



HOUSE OF LORDS

International Agreements Committee

10th Report of Session 2022–23

**Scrutiny of
International
Agreements: Agreement
with Switzerland on
Mutual Recognition in
relation to Conformity
Assessment**

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See Appendix 1.

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SUMMARY

This report addresses the following agreement, laid before Parliament in accordance with section 20 of the Constitutional Reform and Governance Act 2010:

- Agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on Mutual Recognition in relation to Conformity Assessment (CP 760, 2022)

The purpose of this Agreement is to reduce non-tariff barriers related to conformity assessment in five product sectors which have an independent Swiss conformity assessment mark. It does this by permitting approved Conformity Assessment Bodies (CABs) in the UK and Switzerland to certify conformity against the other country's regulations. The Agreement is intended to replace existing temporary recognition arrangements which were due to expire at the start of 2023.

There are a further remaining eight sectors which could not be covered by this Agreement as they are subject exclusively to the EU's "CE" conformity assessment mark. A bilateral MRA with Switzerland can therefore only cover goods that use a CH mark or a UK conformity assessment mark. To avoid a gap following the expiry of the temporary measures in the five product sectors, the Agreement is being provisionally applied from 1 January 2023.

We report this Agreement between the United Kingdom and Swiss Confederation to the House for information.

Scrutiny of International Agreements: Agreement with Switzerland on Mutual Recognition in relation to Conformity Assessment

AGREEMENT REPORTED FOR INFORMATION

Agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on Mutual Recognition in relation to Conformity Assessment (CP 760, 2022)¹

1. The Agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on Mutual Recognition in relation to Conformity Assessment (the Agreement) was laid before Parliament on 25 November 2022.
2. The scrutiny period under the Constitutional Reform and Governance Act (CRAG) for this Agreement is scheduled to end on 16 January 2023, although we note that the Agreement will be applied provisionally before this scrutiny period has elapsed. The Agreement was considered by the Committee at its meeting on 12 January 2023.
3. The purpose of this Agreement is to reduce non-tariff barriers related to conformity assessment on five product sectors which have an independent Swiss conformity assessment mark (the CH mark).² This Agreement seeks to retain part of the coverage provided previously under the EU-Swiss MRA while the United Kingdom was a member of the EU (described in paragraph 4). A brief explanation of conformity assessment is provided in Box 1 and a list of the five product sectors in paragraph 11.

Background to the Agreement

4. An Agreement between the Swiss Confederation and European Union on mutual recognition in relation to conformity assessment (the EU-Swiss MRA) entered into force in 2002.³

1 FCDO, *UK/Switzerland: Agreement on Mutual Recognition in relation to Conformity Assessment*, CP 760 (25 November 2022): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1119893/CS_Switzerland_2.2022_UK_Swiss_Agreement_Conformity_Assessment.pdf [accessed 14 December 2022]

2 While Switzerland has an independent conformity assessment mark (the CH), it also recognises the EU's conformity assessment mark (the CE). The UK's UKCA is the marking required for certain products to be placed on the market in Great Britain.

3 Agreement between the European Community and the Swiss Confederation on mutual recognition in relation to conformity assessment - Final Act - Joint Declarations - Information relating to the entry into force of the seven Agreements with the Swiss Confederation in the sectors free movement of persons, air and land transport, public procurement, scientific and technological cooperation, mutual recognition in relation to conformity assessment, and trade in agricultural products, *OJL 114*, 30 April 2002 [accessed 19 December 2022]

5. The UK concluded a post-Brexit roll-over trade agreement with Switzerland in 2019, which retained some, but not all, of the coverage provided by the EU-Swiss MRA.⁴ The roll-over agreement included conformity assessment provisions, allowing continued coverage of three of the 20 sectors listed under the EU-Swiss MRA. The Explanatory Memorandum (EM) accompanying the new 2022 Agreement highlights that “these [three] sectors accounted for approximately 70% of UK-Switzerland bilateral trade previously covered by the EU-Swiss MRA”⁵ (for an overview of UK-Swiss trade, see Box 2). The EM further notes that the majority of the remaining 30% of bilateral trade previously covered by the EU-Swiss MRA continued to be covered pursuant to temporary and unilateral Swiss measures spanning 13 sectors.⁶
6. Whilst Switzerland has its own independent “CH” mark, it also recognises the EU conformity assessment mark, known as “CE”. The CE mark is used to place goods onto the Swiss market in more sectors than the CH mark. The UK also continued to recognise the CE mark on a unilateral and temporary basis.

Box 1: Conformity assessment

Conformity assessment is the process of determining whether a product meets relevant standards and rules to enable it to be legally placed on a national market. In some cases, the assessment must be carried out by an independent third-party Conformity Assessment Body (CAB), accredited at a national level. Alternatively, some regulators allow manufacturers to declare their own conformity.

Mutual Recognition Agreements (MRAs) dealing with conformity assessment usually provide that one country will accept conformity assessment results issued by the other country’s designated CABs to show compliance with the first’s requirements. These agreements also typically set conditions for the designation of CABs and for the recognition of conformity assessment.

