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EEA-Switzerland: Obstacles with regard to the full implementation of the internal market

European Parliament resolution of 7 September 2010 on EEA-Switzerland: Obstacles with regard to the full implementation of the internal market (2009/2176(INI))

The European Parliament,

- having regard to the Free Trade Agreement of 22 July 1972 between the European Economic Community and the Swiss Confederation,
- having regard to the Agreement of 21 June 1999 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, and in particular its Annex I on free movement of persons and Annex III on the recognition of professional qualifications,
- having regard to the Agreement of 25 June 2009 between the European Community and the Swiss Confederation on the simplification of inspections and formalities in respect of the carriage of goods and on customs security measures,
- having regard to the Agreement of 21 June 1999 between the European Community and the Swiss Confederation on mutual recognition in relation to conformity assessment,
- having regard to the Agreement of 21 June 1999 between the European Community and the Swiss Confederation on certain aspects of government procurement,
- having regard to the Protocol of 27 May 2008 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 regarding the participation, as Contracting Parties, of the Republic of Bulgaria and Romania pursuant to their accession to the European Union,
- having regard to the Protocol of 26 October 2004 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 regarding the participation, as Contracting Parties, of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic pursuant to their accession to the European Union,
- having regard to the Agreement on the European Economic Area,
- having regard to Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (the "Services Directive")¹,
- having regard to Directive 2005/36/EC of the European Parliament and of the Council of 7

¹ OJ L 376, 27.12.2006, p. 36.

September 2005 on the recognition of professional qualifications¹,

- having regard to the European Economic Area Joint Parliamentary Committee Resolution adopted at the 33rd meeting of the EEA Joint Parliamentary Committee,
 - having regard to the European Economic Area Joint Parliamentary Committee Report on the Annual Report on the Functioning of the EEA Agreement in 2008,
 - having regard to the Swiss Foreign Policy Report of 2 September 2009,
 - having regard to the 25th EEA EFTA States Internal Market Scoreboard,
 - having regard to the Treaty on the Functioning of the European Union and in particular Article 217 giving the Union the right to conclude international agreements,
 - having regard to Rule 48 of its Rules of Procedure,
 - having regard to the report of the Committee on the Internal Market and Consumer Protection (A7-0216/2010),
- A. whereas the four European Free Trade Association (EFTA) Members States (Iceland, Lichtenstein, Norway and Switzerland) constitute major trade partners of the European Union (EU), Switzerland and Norway being respectively the fourth and the fifth most important EU trade partners by volume,
- B. whereas relations between the EU and three EFTA Member States (Iceland, Lichtenstein and Norway) are based on the European Economic Area (EEA) which provides for full participation in the internal market with the EEA Agreement managed and monitored in a highly institutionalised framework,
- C. whereas Switzerland's participation in the EEA agreement was contested by a popular vote in 1992 and therefore relations between Switzerland and the EU are currently based on more than 120 bilateral and sectoral agreements that provide for a far-reaching degree of integration but not full participation in the internal market,

Introduction

1. Considers the EEA agreement as a key driver for economic growth; welcomes the overall good track record of the EEA EFTA States in implementing internal market legislation, as demonstrated by the EEA EFTA States Internal Market Scoreboard; notes that relations between the EU and Switzerland pose far more challenges as far as the implementation of the Free Movement of Persons Agreement (FMPA) is concerned;
2. Notes that bilateral agreements do not establish any automatic mechanism for adaptation of their content to the later evolution of the relevant *acquis*; recognises that autonomous adaptation of national law to EU law in the areas covered by bilateral agreements results from the sovereign decision of the Swiss people not to join the EEA, which should be fully respected;

Implementation of internal market rules: EEA EFTA countries

¹ OJ L 255, 30.9.2005, p. 22.

3. Welcomes the inclusion of improved data on the EEA EFTA countries in the annual Consumer Markets scoreboard; encourages the EFTA Surveillance Authority, with the assistance of, and in cooperation with, the Commission, to develop further the systematic monitoring of the implementation of internal market legislation;
4. Notes that with the entry into force of the Lisbon Treaty uncertainty exists as to which EU legislation is EEA relevant; considers that this might lead to slower implementation of the internal market legislation in the EEA EFTA States; urges the Commission to provide an assessment of the situation;
5. Notes that the Lisbon Treaty enhances the role of national parliaments in EU decision-making; considers that, by analogy, parliaments in the EEA EFTA States should be more closely associated with the EU legislative process as regards EEA-relevant proposals; calls on the Commission to provide the national parliaments of the EEA EFTA States with the legislative proposals that are sent to the national parliaments in the EU Member States for consultation;
6. Calls on the Commission to formalise the notification process of new EU rules and legislation that fall within the scope of the EEA Agreement in order to decrease the gap between the adoption of new legislation and potential take-up by EEA EFTA States;
7. Encourages the EEA EFTA States to allocate adequate resources for implementing internal market legislation; considers the implementation of the Services Directive and in particular the setting-up of single points of contact to be of crucial importance in this connection;
8. Recognises that, for institutional reasons, the implementation of internal market legislation is necessarily proceeding more slowly in EEA EFTA countries than in the EU; notes that, despite these differing conditions and the broadly positive results, there is still potential for further reducing the implementation deficit in the EEA EFTA States as well;
9. Notes that other important Internal Market legislation proposals are currently under discussion, including the Commission's proposal for a Directive on Consumer Rights; calls on the Commission to increase the involvement of EEA EFTA Member States in those discussions;

