought into circulation; in other words whole cascades of intermediates are covered. Implementation of REACH causes massive additional expenditure for companies in the EU, which may threaten the very existence in particular of SMEs. The European Chemicals Agency (ECHA) is responsible for implementation.

Companies in Switzerland which supply customers in the EU must bring their products onto the EU market in a manner which is REACH-compliant. Under the terms of the REACH regulation Swiss chemicals manufacturers and traders who do not their own EU branch/subsidiary cannot enter into direct contact with the ECHA. In recent years, Swiss companies have overcome this obstacle by introducing new processes and structures. Access to the EU internal market is therefore guaranteed. From the point of view of industry, there is no need at present to incorporate REACH in Switzerland; to do so would create more drawbacks than advantages. scienceindustries continues to oppose negotiations on the full incorporation of REACH into Swiss law.

Internal economy: In 2007, scienceindustries stated its view that the EU chemicals regulation REACH should not be incorporated into Swiss law for the time being. Experience to date confirms that this approach was the right one. The negative impacts of REACH on companies are proven. If the Swiss regulatory approach is maintained, it may be assumed that companies in Switzerland, especially SMEs, will in coming years not be adversely affected by additional costs of regulation to the same extent as their European competitors.

The high level of protection in Switzerland is not reduced by regulatory autonomy. Swiss chemicals legislation takes appropriate account of the interest in protecting the public and the needs of industry. To prevent the duplication of administrative procedures and technical barriers to trade in dealings with the EU as far as possible, Swiss law must be harmonized with the REACH regulation insofar as scientific arguments favour that approach. The partial review of the chemicals ordinance (ChemV) and the chemicals risk reduction ordinance (ChemRRV) are a first step in that direction. The industry is resolutely opposed to the creation of our own new chemicals agency.

### **TTIP EU/US Transatlantic Trade and Investment Partnership**

External economic relations: Following the de facto failure of the Doha Round, the project for a transatlantic free trade agreement is more likely to be implemented. Since non-participating countries may be placed at a disadvantage, Switzerland should seek in negotiations with the EU to ensure that the EU/US agreement remains open to the participation of further countries. In principle, scienceindustries supports the future participation of Switzerland in a transatlantic economic agreement.

## Annex - Overview of the main existing agreements between Switzerland and the EU<sup>8</sup>

■ violet = particularly relevant to the chemical and pharmaceutical industry in Switzerland

#	Agreement	Content	Status	Nature <sup>9</sup>	Concept for transposition of law <sup>10</sup>
1	Free trade agreement	Abolition of tariff barriers to trade (customs duties, quotas) for industrial products; creation of a free trade area exclusively for industrial products.	Ratified 1972; In force since 1973.	Market access agreement	Equivalence
2	Insurance agreement	Rules on rights of establishment for insurance companies.	Ratified 1989; In force since 1993.	Market access agreement	Equivalence
3	Customs facilitation and security	Regulation of the traffic in goods; simplification of customs clearance; improvement of border cooperation; since 2009: abolition of the 24 hour rule in goods traffic; provisions regulating security cooperation.	Ratified 1990 (rev. 2009); In force since 1991 (2011).	Market access agreement	Equivalence

<sup>8</sup> Source: <http://www.europa.admin.ch/themen/00500/>

<sup>9</sup> Assessment by scienceindustries

<sup>10</sup> Assessment by scienceindustries. A clear distinction cannot be drawn between the different concepts; they may overlap in practice.

The principle of homogeneity requires in effect full 1 to 1 transposition of laws. The degree of legal homogeneity depends essentially on the nature of the EU law to be transposed in each case. EU directives give the Member States freedom to determine implementation while EU regulations stipulate the fullest possible degree of homogeneity (e.g. REACH regulation).

The principle of equivalence calls for an equivalent impact of the legal systems. Harmonisation of laws is less far-reaching than when the homogeneity principle is applied. The lowest limit of the necessary approximation of laws is set by the conclusion of a treaty which formally regulates the equivalence of the legal systems (e.g. in a bilateral agreement or MRA).

The principle of equivalence can be weakened to become the principle of convergence on which the autonomous and selective implementation of EU law is based. Here, the lower limit of the necessary approximation of laws is set by the fact that the barriers to trade in relations with the EU should not exceed a specific extent. There is no formal provision for the adoption of a treaty. The principle of convergence is therefore closer to the autonomy principle.

Under the autonomy principle, Switzerland has intentionally not aligned itself to the EU legal system but instead creates its own independent autonomous framework conditions for companies based in Switzerland (e.g. corporate taxation III).

