

The institutional question and the end of the framework agreement

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From 2008 the Union made further market access conditional on the resolution of what it called the institutional questions. It wanted a mechanism to ensure the dynamic adoption of relevant Union law, a uniform interpretation of the agreements, independent surveillance and a binding procedure for settling disputes. Switzerland, for its part, wanted legal certainty and access to new areas such as electricity. Negotiations on an institutional framework agreement began in 2014 and produced a draft text in November 2018, which the Federal Council published in December 2018 without endorsing it, inviting a consultation of the political parties, cantons and social partners.¹

The draft provided for the dynamic adoption of Union law in five market access agreements, an arbitration tribunal that would have to refer questions of Union law to the Court of Justice of the European Union, and state aid rules. The Federal Council identified three issues that required clarification: wage protection, the Citizens' Rights Directive and state aid.² The trade unions refused any weakening of the accompanying measures, while parts of the business community and the political right regarded the role of the Court of Justice as a loss of sovereignty. After a final round of talks in Brussels in April 2021 produced no agreement, the Federal Council decided on 26 May 2021 to end the negotiations.³

The decision was taken by the government without a parliamentary vote or popular consultation. It reflected a judgement that the agreement could not win a referendum in its existing form. In Basel the decision met with disappointment among business associations, the university and the government of Basel-Stadt, which had supported the conclusion of the agreement.⁴ The year 2021 thus marks the low point of the relationship, from which the consequences discussed in the next section followed.

1 Notes

1. On the negotiations on an institutional framework agreement (InstA) from May 2014 to November 2018 and the publication of the draft text on 7 December 2018, see the communications of the Federal Council and the FDFA. To be verified. ↩
2. Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely (Citizens' Rights Directive); on the three points of clarification demanded by the Federal Council in June 2019, see its communications. To be verified. ↩
3. Decision of the Federal Council of 26 May 2021 not to sign the institutional framework agreement and to end the negotiations; see its press release of that date. To be verified. ↩
4. On the positions of the Basel Chamber of Commerce (Handelskammer beider Basel), the University of Basel and the government of Basel-Stadt on the institutional framework agreement and its abandonment in 2021, see their public statements. To be verified. ↩

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