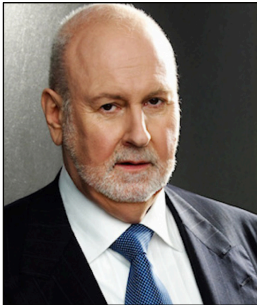


The charade with the EU continues

Swiss chief negotiator produces fake news – federal councillors allow themselves to be patronised

by Carl Baudenbacher*



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(Picture <https://baudenbacher-law.com>)

In Switzerland, the year 2024 will go down in the history books. The federal councillors, the country's directorate government consisting of seven members with equal rights, approved a framework agreement with the European Union without knowing its exact content.

The fact that the government has not yet signed the agreement is not relevant. It committed itself to signing it in the presence of EU Commission President *Ursula von der Leyen*.

Of course, the illustrious body would not dream of going back on this action or even challenging it. The embarrassing genuflection of 20 December is rather a further confirmation that the issue with the "Common Understanding" of 15 December 2023 was settled. The "negotiations" were primarily aimed at throwing dust into the eyes of one's own people.

Nevertheless, lawyers sometimes take the liberty of asking what would happen if the Federal Council wanted to challenge its approval of the unread agreement. Purely theoretically, or for the sake of practice. One is reminded of the case

of someone signing an unread document. The following applies here: if you sign a document in the knowledge of its legal relevance without reading it, you cannot usually contest it (see, e.g., BGE 135 IV 12).

In view of the small print with the many unclear clauses, however, one could imagine an analogy with the law of *General Terms and Conditions* (GTC).

According to Art. 8 of the *Swiss Federal Law on Unfair Competition* (UWG), anyone who "uses general terms and conditions that, in bad faith and to the detriment of consumers, provide for a significant and unjustified imbalance between the contractual rights and the contractual obligations" is acting unfairly.

It is indisputable that there is a significant and unjustified imbalance between the contractual rights and obligations of Switzerland. The Swiss industry is granted limited access to the internal market; banks and insurance companies are not included.

In return, Switzerland is obliged to dynamic adoption of EU law development and to submit to monitoring by the EU Commission and the monopoly on interpretation of the *Court of Justice of the European Union* (CJEU).

Both institutions lack neutrality. Although there is an "arbitration tribunal" that formally decides in the event of a conflict, this is only a fig leaf for this contractual imbalance.

Contrary to what Federal Councillor *Ignazio Cassis*, supported by his chief negotiator with an approving nod, claimed twice at the media conference to approve the unread agreement, the "arbitration court" must, not can, request the CJEU to make a binding decision.

The statement of the Foreign Minister fulfils the criteria of fake news in optima forma. According to the Duden, fake news are "false reports spread with manipulative intent".

Submission to an extraterritorial court is a defining feature of semi-colonisation. But that is not all.

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From 1995 until April 2018, he was a judge at the EFTA Court in Luxembourg, and its President from 2003 until 2017. From 1987 until 2013, he was a full professor at the *University of St. Gallen* (HSG) and between 1993 and 2004, he was a Permanent Visiting Professor at the *University of Texas* in Austin.

Switzerland is also supposed to pay 350 million francs a year to the EU. The comparison that the Federal Council draws in this regard with the EEA/EFTA states Iceland, Liechtenstein and Norway is untenable. These states are not subject to the supervision of the EU Commission and the jurisdiction of the CJEU.

Whether the Federal Council was taken for a ride by the EU Commission in violation of the principle of good faith is debatable. If we look back at 2013, the answer must be no.

At the time, the illustrious body, under the influence of Foreign Minister *Didier Burkhalter*, explicitly requested subordination to the EU Commission and the CJEU. The then EU ambassador in Bern, the Briton *Richard Jones*, was amazed. Even at that moment, fake news played a decisive role. Among other things, the Federal Council claimed that the CJEU would only issue "opinions". Burkhalter stuck to this untruth even when two presidents of the CJEU made it clear that the CJEU only issued legally binding judgments.

The campaign of lies has continued ever since. Even on 20 December 2024, the Federal Council was not taken for a ride by the EU. Its own chief negotiator withheld the text of the agreement from it and instead handed over so-called "fact sheets" written by his team.

As a first review shows, these contain the usual fake news. This is not surprising in view of what has been going on in the Federal Palace in Bern since 2013. It's hard to believe, but the federal councillors allowed themselves to be patronised by a bureaucrat.

It is also unclear whether the Federal Council can be compared with consumers to be protected by the UWG. Consumers are considered to be in need of protection in business transactions because they are the economically, intellectually and structurally inferior party.

However, there can be no question of economic inferiority in the relationship between Switzerland and the EU. Switzerland is economically much better off than the EU. Structurally, too, Bern should be able to hold its own, even if the systematic employment of nodding heads in the public sector is of course a problem.

At best, one could be tempted to take a closer look at the element of intellectual inferiority. But that is a delicate matter with federal councillors.

Ultimately, under the framework agreement the question might end up before the CJEU. So, let's leave it at the above theoretical considerations. But 20 December 2024 will always be a memorable day in Switzerland, in a negative sense.

Post Scriptum: On the same day, the "Financial Times" reported that US President-elect *Donald Trump* had promised to deregulate the economy and appointed billionaire entrepreneur *Elon Musk* to co-head a new efficiency department.

Brussels eurocrats expect Musk to trigger a race to the bottom on regulation. European companies fear that they will get so bogged down by bureaucracy they will fall even further behind their US competitors.¹

Exactly one month after the grotesque fanfare in Bern, on 20 January 2025, Donald Trump will be sworn in as President of the United States in Washington, D.C. The question arises as to whether the Federal Council will still be as happy with its unread agreement as it or its majority now claim.

Or was the whole thing just a charade to be in the good books of the great leader of the EU Commission?

Source: <https://insideparadeplatz.ch/2024/12/21/die-farce-mit-der-eu-geht-weiter/>, 21 December 2024
(Translation "Swiss Standpoint")

¹ <https://www.ft.com/content/5d1e8180-c2dd-4f66-8884-4bbbeccc157>