



Brief guide to the Updated EFTA Convention

INTRODUCTION

The European Free Trade Association (EFTA) was established by a Convention signed in Stockholm on 4 January 1960. Today, the EFTA members are Iceland, Liechtenstein, Switzerland and Norway.

The main objective of the Association was to provide a framework for the liberalization of trade in goods amongst its Member States. The original Convention thus contained basic rules regarding free trade in goods and related disciplines.

To strengthen the already preferential relationship between the EFTA States and the European Union, the European Economic Area (EEA) was concluded in the early 1990s. The EEA establishes a single market for all forms of trade, including trade in services and the free movement of persons between and among the EU and the EFTA States, excluding Switzerland.

Since the early 1990s the EFTA States have also been expanding trade relations with partners in Central and Eastern Europe and the Mediterranean region. More recently, EFTA has embarked on extending this network to countries in other parts of the world. Three of the more recent agreements, with Mexico, Singapore and Chile, cover not only trade in goods but also a number of new areas such as investment, the trade in services and other current trade areas.

Another important development was the conclusion by Switzerland in 1999 of a set of bilateral agreements with the European Union covering a wide range of areas, including movement of persons, transport and technical barriers to trade. This development prompted the EFTA States to modernise their Convention to ensure that it will continue to provide a successful framework for the expansion and liberalization of trade among them and with the rest of the world.

WHAT'S NEW

The updated Convention entered into force on 1 June 2002.. It includes several significant changes and innovations. The most important is the integration into the Convention of the principles and rules established between EFTA EEA members and the content of the bilateral agreements between Switzerland and the European Union. This means that all EFTA members now benefit from virtually the same privileged relationship among themselves as they do with the EU.

The main areas in which the Convention has been modernised include:

Mutual recognition of conformity assessments

The EEA Agreement extends the Union's internal market rules to the three EEA EFTA States. This comprises the entire body of technical regulations determining the requirements products need to fulfil concerning safety, consumer protection, health and the environment, as well as the procedures for testing conformity with such requirements.

The Convention incorporates the rules established under the bilateral agreement between Switzerland and the EU in this area, as well as the corresponding provisions of the EEA Agreement.

Intellectual property rights

Under the revised EFTA Convention, the EFTA States grant each other adequate and effective protection of intellectual property rights and combat the infringement, for instance, through counterfeiting and piracy, of such rights. "Intellectual property" covers copyright, including computer programmes and databases, as well as of neighbouring rights, trademarks for goods and services, geographical indications, industrial designs, patents, plant varieties, topographies of integrated circuits, and undisclosed information.

Movement of persons, social security and mutual recognition of diplomas

The Convention introduces the free movement of persons by opening the labour markets of the EFTA States. The Convention applies to workers, the self-employed and persons who otherwise have sufficient financial means, including under certain conditions, their family members. They have the right of access to work, entry/exit and establishment (residence), the right to provide services for a period of up to 90 days per year and the right of equal treatment.

In the case of Switzerland, a few special provisions have been elaborated:



Free movement of Swiss citizens to Iceland and Norway took effect upon entry into force of the revised EFTA Convention, whereas the freedom of movement to Switzerland for citizens of the other EFTA States is subject to transitional periods lasting up to 5 years.

Switzerland has introduced special quotas for EFTA citizens, which may later be adjusted by decision of the EFTA Council.

Liechtenstein will gradually reduce its limitations to the free movement of Swiss nationals to its territory to the level of liberalisation currently in force under the EEA Agreement.

Special rules govern individuals living in border areas and working in Switzerland as well as public service activities and the acquisition of real estate in Switzerland. EFTA citizens living in Switzerland are now granted the same rights as Swiss nationals.

The free movement of persons also covers social security issues by establishing a system of coordination between the EFTA States. The objective is to apply common principles and rules so that differences in national legislation do not hinder the mobility of persons who move within the EFTA area.

Additionally, the mutual recognition of professional diplomas has been introduced under the EFTA Convention, which will further facilitate the free movement of persons. Qualifications obtained in an EFTA State under so-called general systems for

the recognition of higher-education diplomas and of professional education or training or in the following specialized areas are recognised in the other EFTA States. This concerns, inter alia, legal professions, medical and paramedical activities, architecture, commerce and intermediaries.

Investment and services

The modernised Convention includes a comprehensive framework for the general liberalization of investment and trade in services between EFTA States. As of the entry into effect of the Convention, the EFTA States may not adopt any new discriminatory measures as regards establishment or trade in services. However, some reservations remain in effect, which are subject to review with a view to their eventual removal.

Subject to these reservations, a company or firm formed in accordance with the laws of an EFTA State may set up and operate its business in another EFTA State.