This should facilitate trade by allowing exporters to obtain certifications required by the importing country in their home country. The UK has stand-alone MRAs with Australia, New Zealand, and the United States of America, and its Free Trade Agreements (FTAs) with Canada, Israel, and Japan also provide for conformity assessment agreement.

7. When the UK previously extended recognition of the CE mark, the Swiss reciprocated by extending their temporary measures. These measures were

4 FCO, *Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation*, CP 55 (11 February 2019) : https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/780200/CS_Swiss_4.2019_FTA.pdf [accessed 14 December 2022]

5 HM Government, *Memorandum of understanding between the Department for International Trade of the United Kingdom and Northern Ireland and the State Secretariat for Economic Affairs of the Swiss Confederation*, para 4.3: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/803719/memorandum-of-understanding-between-the-uk-and-switzerland.pdf [accessed 12 January 2023]

6 *Ibid.*, para 4.4

due to expire on 31 December 2022 but Switzerland has since extended them to 31 March 2023 for sectors not covered by this MRA.⁷

8. In the absence of this Agreement, British businesses exporting to Switzerland would be required to instruct a Conformity Assessment Body (CAB) in Switzerland or another third country⁸ to provide an assessment of relevant products in the five sectors included in the Agreement at an increased cost. This will be the case for the other eight sectors currently covered by the Swiss temporary measures which are not included within the Agreement, if the measures are not extended further.

Box 2: Switzerland

Switzerland, officially the Swiss Confederation, is a federal republic of 26 cantons, with federal authorities based in Bern. Switzerland is not part of the European Union, European Economic Area, or Eurozone but participates in the European single market and Schengen Area through bilateral treaties.

In the four quarters to the end of Q2 2022, Switzerland was the UK's 10th largest trading partner, accounting for 2.9% of total UK trade. In this same period, total trade in goods and services (imports and exports) between the UK and Switzerland was £41.8 billion, with UK export to Switzerland amounting to £23.9 billion and total UK imports from Switzerland amounting to £17.9 billion.⁹

The Agreement

9. The new Agreement permits approved CABs in the UK and Switzerland to certify conformity against the other country's regulations. In practical terms, the Agreement allows UK manufacturers to apply the CH mark to goods requiring conformity assessment before export to Switzerland, and Swiss manufacturers to similarly apply the UKCA mark.
10. Unlike the EU-Swiss MRA, the Agreement provides for regulatory autonomy, meaning the UK can diverge in regulations if it wishes to do so.
11. Collectively representing approximately £400 million of bilateral trade,¹⁰ five product sectors are covered by the Agreement:
 - electrical equipment and electromagnetic compatibility,
 - measuring instruments,

7 Swiss Confederation, *Recognition in relation to conformity assessment* (November 2022): https://www.seco.admin.ch/dam/seco/en/dokumente/Aussenwirtschaft/Wirtschaftsbeziehungen/brexit/brexit_erkennung_konformitaetsbewertungen.pdf.download.pdf [accessed 5 January 2023]. This Agreement is unaffected by the UK's 14 November announcement that it will continue to recognise the CE mark in many sectors until 31 December 2024. HM Government, 'Businesses to be given UK product marking flexibility' (14 November 2022): <https://www.gov.uk/government/news/businesses-to-be-given-uk-product-marking-flexibility> [accessed 16 December 2022]. Switzerland uses both the CE and CH mark for products in the five sectors covered by the Agreement.

8 British businesses could alternatively instruct a third country with whom Switzerland has an alternative conformity assessment agreement.

9 Department for International Trade, *Trade and Investment Factsheets: Switzerland* (18 November 2022): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1117936/switzerland-trade-and-investment-factsheet-2022-11-18.pdf [accessed 14 December 2022]

10 HM Government, *Memorandum of understanding between the Department for International Trade of the United Kingdom and Northern Ireland and the State Secretariat for Economic Affairs of the Swiss Confederation*, para 4.9

- radio equipment,
 - transportable pressure equipment, and
 - noise emitting equipment for use outdoors.
12. The Agreement additionally provides market surveillance, notification mechanisms, and cooperation between accreditation bodies.
 13. As listed in paragraph 11, of the 13 product sectors currently covered by temporary arrangements, only five will be included in the new Agreement. The remaining eight sectors could not be covered by this MRA as they are subject exclusively to the CE marking and thereby “require [the] use of rules of a third territory (the EU), over which neither party has control”.¹¹ Officials from the Department for International Trade (DIT) clarified that while the UK can unilaterally recognise CE marks for imports, UK CABs cannot certify CE marks for exports. A bilateral MRA with Switzerland can therefore only cover goods that use a CH mark or a UK conformity assessment mark. In practice, this means that Swiss goods entering the UK in the eight sectors will continue to benefit as a result of the UK Government’s unilateral extension of its recognition of CE markings. However, UK manufacturers in these sectors will need to rely on Swiss or EU CABs for certification.
 14. In seeking to understand the impact of the Agreement and of the eight excluded product sectors, DIT officials were asked what proportion of UK trade with Switzerland the five and eight sectors cover. In response, officials stated that 2% or 5% of bilateral goods trade would be excluded depending on the inclusion or exclusion of non-monetary gold from calculations.
 15. The Government’s overall strategy towards mutual recognition agreements and conformity assessments is unclear; there have been two extensions to the deadline for the UKCA mark to fully replace CE, which is now due to take place after 31 December 2024.

