

FRAMEWORK AGREEMENT AND ACCOMPANYING MEASURES: THE POSITION OF THE SWISS TRADE UNION CONFEDERATION

Berne, 21st of January 2019

The framework agreement of the Federal Councillor Ignazio Cassis

A threat to wages and jobs

Switzerland has the highest wages in Europe

Switzerland has the highest wages in Europe. An uncontrolled opening of the Swiss labour market would therefore be associated with the risk of wage pressure. The Swiss average wage is over CHF 7,200 per month (full-time) - compared with wages slightly above CHF 4,000 in our neighbouring countries Germany and Austria. In the east of the EU, wages are even much lower at just over CHF 1,000 per month.

The same differences exist in the individual occupations. In Switzerland, skilled craftsmen earn an average of around 6200 Swiss francs. In Germany it is 3700, in Poland only 900 francs. Without wage protection, even our skilled workers are threatened with social assistance.

Average monthly wage

(2014, Swiss franc, full-time equivalents)

Switzerland	7243
Luxembourg	5925
Norway	5907
Denmark	5547
Belgium	4589
Sweden	4502
Finland	4491
Netherlands	4368
Austria	4257
Germany	4110
United Kingdom	3948
France	3624
Italy	3465
Spain	2750
Portugal	1737
Czech Republic	1257
Poland	1163
Romania	670
Bulgaria	578

Source: Eurostat, CHF/EUR: 1.205

Protection of wages: The Federal council's promise

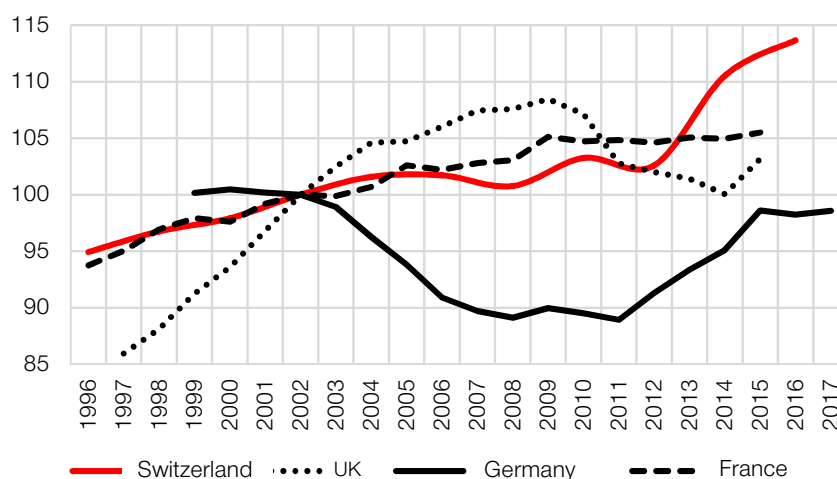
In order to protect Swiss wages, the Accompanying measures were introduced. The Accompanying measures were one of the central lessons learned from the lost EEA vote in 1992. The Swiss electorate agrees to an opening towards the EU only if wages and working conditions are effectively protected. Under pressure from the trade unions, the free movement of persons was combined with Accompanying measures. In its first vote on the Bilateral Agreements, the federal council promised the population "extensive protection against wage and social dumping" through the Accompanying measures. And in the negotiations on the framework agreement the council subsequently protected the Accompanying measures with "red lines".

The agreement on the Free Movement of Persons also obliges Switzerland to ensure that workers from abroad receive Swiss wages. Art. 1d requires Switzerland to "grant the same living, employment and working conditions as nationals". Employees from the EU must be protected from wage dumping in Switzerland. After all, one third of the working hours in Switzerland are performed by people without a Swiss passport.

Accompanying measures: a success story

It has become clear in recent years that the Accompanying measures are a very effective instrument against wage and social dumping. Due to the Accompanying measure it has been possible to prevent a drop in wages in the well-protected sectors. And due to good collective labour agreements, low and medium wages have risen in Switzerland. In contrast to the United Kingdom, for example, where the lack of accompanying measures and the associated pressure on wages and working conditions unfortunately contributed to the Brexit decision.

