

Institutional elements: dynamic adoption, the Court of Justice and arbitration

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The heart of the package lies in the institutional elements, which apply only to the internal market agreements and do not create a general framework for the whole relationship. They have four components. The first is dynamic adoption: Switzerland undertakes to incorporate relevant developments of Union law into the agreements, through decisions of the joint committees that respect the Swiss constitutional procedures, including Parliament and a possible referendum. Switzerland participates in the shaping of new Union law at the expert level ("decision shaping"), although it has no vote in the adoption of legislation.¹

The second component is uniform interpretation. The agreements shall be interpreted in accordance with the case law of the Court of Justice insofar as they apply concepts of Union law. The third is surveillance, which each party carries out on its own territory, so that Swiss authorities and courts monitor the application of the agreements in Switzerland. The fourth is dispute settlement. A dispute that cannot be resolved in the joint committee may be brought before an arbitral tribunal composed of members appointed by both parties. When the dispute raises a question concerning the interpretation of a concept of Union law, the tribunal must refer it to the Court of Justice, whose interpretation binds the tribunal. The tribunal itself decides the case.²

The last element has been the most controversial part of the package in Swiss politics. Opponents speak of "foreign judges", recalling the formula of the Federal Charter of 1291, while the Federal Council argues that the Court of Justice interprets only Union law and that the decision of the dispute remains with a joint tribunal. If Switzerland declines to implement a ruling, the other party may take compensatory measures. Those measures must be proportionate, a condition that the arbitral tribunal can itself review.³ For a financial centre accustomed to the unilateral withdrawal of

equivalence, the replacement of political retaliation by a reviewable procedure is the institutional gain that business associations have stressed most.

1 Notes

1. On dynamic adoption, decision shaping and the respect of Swiss constitutional procedures (up to two years, extendable to three in the event of a referendum), see the institutional protocols of the package and the dispatch of 13 March 2026. Periods to be verified. ↩
2. On the arbitral tribunal and the obligation to refer questions of interpretation of EU law to the CJEU when relevant and necessary for the decision, see the institutional protocols of the package; for the comparable mechanism in the EU–Ukraine and other association agreements, see the literature on EU dispute settlement with third states. To be verified. ↩
3. On the proportionality of compensatory measures and their review by the arbitral tribunal, and on the political debate about "foreign judges" with reference to the Federal Charter of 1291, see the dispatch of 13 March 2026 and the commentary literature. To be verified. ↩

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