



Structure of the submission and the referendum issue

Overview

The Switzerland–EU package involves the amendment of existing agreements that form part of the first package of bilateral agreements with the EU (Bilaterals I) as well as the conclusion of new agreements. The package also includes amendments to domestic legislation and the enactment of new legislation. These amendments and new laws serve to implement the agreements or introduce accompanying measures, including measures to protect wage levels and implement the safeguard clause on immigration. The agreements and the implementing legislation (including accompanying measures with amendments to the law) will be submitted to Parliament for approval. The Federal Council has had to answer the following three questions in relation to the approval process:

1. Which agreements should be submitted jointly? ('horizontal bundling')
2. Are the agreements subject to an optional or mandatory referendum?
3. Should the implementing legislation be submitted with the corresponding agreement or separately? ('vertical bundling')

The Federal Council will present its proposals on these three issues in the consultation draft, which will then form the basis for the dispatch to Parliament. The request for the approval of its proposal on the three questions will be submitted to Parliament with the dispatch. Parliament is under no obligation to accept this request, and will make the final decision on how the Switzerland–EU package is submitted to the People.

Horizontal bundling of agreements

The Federal Council proposes dividing the Switzerland–EU package into two parts. The first part comprises all agreements that serve to *stabilise bilateral relations*. These include the institutional protocols and the amending protocols to the existing agreements on the free movement of persons, air and overland transport, mutual recognition of conformity assessments (MRA) and agriculture, as well as the state aid protocols to the overland and air transport agreements, the contribution agreement, the agreement on participation in the European Union Agency for the Space Programme (EUSPA) and the agreement on participation in various EU programmes. The dates on which these agreements come into force are linked by a contractual clause. It is therefore planned to submit these agreements and protocols at the same time in a single federal decree.

The second part comprises three new agreements relating to health, electricity and food safety. These are regarded as *further developments in bilateral relations*. It is planned to submit these three agreements in three separate federal decrees.

The texts of these agreements stipulate that the further development agreements can only come into force if the stabilisation agreements also come into force. However,

voters may say YES to the stabilisation agreements, but reject one or more of the further development agreements. This means that the stabilisation agreements can come into force even if all or some of the new agreements are rejected.

The Federal Council is thus submitting four separate federal decrees, one on stabilising bilateral relations and three on the further development of bilateral relations. This approach is in line with the constitutional principle of cohesion of subject matter.

In addition, the Federal Council is proposing a protocol on parliamentary cooperation between Switzerland and the EU. This is the only item in the package that is not subject to a referendum and will therefore be submitted to Parliament separately.

Referendum

The Federal Council proposes that the agreements on the stabilisation of bilateral relations and the three agreements on the further development of bilateral relations should each be subject to an optional referendum. After carefully analysing the results of the negotiations, thoroughly examining previous decisions in comparable cases and taking account of the legal doctrine and discussions with the cantons and the foreign affairs committees, the Federal Council has concluded that an optional referendum is the most constitutionally sound and politically viable solution.

Agreements that contain important legislative provisions or require the enactment of federal legislation are subject to an optional referendum (Article 141 paragraph 1 letter d number 3 of the Federal Constitution (Cst.)). If a referendum is held against such an agreement, a majority of the People is required. Accession to an organisation for collective security or to a supranational community is subject to a mandatory referendum (Article 140 paragraph 1 letter b Cst.). In this case, a majority of both the People and the Cantons is required.

All the agreements on the stabilisation of bilateral relations and the three agreements on the further development of bilateral relations contain important legislative provisions and/or require the enactment of federal legislation. However, none of these agreements provides for accession to an organisation for collective security or to a supranational community. According to the Federal Constitution as it currently stands, the agreements to stabilise bilateral relations and the three agreements to further develop bilateral relations are therefore subject to an optional referendum.

Under the previous constitution, on three occasions Parliament held that an agreement was subject to a mandatory referendum even though the constitution in force at the time did not require this (this was known as a 'mandatory state treaty referendum sui generis'). The Federal Council reaffirms the view that this procedure can be applied in exceptional cases if an agreement entails serious interference in Switzerland's internal structure, and in particular if it affects the constitutional order, or results in a fundamental reorientation of Swiss foreign policy.

The Federal Council has determined that the agreements in the Swiss–EU package do not fulfil these criteria. They preserve the constitutional order and do not interfere in any serious manner with Switzerland's internal structure. The Federal Council and Parliament at the time also took the same view of the first and second packages of bilateral

agreements (Bilaterals I and II), even though the Schengen/Dublin association agreements in particular provide for the dynamic adoption of legislation. Under the Schengen/Dublin association agreements, the consequences of not adopting a relevant EU legal act are also more serious than those provided for in the Switzerland–EU package. Nevertheless, the Federal Council concluded that the Schengen/Dublin association agreements "do not lead to any far-reaching changes to our state system and therefore do not affect the constitutional order" (BBl 2004 5965, 6288) and Parliament confirmed this assessment.

The Switzerland–EU package does not result in a fundamental reorientation of Swiss foreign policy either. With this package, the Federal Council wants to continue along the path taken with Bilaterals I and II.

By going for an optional referendum, the Federal Council is maintaining consistency with its previous practice and the continuity of Swiss European policy. It also ensures the greatest possible freedom of action for Parliament and the cantons. This approach is in line with that taken for Bilaterals I and II and also takes account of the decision on the popular initiative 'Put state treaties to the People' in 2012, when 75.3 per cent of voters rejected the call for a mandatory referendum on international treaties with important legislative provisions. Finally, the option chosen by the Federal Council enables the vertical bundling of the agreements with their domestic implementing legislation (see below).

Parliament will make the final decision on the issue of the referendum as part of the parliamentary debate on the Switzerland–EU package. The basic concept of a mandatory sui generis referendum on state treaties remains unaffected.

Vertical bundling of agreements and implementing legislation

Implementing the package will require existing federal legislation to be amended and new legislation to be enacted. It will also require domestic measures relating to wage protection, immigration, tuition fees, electricity and overland transport. These measures are not essential to the implementation of the agreements, but were devised by the Federal Council to facilitate the domestic political acceptability of the package.

The Federal Council takes the view that the agreements and the implementing legislation as well as the accompanying measures with legislative amendments belong together from a democratic policy perspective. It is therefore proposing that the amendments to the law be submitted along with each respective agreement. It has decided that the four federal decrees on the stabilisation agreements and on the three further development agreements should each also contain the related amendments to the law. This is provided for in Article 141a of the Federal Constitution. This approach lets voters know that a Yes to an agreement also means a Yes to the implementing legislation and accompanying measures.