Development of real wages – lowest decile
(2002=100)



Today in Switzerland, wages are monitored in around 45,000 companies every year - of which around 21,000 are foreign companies. In almost every fourth company, the supervisors find that wages are too low. This shows how necessary accompanying measures are in everyday life. These figures do not include the preventive effect of accompanying measures. Without controls and impending fines, there would be no reason for foreign companies to pay Swiss wages. The extent of dumping would

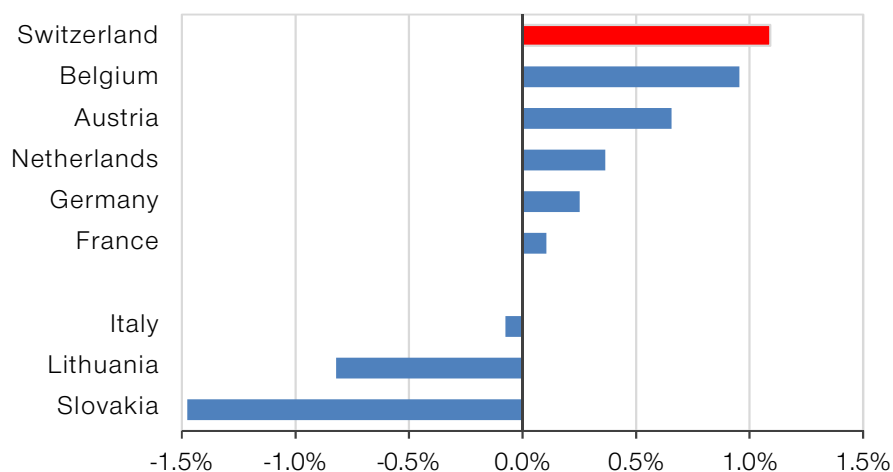
be much greater. Foreign companies with lower wages would quickly gain substantial market shares. The result: falling wages and rising unemployment in Switzerland. In the industrial sectors, everything would be thrown out of joint. If wages were much lower, hardly anyone would want to do an apprenticeship.

Accompanying measures are no obstacle for respectable foreign companies

Foreign companies that comply with Swiss laws and working conditions have no problem with the Accompanying measures. Dumping companies, on the other hand, do. After all, that is the purpose of the Accompanying measures. The fact that they are not an obstacle to entry for foreign companies is not only shown by the positive practical examples but also confirmed by statistics. Because of its high income level, Switzerland is an attractive market for foreign suppliers. Today, expatriates and self-employed persons from the EU work in Switzerland for more than 2.5 million days a year. This corresponds to a contract volume of around CHF 2 billion. No other country in Europe has as many foreign service providers as Switzerland (in terms of resident population).

Expatriated employees and self-employed persons in 2016

(Net, in percentage of resident population)



Source: Eurostat

Repeated attacks on Accompanying measures - also from Switzerland

The Accompanying measures were repeatedly exposed to attacks - especially from within the country. For example from the economic wing of the Swiss People's Party (SVP) with national Councillor Magdalena Martullo-Blocher, from Avenir Suisse, the think tank of large corporations, or from the NZZ (important newspaper). They all criticised that the Accompanying measures had improved employee protection and the position of the trade unions too much.

With the framework agreement of Federal Councillor Cassis, these attacks have reached a new, threatening scale. The framework agreement takes over the criticism of our wage protection system from the EU Commission and aims to substantially worsen Swiss wage protection. On the one hand,

Switzerland is to adopt the EU legal bases (Posting and Enforcement Directives), as well as the associated case law of the EU Court of Justice. On the other hand, central protective measures such as the 8-day advance notification and the deposit will be largely abolished.

The EU Commission wants to make it even easier for EU companies to gain access to the market. But even in the EU, many people disagree with the commission. In recent months, the European trade unions have called on the SGB to remain tough on the Accompanying measures. The Accompanying measures are a role model for the European trade unions, which they would like to have for Europe as well, as soon as the political majority allows such improvements. For them, improving wage protection is an important step towards a more social Europe. Even the German craft trades are divided on this issue. Many have come to terms with our supporters. They themselves want more wage protection to ward off dumping competition.

Federal Councillor Cassis's framework agreement threatens wages and jobs

The framework agreement negotiated by Federal Councillor Cassis and his people puts central parts of the accompanying measures at risk. And that's not all: by endangering wage protection the bilateral agreements will sooner or later be called into question as well.