#	Agreement		Content	Status	Nature <sup>9</sup>	Concept for transposition of law <sup>10</sup>
4	Freedom of movement of persons	Bilateral I	Mutual, progressive opening of the labour markets by means of transitional regulations; flanking measures to protect employees (protecting Swiss wage and employment standards)	Ratified 1999; In force since 2002.	Market access agreement	Equivalence
5	Technical barriers to trade		Mutual recognition of conformity assessments for most industrial products; verification of compliance with product standards.	Ratified 1999; In force since 2002.	Market access agreement	Equivalence
6	Public procurement system		Definition of the criteria for public procurements; creation of equivalent mutual access for private sector bidders.	Ratified 1999; In force since 2002.	Market access agreement	Equivalence
7	Agriculture		Facilitation of the trade in agricultural products by dismantling customs tariffs and non-tariff barriers to trade.	Ratified 1999; In force since 2002.	Market access agreement	Equivalence
8	Research		Participation by Swiss research (universities, enterprises, individuals) in EU framework research programs.	Ratified 1999; In force since 2002; Continuation mandate adopted 2013.	Cooperation agreement (participation)	Convergence
9	Air transport		Mutual access for airlines to the air transport markets; no discrimination for landing rights.	Ratified 1999; In force since 2002.	Market access agreement	Homogeneity
10	Land transport	Bilateral II	Opening of the road and rail transport market for the transport of persons and goods; introduction of heavy commercial vehicles levy (LSVA) and increase in the maximum truck weight limit to 40 tonnes	Ratified 1999; In force since 2002.	Market access agreement	Equivalence
11	Schengen / Dublin		Abolition of checks on persons at the internal Schengen borders; strengthening of cross-border police and judicial cooperation; common visa policy for short stays (Schengen visa); coordination of national authority for asylum procedures.	Ratified 2004; In force since 2008.	Cooperation agreement (association)	Homogeneity
12	Taxation of interest		Cross-border taxation of interest income of persons with a tax residence in the EU; obligation to provide administrative assistance on request; waiver of taxation of dividends, interest and licence fees between affiliated companies.	Ratified 2004; In force since 2005; Revision mandate adopted 2013.	Cooperation agreement	Equivalence

#	Agreement	Content	Status	Nature <sup>9</sup>	Concept for transposition of law <sup>10</sup>
13	Combatting fraud	Cooperation in combatting smuggling and other forms of crime in the areas of indirect taxation (customs duty, value added tax), subsidies and public procurement system.	Ratified 2004; early implementation since 2009 (ratification by Ireland still outstanding).	Cooperation agreement	Equivalence
14	Processed agricultural products	Regulation of trade in processed agricultural products; revision of protocol No. 2 to the free trade agreement of 1972.	Ratified 2004; In force since 2005.	Market access agreement	Equivalence
15	MEDIA	Participation in the EU film promotion program MEDIA; promotion of the development, distribution and marketing of European film productions.	Ratified 2004; In force since 2006; Continuation mandate adopted 2013.	Cooperation agreement (participation)	Convergence
16	Environment	Participation in the European Environmental Agency (EEA); access to Europe-wide environmental database; participation in the orientation of projects and research activities.	Ratified 2004; In force since 2006.	Cooperation agreement (participation)	Equivalence
17	Statistics	Adaptation of statistical data acquisition; mutual access to data on economic, political and social issues.	Ratified 2004; In force since 2007.	Cooperation agreement	Equivalence
18	Pensions	Elimination of the double taxation of the pensions of former EU officials who reside in Switzerland.	Ratified 2004; In force since 2005.	Cooperation agreement	Convergence
19	Education, vocational training, youth	Participation of Switzerland in EU educational, vocational training and youth programs; improvement in the offering and mobility for basic and further training; enhancement of the quality of training.	Ratified 2010; In force since 2011 (prov. since 2007).	Cooperation agreement (participation)	Equivalence
20	Europol	Improvement in police cooperation for the prevention and combating of organised international crime and terrorism. Facilitation of and improvement in the exchange of information.	Ratified 2004; In force since 2008.	Cooperation agreement	Convergence
21	Eurojust	Extension of international cooperation in the fight against serious crime; coordination of investigations and criminal prosecutions ; clarification of matters of jurisdiction.	Ratified 2008; In force since 2011.	Cooperation agreement	Convergence

#	Agreement	Content	Status	Nature <sup>9</sup>	Concept for transposition of law <sup>10</sup>
22	EVA cooperation	Improvement in armaments cooperation; early detection of developments in armaments policy; access to multilateral armaments cooperation in Europe.	Ratified 2012; In force since 2012.	Cooperation agreement (framework agreement)	Convergence
23	Cooperation between the competition authorities	More efficient fight against cross-border restrictions on competition; exchange of confidential information and cooperation between the competition authorities.	Ratified 2013.	Cooperation agreement	Convergence