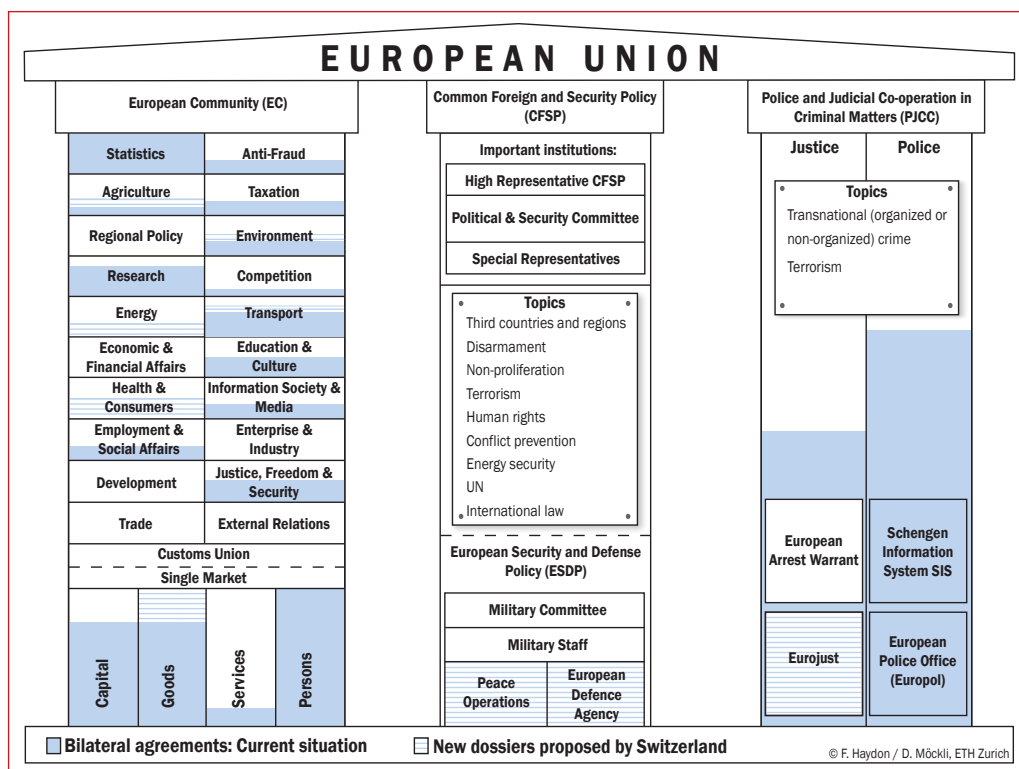


SWITZERLAND AND THE EU: THE PROSPECTS OF BILATERALISM

Through its bilateral agreements with the EU, Switzerland has gained far-reaching access to the Single Market. EU accession is no longer an economic issue for the Swiss. However, the longer-term sustainability and usefulness of bilateralism as the main paradigm of Switzerland’s EU policy remain uncertain. Swiss politics are being increasingly Europeanized, but Switzerland as a non-member lacks a say in defining the relevant *acquis communautaire*. Also, the Swiss bilateral approach is vulnerable both domestically and in the international arena. The double strategy of selective cooperation coupled with niche policies in the finance and tax sector as well as in foreign policy has met with some criticism in the EU.



mented by the notion of “Euro-competitiveness”. In several areas such as foreign trade, taxation, currency policy, or the banking sector, Switzerland chooses to pursue a path that differs from that of the EU. At the same time, the Federal Council suggests that Swiss bilateralism could become an alternative integration model for all those states unable or unwilling to join the EU. Appeals by Swiss decisionmakers to the EU to “Swissify” and offer their citizens more opportunities for political participation are evidence of the current Swiss optimism in matters of European policy. However, it remains unclear whether the bilateral path will

Fields of cooperation between Switzerland and the European Union (as of July 2008)

Bilateralism as the guideline of Switzerland’s EU policy enjoys strong domestic support. Although originally conceived as a temporary solution after accession to the European Economic Area (EEA) had been rejected in a popular vote in 1992, the bilateral approach is widely regarded today as a genuine alternative to EU membership. Access to the European market, the traditional core aim of Swiss European policy, has been largely secured by the bilateral agreements. Accordingly, EU membership is no longer an economic issue for the Swiss. At

the same time, staying outside the EU allows Switzerland to pursue a niche strategy in its foreign policy, as expressed in its independent Middle East policy, for example.