The EFTA States shall grant to companies of any other EFTA States national treatment and Most-Favoured-Nation treatment.

The movement of capital is free of any restrictions in so far as it concerns establishment. The rules on capital movements are subject to review within two years after the entry into force of the updated Convention with a view to their further liberalisation.

Regarding cross-border supply of services between EFTA citizens, i.e., the consumption of services of citizens from one EFTA State in another, and the supply of services by local presence, the revised Convention opens up this sector subject to some minor reservations. These reservations are to be reviewed within two years after the entry into force of the new Convention.

Any benefits that an EFTA State may grant to the European Union in the future in terms of liberalization of trade in services will have to be extended to the other EFTA States. This may be of particular importance if Switzerland were to take further steps in this area vis à vis the EU.

It is noteworthy that the supply and the consumption of services by individuals are also governed by the rules regarding the movement of persons. Moreover, specific rules apply in the field of transport and services.

Both the framework on investment and on the trade in services contain specific rules regarding the financial markets, most notably the right of an EFTA State to restrict the supply of financial services in their territories for prudential and public security reasons.

The reservations maintained by the EFTA States under the revised Convention in the area of financial services reflect their current commitments under the General Agreement on Trade in Services (GATS).

Land and air transport

As mentioned above, special rules apply to transport services. Essential elements of the bilateral Swiss-EU agreements have been transposed into the revised EFTA Convention, including references to EU rules regarding road, rail and air transport.

In the field of *land transport*, the EFTA Convention now provides for a gradual reciprocal opening of the markets for the transportation of both persons and goods by road and by rail between all the EFTA States.

The rules on *civil aviation* lay down the terms on which an EFTA State air transport company will have access to the air transport markets of another EFTA State.

It is worth noting that existing bilateral treaties granting air traffic rights between individual EFTA States remain in force if the traffic rights they grant are not covered by the revised EFTA Convention and further that there is no discrimination on the grounds of nationality.

The unrestricted freedom of establishment, excepting Swiss operators in Iceland, is the core of the new provisions on air transport in the EFTA Convention. Other provisions that aim at creating open and equal market conditions in air transport concern the granting and surveillance of state aid, fares and rates, the conduct of computer reservation systems, environmental regulations, licensing issues, the slot allocation, ground handling, air carrier liability, technical harmonization and air safety.



Public procurement

In the area of public procurement, the revised EFTA Convention builds on the EFTA States' commitments under the World Trade Organization's Agreement on Government Procurement (GPA), to which all EFTA States are Parties. Moreover, the Convention goes beyond the WTO rules by extending the sectoral coverage. This extended coverage includes: purchases of products and services including construction services, by railway operators, entities active in the field of energy other than electricity and private utilities active in the fields of drinking water, electricity, urban transport, ports and airports in the EFTA States.

The chapter on public procurement applies to contracts awarded by railway operators, entities active in the field of energy (other than electricity) for which the estimated value exceeds EUR 400,000 for supplies/services and EUR 5,000,000 for works. When awarded by private utilities, the thresholds are SDR 400,000 for supplies/services and SDR 5,000,000 for works.

This section also lays down the basic principles governing public procurement such as non-discrimination, transparency, and reciprocity.

Agriculture

The provisions governing agriculture were updated and made more accessible while still maintaining the special considerations affecting the sector. No substantive changes were made to the provisions and treatment for processed agricultural products. The principle of parallelism between the treatment accorded to the EU or any other third country partner and an EFTA State is also maintained.

The EFTA States have agreed on a number of changes that will facilitate trade in agricultural products among themselves. First, the existing tariff concessions for basic agricultural products – so far covered by bilateral arrangements between the individual EFTA States – were integrated into the Convention. Furthermore, under the revised Convention individual EFTA States made additional concessions for certain basic agricultural products such as cheese, certain vegetables (lettuce and cucumbers), live horses, meat of sheep or goats.

In addition, trade in seeds and organically produced agricultural products is considerably facilitated by the reduction or elimination of a number of technical barriers along the same rules as under the EEA Agreement and the Swiss-EU Agricultural Agreement.

As regards sanitary and phytosanitary measures, the WTO Agreement on the Application of Sanitary and Phytosanitary Measures provides the rules for the EFTA

Convention, but more specific arrangements might be included in the Convention as developments in the EEA Agreement occur.

MAINTAINING THE CONVENTION

The revised EFTA Convention is updated on a continuous basis. The first review of the Convention started 3 months after entry

into force, the purpose being to take stock of, and to update the Convention in line with recent developments under the EEA Agreement and the Swiss-EU Bilateral Agreements of 21 June 1999. This process has already resulted in two amendments of the Convention.





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