The adoption of the EU directives on wage protection (Posting and Enforcement Directives) entails a substantial reduction in accompanying measures. The directives define the instruments which countries can use to protect wages. They represent a maximum of what countries are allowed to do for wage protection. Further measures are subject to general suspicion of impeding companies' market access and thus obstruct the internal market. The EU Court of Justice (ECJ) will then judge whether the wage protection is proportionate. In the future, its decisions would also have to be complied with by Switzerland.

But the ECJ sees itself as an engine of the pure internal market. It wants to reduce obstacles to market access for businesses. The aim is to enforce the "four fundamental freedoms". Restrictions on these fundamental freedoms are only permissible under certain conditions. In various rulings the ECJ came to the conclusion that wage and employee protection provisions were contrary to the internal market, and regularly placed the freedom of the entrepreneur to offer his services above the right of employees to be protected in their rights. The most recent ruling was against the accompanying measures in Austria (case Čepelnik), where the ECJ banned a deposit. The ECJ rulings of recent years in the field of employees' rights show the following pattern: In the area of individual labour law, the ECJ has repeatedly ruled in favour of employees (e.g. against discrimination against individual employees). Collective labour law (collective agreements, the right to strike, etc.) has been weakened. Collective labour law, with its collective labour agreements, is indispensable for the protection of wages and working conditions.

The ECJ logic contradicts the Swiss approach that non-discriminatory market access and the protection of wages and working conditions are equivalent. The contradiction not only weakens the Accompanying measures in general, but also leads directly to a number of concrete problems.

In Switzerland, the minimum standards for wages and working conditions are largely laid down in collective labour agreements (CLAs). Their observance is monitored by equal commissions of employers and trade unions and enforced by means of sanctions (contractual penalties). This method of enforcement is unique in Europe. There is a great threat that the EU Commission or the ECJ would

prohibit Switzerland from doing so in whole or in part. The EU Enforcement Directive allows the social partners to carry out certain controls to a limited extent. However, there is no provision for a density of controls as is customary in Switzerland - let alone the competence of equal commissions to impose fines on foreign companies.

A significant part of the Accompanying measures instruments, such as the 8-day advance notification or the deposits, is not included in the catalogue of measures in the enforcement directive. From the point of view of the EU Commission and the ECJ, our Accompanying measures would therefore be inadmissible. Without these instruments, Swiss wages can no longer be enforced against dubious and short-lived companies from abroad (see the detailed analysis of the SGB: https://www.uss.ch/fileadmin/user_upload/Dokumente/Broschueren_Buecher/Position_SGB_AC-COMPANYING_MEASURES_8-Tage-Regel.pdf). In the framework agreement, the EU Commission offers - under restrictive conditions - certain exceptions (4-day rule, deposit only for repeat offenders, etc.). But these do not represent a valid replacement for our Accompanying measures. For example, a deposit only for repeat offenders is ineffective. Because dubious and short-lived companies could simply change the name or adapt it and thus bypass the regulation. In addition, checking whether a company has already violated Swiss wages takes a lot of time. This contradicts the shortened reporting deadline. The application of these measures is not optional for Switzerland, but the agreement requires an "objective risk analysis" as well as a periodic review and adjustment, which increases the risk that even these measures would, sooner or later, no longer be accepted by the arbitral tribunal or the ECJ.

Finally, the catalogue of measures in the EU Enforcement Directive would in future determine which Accompanying measures Switzerland can issue and which it cannot. New accompanying measures would therefore hardly be possible - even if they were urgently needed.

Aid: Risks for the public service, but also for tripartite structures

In addition to the substantial weakening of the Accompanying measures, the question of state aid is of great political importance. The draft agreement stipulates that future bilateral agreements should be subject to a very restrictive regime. The Competition Commission or another newly created authority could override democratic decisions under the state aid rules of the Framework Agreement. This does not only apply to the public service. At best, it could also include parity or tripartite institutions in the field of vocational training or health protection.

This threat is greater than generally perceived. This is because the framework agreement of Federal Councillor Cassis can already be applied to the existing free trade agreement: Provision should be made for "transitional provisions so that the respective joint committees can appeal to the arbitration court of the institutional agreement" (EU-Switzerland Joint Declaration on Trade Agreements, point 8).

SGB rejects framework agreement of Federal Councillor Cassis

The Swiss Trade Union confederation (STUC) rejects the framework agreement of Federal Councillor Cassis. If necessary, it will fight it with a referendum.