Today, the domestic EU debate is no longer determined by the fundamental issue of Switzerland’s strategic position within Europe, but by tactical questions on how best to consolidate bilateralism. It is noticeable that in current discussions, the dominant 1990s concept of “Euro-compatibility” is increasingly being comple-

prove sustainable and in the interests of Switzerland in the longer term.

The search for a policy

Switzerland’s relationship with the European integration process has been a key issue of Swiss foreign policy for the past five decades. During this time, Switzerland has considered the European question primarily from an economic point of view. While it has always acknowledged the importance of European unification for the pacification and security of the continent, this aspect has had only a limited impact

on the country's policies on Europe. Rather, the two main factors shaping Switzerland's European strategy were, first, the degree of economic pressure deriving from the integration process at different points in time, and, second, Switzerland's direct democracy.

In the first phase of Switzerland's European policy between 1957 and 1971, the need to act was severe. Accession to the European Economic Community (EEC) was out of the question, as Switzerland prospered due to non-occupation in the Second World War and pursued a policy of strict neutrality in the post-war period, rejecting supranationalism. Still, the desire to mitigate the negative effects of the trade handicaps caused by Swiss non-membership compelled the Federal Council to create the European Free Trade Association (EFTA) together with other non-EEC states in 1960. It also negotiated an association agreement with the EEC between 1961 and 1963, but the talks failed and earned the Federal Council charges of cherry-picking.

It was only in 1972 that Switzerland managed to overcome the discrimination in customs duties by means of a bilateral free trade agreement for industrial goods with the EEC. This step marked the beginning of a second phase of its European policy that lasted until 1987 and has been referred to as the "Golden Years", due to the low degree of pressure for change. The third phase, between 1988 and 1992, was characterized by hectic attempts to find an appropriate response to the new dynamics of the European integration process. While the Federal Council had rejected a change of course in its first integration report in 1988, it soon thereafter joined the EEA negotiations, which foresaw an association of the EFTA states with the EU's Single Market. Once this multilateral model had proven unsatisfactory due to the lack of opportunities for shared decision-making, the Federal Council followed the other neutrals Austria, Sweden, and Finland and submitted an EU membership application in 1992. The overlap of the EEA vote on 6 December 1992 with the debate over accession was a major reason why the project, though enjoying a comfortable majority in parliament, failed with 50.3 per cent "no" votes in the popular referendum.

Bilateral Agreements I and II

The fourth phase of Switzerland's European policy continues until today and is marked by the expansion of the policy of sectoral bilateralism that was begun in 1972. The

first set of bilateral treaties, negotiated between 1994 and 1999, aim (with the exception of the research agreement) at improving Switzerland's access to the EU's Single Market. It is interesting to note that the free movement of persons, which the Swiss corporate sector today touts as the core of bilateralism, was introduced by the EU and proved to be one of the most difficult sticking points in the negotiating process.

The second set of bilateral treaties negotiated between 2002 and 2004 goes beyond economic topics. In particular, Switzerland's participation in the Schengen/Dublin association agreements means that it will abolish identity checks at national borders and will participate in the concomitant EU cooperation on domestic security and asylum policies. The strategic importance of the Bilateral II Agreements for Switzerland's economy lies in the successful defense of Swiss banking secrecy laws in both the taxation of savings and anti-fraud dossiers that had been introduced by the EU and in the Schengen Agreement, which Switzerland wished to join. However, the particular interests of the banks and their resistance to EU legislation on money-laundering and other issues have contributed to the breakup of negotiations on an agreement on services – much to the chagrin of the insurance sector and others.