Implementation of internal market rules: Switzerland

10. Welcomes the progress made towards liberalisation of cross-border service provision between the EU and Switzerland and, in particular, the positive effects of the FMPA, as witnessed by constant increases in the numbers of posted workers and self-employed service providers from the EU operating in Switzerland from 2005 to 2009; notes that this trend has been mutually beneficial;
11. Notes that Switzerland has adopted a number of supporting measures accompanying the FMPA aimed at protecting workers against wage and social dumping, providing equal treatment for Swiss and EU services providers and safeguarding public support for the agreement; observes that these measures can hinder the provision of services by EU businesses, notably by small and medium-sized businesses in Switzerland; notes that according to Court of Justice case-law a number of these supporting measures would be acceptable only if they protect, in a proportional manner, a general interest that is not already protected in the state of origin of the service providers;

12. Points out that the following supporting measures in particular are disproportionate as regards the agreement on freedom of movement and make it difficult for SMEs to provide services in Switzerland: the obligation in force in Switzerland to provide prior notification with an 8-day waiting period, the requirement to contribute to the enforcement costs of tripartite commissions, and excessively strict enforcement; in this context, also urges the Swiss authorities to repeal regulations which oblige foreign enterprises providing cross-border services to place a guarantee of financial probity;
13. Is concerned about the recent developments at Zürich-Kloten Airport where the Swiss authorities refused to allow German and Austrian taxis to take passengers, and expresses serious doubts as to whether this measure complies with the FMPA; urges the Commission to examine this issue thoroughly;
14. Calls on the Commission to examine measures obstructing the functioning of the internal market within the EU which also pose problems for Swiss service providers, and to take measures, if appropriate;
15. Encourages the Swiss Government, and the Cantons, to draw on the EU and EEA's experiences of opening up the services sector through the implementation of the Services Directive; emphasises that, in economic terms, the Services Directive is proving to have a liberalisation affect not only across but also within Member States, through the process of screening national legislation to remove unnecessary barriers to establishment, and peer review, whereby Member States have been justifying any further restrictions in the public interest; considers therefore that a similar exercise might prove helpful in paving the way for increased cross-border service provision between the EU and Switzerland;
16. Welcomes the efforts made by the Swiss government to improve the availability of information for businesses from the EU;
17. Welcomes the Swiss Parliament's decision to transpose Directive 2005/36/EC on the recognition of professional qualifications and calls on Switzerland and the Commission to reach an agreement on the implementation of the Directive as soon as possible;
18. Observes that in general the FMPA does not contain a comprehensive agreement on the free movement of services, with the latter only being very selectively covered by specific bilateral agreements; stresses that a comprehensive agreement on the free movement of services would bring significant economic benefits for both sides; calls on the Commission and Switzerland, therefore, to explore the possibility of launching negotiations with the aim of concluding an all-encompassing agreement on the free movement of services;
19. While fully respecting the causes of the specific nature of the relations between Switzerland and the EU, considers that every effort should be made so that identical or parallel internal market rules, inter alia in the area of free movement of services, are interpreted and applied in the same manner in the EU and Switzerland, in order to ensure Switzerland's equal participation in the internal market;
20. Stresses the mutual interest of the EU and Switzerland in enhanced uniformity in the application of the FMPA and a more timely convergence of Swiss and EU internal market legislation which would provide economic operators from both sides with a more transparent and predictable environment;

21. Welcomes the independent trend for Swiss authorities to consider EU Court of Justice case-law that has been handed down after the signing of the FMPPA; welcomes the recent adoption of the Swiss legislation to take into account the Cassis de Dijon principle;
22. Encourages the Commission and Switzerland to reach a prompt understanding in the ongoing negotiations on bilateral agreements, including the one on product safety; calls on the Commission and Switzerland to formulate these and future agreements as clearly as possible, taking account of future developments, so that the possibilities for uneven application are strictly limited from the outset;
23. Calls on the Commission and Switzerland to look into developing a mechanism for a faster adaptation of the FMPPA to the development of the relevant *acquis* in the areas falling within its scope;
24. Calls on the Commission and Switzerland in the short run to look into ways of finding horizontal solutions to certain institutional issues, to decrease fragmentation and enhance transparency in the decision-making system, to enhance communication between the Joint Committees and to consider the introduction of an effective dispute settlement mechanism;
25. Calls for enhanced communication between the European Parliament and Switzerland and for Swiss representatives to be more involved in the work of the European Parliament and its respective bodies;
26. Notes that in light of the new challenges in current and planned negotiations on several policy areas, *inter alia* consumer protection, there is a need to discuss the possibility of going beyond the existing institutional framework and perhaps concluding an all-encompassing bilateral agreement to the mutual benefit of Switzerland and the EU;
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27. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States.