Entry into force

16. The Agreement will enter into force once both the United Kingdom and Switzerland have notified each other of the completion of their respective domestic procedures. To avoid a gap following the expiry of the Swiss temporary measures, the Agreement is being provisionally applied from 1 January 2023.
17. While regrettable that the Agreement will be applied provisionally before the completion of Parliamentary scrutiny under CRAG, officials from DIT explained that delays in depositing the Agreement in Parliament were a result of Swiss domestic procedures that had to be completed prior to signature. Officials highlighted that provisional application would provide businesses with continuity and certainty upon the expiration of temporary measures.
18. The Agreement has an initial duration of three years. Parties can request an extension of the Agreement by notifying the other party at least six months before the expiry of the initial period.

¹¹ *Ibid.*, para 4.11

Territorial scope and consultation

19. The Agreement does not extend to the UK Crown Dependencies or Overseas Territories. The EM states, however, that the Crown Dependencies have been informed of the Agreement.
20. We note that the exclusion of UK Crown Dependencies is not consistent across post-Brexit trade agreements dealing with the mutual recognition of conformity assessment.
21. The EM states that “this [agreement] does not relate to a devolved matter in relation to Scotland and Wales but both the Scottish and Welsh administrations have been consulted throughout this process”.¹²
22. Although the Agreement text states that it will apply to the whole of the UK, the EM highlights that, given the effect of the Northern Ireland Protocol, goods placed on the market in Northern Ireland will be subject to the EU-Swiss MRA rather than this Agreement. The EM notes that the Northern Ireland Executive was consulted on this Agreement.

Amendments to the Agreement

23. The Joint Committee set up under the Agreement can amend the Annexes to the Agreement (Articles 25.2 and 17). The EM states that significant amendments to the Annexes—for example, the addition of a new sector—would be subject to ratification in accordance with CRAG; however, there appears to be no such restriction in the Agreement itself, as the list of sectors is included in Annex 1 and is therefore amendable by the Joint Committee.
24. The EM commits that “the Government will comply with the requirements of the Constitutional Reform and Governance (CRAG) Act 2010 in relation to any treaty amendment which does require ratification”.¹³
25. **We welcome the Agreement with Switzerland to extend arrangements in relation to conformity assessment, but note its limited extent. The exclusion of some sectors means that, when temporary arrangements set by Switzerland expire, trade in these sectors will be simpler for Swiss exporters to the UK than the reverse. We also note that there remain additional barriers to UK-Switzerland trade.**
26. **We also believe the Government should provide further clarity on its overall strategy in relation to conformity assessments and mutual recognition agreements.**
27. **We consider that any amendment to an Annex which involves extending the scope of the Agreement by adding a new sector should be subject to the CRAG process.**
28. **We report this Agreement between the United Kingdom and Swiss Confederation to the House for information. We highlight, in particular, our comments in paragraphs 25–27.**

¹² *Ibid.*, para 10.1

¹³ *Ibid.*, para 5.7

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members

Lord Gold
Lord Grimstone of Boscobel
Baroness Hayter of Kentish Town
Lord Kerr of Kinlochard
Lord Lansley
Baroness Liddell of Coatdyke
Lord Morris of Aberavon
Lord Oates
Lord Razzall
The Earl of Sandwich
Lord Udny-Lister
Lord Watts

Declarations of interest

Lord Gold
Director, Gold Collins Associates Ltd
Principal, David Gold & Associates LLP

Lord Grimstone of Boscobel
No relevant interests

Baroness Hayter of Kentish Town
Senior Non-Executive Director, Association of British Insurers

Lord Kerr of Kinlochard
Chairman, Centre for European Reform

Lord Lansley
Director, LOW Associates Ltd
Chair, UK-Japan 21st Century Group
Trustee, Radix

Baroness Liddell of Coatdyke
Association Member, Bupa
Chair, Annington Ltd
Honorary Vice President, Britain-Australia Society Education Trust
Trustee, Northcote Educational Trust

Lord Morris of Aberavon
No relevant interests

Lord Oates
Chair, Advisory Committee, Weber Shandwick UK
Director, H&O Communications Ltd

Lord Razzall
Director, North Atlantic Mining Associates Limited
Director, ZeU Technologies Inc
Shareholdings, ZeU Technologies Inc
Shareholdings, St-Georges Eco-Mining Corporation
Shareholdings, Tintra plc

Earl of Sandwich
No relevant interests

Lord Udny-Lister

Advisor to the Group Chairman of HSBC

Lord Watts

No relevant interests