The current state of affairs

The current framework of bilateral treaties with its 20 main and around 100 secondary agreements has significantly reduced the pressure on Switzerland to join the EU on economic grounds. While full access to the Single Market has not been realized, the bilateral track allows Switzerland to be selective in its cooperation with the EU in a way that has enabled the country to preserve its independent positions in important matters of economic and foreign policy. Since the bilateral agreements are genuine intergovernmental treaties, Switzerland has also managed to preserve its institutional independence.

In its Europe Report 2006, the Federal Council decided after a sober assessment of European policy options that, while it would refrain from withdrawing its suspended membership application, it would only regard EU membership as a "longer-term option" instead of a "strategic goal" as in the 1990s. At the same time, it argued that Switzerland had focused too strongly on the question of institutional

membership in the EU during the 1990s while neglecting a debate on the best possible approach to "preserving national interests". It thus signaled for the first time that EU membership was not an option for Switzerland in the mid-term.

Today, the main priority of the Federal Council is the efficient implementation of the existing treaties. Some of the agreements such as Schengen have yet to be enacted, while others require constant adaptation or renewal. Furthermore, Switzerland would like to expand the bilateral framework, and the Federal Council in March 2008 identified seven new topical areas, thus indicating its desire for cooperation with the EU in an increasing number of fields.

It is notable that Switzerland is now also aiming for the first time to conclude an agreement with the EU covering foreign and security policy (the "second pillar" of the EU). An Administrative Agreement with the European Defense Agency aims to facilitate participation in EU armaments cooperation. Also, it is hoped that a framework agreement will reduce the administrative effort involved in Swiss participation in civil and military peace missions in the context of European Security and Defense Policy (ESDP). However, Switzerland is still likely to be less willing to cooperate with the EU on foreign and security policy in the future, compared to other issues such as domestic security and particularly economic cooperation. While the Swiss Defense Ministry for reasons of domestic politics is wary of formulating a clear strategy for cooperation with the EU, the Foreign Ministry in addition is motivated by a desire to pursue a niche foreign policy.

How sovereign?

Even if bilateralism has undisputed merits for Switzerland today, its longer-term sustainability and usefulness can by no means be taken for granted. In particular, questions remain over the balance sheet of sovereignty and the domestic and foreign-policy vulnerabilities associated with the bilateral approach.

The degree of factual sovereignty of Switzerland as a non-member of the EU is declining. In view of its economic dependency on the European market, Switzerland has been forced for two decades to adapt its legislation more and more to EU laws without being able to influence the development of the latter. The instances of "autonomous duplica-

tion" (*autonomer Nachvollzug*) or unilateral adaptation of Swiss law to EU law without a legal basis cannot be quantified, but are significant. The bilateral agreements also oblige Switzerland increasingly to adapt community law. Although most of the agreements are static in nature, the Federal Council is in fact often forced to accept new EU regulations to secure the implementation of the agreement in question. In general, the EU is increasingly unwilling to negotiate special solutions with third countries for topics on which it has painstakingly elaborated regulations that are acceptable for all 27 of its member states. Swiss efforts to work out arrangements on the basis of mutual recognition of the equivalence of respective laws frequently meet with resistance in Brussels.

Despite widespread rhetoric on self-determination, the factual constraints have increased in Swiss policy towards Europe. If the Swiss should reject the prolongation of the agreement on the free movement of persons, the other agreements within the Bilateral I set of treaties would also be in jeopardy. Neither would the EU be able to accept a Swiss refusal to extend the free movement of persons to Bulgaria and Romania, which is why the insistence of some right-wing parties to carry out two separate popular referenda on these topics insinuates a greater degree of popular sovereignty than Swiss voters can de facto command. Switzerland must also accept new legislation under the Schengen Agreement (around 50 new acts of legislation since 2004 on issues such as biometric identification and external border control) or risk the dissolution of its association with this treaty. Switzerland's enlargement contribution to support the new EU members in Eastern Europe, often described as "voluntary" by the government, is regarded by Brussels as a simple reciprocal deal in return for privileged status. Moreover, even if Switzerland should manage to defuse the current dispute over taxation by "autonomous" measures as it intends to do, it would hardly be able to conceal the factual limitations of its freedom of action.

