ORGANISME D'AUTOREGULATION
DES GERANTS DE PATRIMOINE

FDFA, Directorate for European Affairs

Federal Palace West Wing
3003 Bern

Geneva, 6 March 2019

Statement regarding the agreement facilitating bilateral relations between the European Union and the Swiss Confederation in those parts of the internal market in which Switzerland participates

Dear Sir, dear Madam,

In this document OAR-G gives its opinion on the consultation opened by the Federal Council on 7 December 2018 on the framework agreement between Switzerland and the European Union (EU). Below you will find our general comments and comments on the substance and form of the report.

In recent years there has been an overall drop in the number of independent asset managers. As a result, the number of jobs in finance has fallen, and the role of this sector as a contributor to our country's GDP has declined. It should be pointed out that since 1992 the financial sector has shrunk by more than half to less than 10% of GDP and that it is other sectors of the economy that have primarily benefited from the bilateral agreements negotiated with the EU. This will continue to be the case under the current proposed agreement. Meanwhile, Switzerland has agreed to many changes which affect the financial sector (end of banking secrecy, automatic exchange of information, new legislation).

Moreover, we note that there has been a significant movement of jobs to other countries, in Europe in particular, and the loss of a huge number of EU clients. The profession of independent asset manager is thus under threat, a fact that the OAR-G wishes to highlight with this statement. Indeed, although the explanatory document to the framework agreement begins by explaining the importance that the Federal Council accords to integration in the EU internal market, the agreement does not guarantee this access in any way. Such a key aspect should not be left to the

discretion of the EU negotiators who, aware of our interest, could continue to demand commitments from Switzerland without granting anything in exchange.

In fact, in many respects the substance of the framework agreement seems unilateral, favouring the EU. The principles of equality, reciprocity and general balance referred to in the preamble are only partially applied in the text. Without going into all the technical details, we draw attention here to the following points:

- It is surprising that in Article 4 no reference is made to the concepts of Swiss law, which should be interpreted according to our law. Similarly, Article 11 requires the Federal Supreme Court to accept the interpretation of the European Court of Justice, since the latter is the competent court for interpreting European law and the court to which the arbitral tribunal would refer the matter.
- Wording such as that in Article 12 paragraph 4 *in fine* is too imprecise and therefore inadequate. Although the Commission "…assures Switzerland the broadest participation possible", this does not grant our country any rights whatsoever.
- According to Article 13 paragraph 1, Switzerland is merely informed if the EU adopts legislation in the relevant domains of the agreements with our country. Including Switzerland in the decision-making process or, at the very least, in decision-shaping would ensure the equality evoked in the preamble.
- Article 13 poses a further considerable problem. This provision gives the EU the power to adopt measures which contradict the bilateral agreements. In such a situation, the EU will ask for the agreement to be amended and adapted to its new legislation. This article authorises the EU to initiate changes to the agreements concluded with Switzerland as it wishes, and this will create legal instability for our country. Moreover, Article 14 does not deal with the Swiss constitutional order in the same manner. Once again, it is a question here of equality between the two parties.
- A further major element we would like to highlight relates to Article 17 paragraph 2 of the framework agreement. The bilateral agreements were put to a referendum in accordance with Article 141 paragraph 1 of the Swiss Constitution. According to the principle of formal parallelism, the framework agreement can only take precedence over the bilateral agreements if it has the form of a legal act at the same level as the bilateral agreements (that is to say, a federal decree submitted to an optional referendum in accordance with Article 141 paragraph 1 of the Swiss Constitution).
- There is too little clarity in Article 8A paragraph 2 let. c, ii) regarding support for "a major project of common European interest or of common interest to Switzerland and the European Union". The second part of this sentence should suffice to ensure equality between the two contracting parties.
- The decision-making procedure by consensus (Art. IV.1 of Protocol 3 on the arbitral tribunal) is unknown in Swiss law.

In terms of the formal aspects, it is regrettable to note that there are inconsistencies and mistakes in the French version of such an important agreement. […]

Finally, it is our belief that the majority of trustees and asset managers and their clients are not in favour of this agreement. Indeed, it is worrying to note that adopting European law would, in the long term, have negative consequences for Swiss law and for the safety of deposits made in our country owing to the provisions of European cross-border legislation in conjunction with the Lugano Convention. This would, of course, reduce foreign clients' interest in Switzerland.

Regarding the arbitration tribunal, this would be reduced to no more than a registration chamber, as it would arbitrate according to European law. It is highly surprising to note that the provisions adopted by the EU are those that it intends to impose on candidates for future integration, such as Moldova, Georgia or Ukraine.

We have already favoured Luxembourg over funds and life insurance industry, and to our English-speaking and Asian competitors over trusts. It is time to address the interests of our end clients and not to destroy the entire margin of the services we offer, as happened in the case of sub-custody. We accepted new standards with the CRS, and adopted the principles of the MiFID and the Basel agreements, yet will not obtain market access for political reasons.

After 25 years of bilateral agreements, the only questions we can clearly ask are: does Switzerland want to become a member of the EU or to remain an independent third country? Each of these choices has its price and its benefits, but it is dangerous to agree to modifications in the structure of our legal, social and economic systems without sufficient guarantees or answers to our questions.

It would be unjust towards our members to jeopardise Switzerland's future under pressure from the European Union. Our direct democracy requires that the citizens be consulted on these issues and their consequences.

The OAR-G cannot support the draft agreement submitted for consultation by the Federal Council in its current state. Further explanations and clarifications are required on key questions such as:

- The automatic adoption of law and dispute resolution (arbitral tribunal)
- The directive relating to EU citizen's rights,
- Accompanying measures and the safeguarding of our social welfare system and labour laws,
- The consequences on business of the primacy of European cross-border legislation coupled with the Lugano Convention, in particular on deposit protection, the right of recourse and the right to prior information.

The OAR-G is willing to explain its position as part of the consultation procedure. The proposed agreement can only be properly assessed once the outstanding points have been clarified.

Yours sincerely

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Vice President	President