Undoubtedly, Switzerland would also only have limited influence on the development of the *acquis communautaire* as an EU member. It should be noted, however, that due to the formation of alliances and the principle of unanimity in several important matters, small states within the EU have a degree of leverage that often exceeds their actual weight. It is ultimately a matter of individual judgment at which point Swit-

zerland's self-determination would be enhanced through shared sovereignty in the framework of EU membership compared to the bilateral approach.

Vulnerabilities of bilateralism

At the domestic level, the bilateral approach is particularly exposed to imponderable developments due to the principle of direct democracy in Switzerland. Referenda on expanding the free movement of persons to new EU member states will always be accompanied by emotional debates. In times of growing unemployment, the strong increase of foreign employees might stoke Swiss skepticism towards the rest of Europe. The projected free trade in agricultural products with the EU could also trigger new defensive reflexes towards Europe.

At the same time, the continuation of the bilateral track also depends on the goodwill of Brussels. The EU has so far supported the bilateral approach in the expectation that it would bring Switzerland closer to accession. Since the opposite has been the case, the EU might be less prepared to make concessions in the future. In particular, some of the new EU members, who have undergone a great deal of concessions in order to be eligible for membership and whose relations with Switzerland are not as close as those of the Western European EU founding members, are rather skeptical towards the Swiss *Sonderweg*.

Because of its occasionally harsh rhetoric and its principled legalistic argumentation in the tax dispute, Switzerland has forfeited some sympathy in Brussels for the "special case" it so often pleads. For example, on its website on EU policies towards Switzerland, the Commission criticizes the fact that Berne claims privileged access to the Single Market while simultaneously continuing to pursue niche policies that are damaging to the EU, such as its taxation regime, and trying to secure the comparative advantages of non-membership, which it considers hardly acceptable politically. Even if the EU has many voices and if Commission President Barroso as well as a number of member states are certainly well disposed towards Switzerland, the EU's pressure on Switzerland to adapt to the *acquis communautaire* seems to be increasing as the intensity of the bilateral relations grows.

In order to enhance the predictability and legal security of the bilateral approach, and in order to be able better to absorb negative blowback from topic-specific conten-

tious issues, Switzerland has suggested to the EU the conclusion of a political framework agreement intended to enhance the overall political coordination of the current cumbersome administration of treaties and to streamline decision-making processes. Additionally, Switzerland believes that such a framework could serve to institutionalize a political dialog in which joint challenges could be discussed and the respective positions in matters related to the UN or the WTO could be clarified. The EU has so far remained reserved as far as this idea is concerned. Such a framework would mainly be of interest to Brussels if it implied a standardized acceptance by Switzerland of new EU regulations into existing treaties. The idea of political dialog has also met with varying responses in Brussels, with some skeptics pointing to Switzerland's unilateralist leanings in foreign policy.

Uncertain prospects

Hidden amidst a plethora of technical deliberations, the Europe Report 2006 includes the core observation that a successful continuation of bilateralism depends on the degree of co-determination in relations with the EU and the freedom of maneuver for Switzerland's own policies, the EU's continuing support for the bilateral approach, and the economic framework conditions. Since all of these aspects can be subject to change, a constant political debate on the sustainability and usefulness of the bilateral track is indispensable. The balance sheet of sovereignty is already an ambiguous one today. The EU still seems benevolent overall towards bilateralism, but has become more critical of Swiss niche policies lately. If these niches should one day prove to be no longer feasible, the question of EU accession can be expected to gain new traction. Finally, even if the economic pressure to act should remain at a low level, the issue of Switzerland's strategic positioning within Europe should not be prematurely regarded as settled. Since an increasing number of challenges can only be met in a European-wide framework, Switzerland's aloofness from EU institutions and its modest engagement in policy fields such as ESDP may make an effective protection of its interests increasingly difficult in the longer term.

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