Switzerland's association with the EU

Assessment of the current situation and future prospects

## 0 Overview

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## 1 Some historical notes on the developpement of swiss bilateralisme with the EU

Switzerland has close relations with the European Union on the political, economic and cultural levels. These relations are governed by a whole structure of bilateral agreements concluded over the years between Switzerland and the EC/EU (on the whole at about 120 agreements).

The main stages of the development of these treaties were:

* the Free Trade Agreement of 1972 (approval by referendum; 72.5% of yes)
* the Insurance Agreement of 1989 (approval by parliament)
* EEA of 1992 (refusal by referendum; participation 78.7%; 49.7% yes of the votes, but only 6 2/2 yes of cantons)
* Bilateral Agreements I of 1999 (accepted in a referendum; 67.2% of yes)
* Bilateral Agreements II of 2004 (accepted in a referendum; 54.6% of yes)

In the development of the approval rates you can see, that the Swiss people accepts economic liberalisation but is less enthousiastic about institutional commitments. The bilateral Agreements II are in fact the treaties which in that respect go most far, as we will see. The approval of economic liberalisation can be explained by the fact that the swiss economy ist quite competitive. Competitive countries are generally in favour of free trade agreements. This is stressed by the fact that the Swiss economy is very export orientated as it is a rule for small and competitive countries and that the Swiss economy is very integrated into the economy of the surrounding EU-states.

Some indicators for these claims: exports per head 19 100 (estimation for 2010 in Euro; 63% into the EU-27 countries). Imports per head 17 000 (82% from the EU-27 countries). In both directions Germany by far, Italy and France to a lesser degree are the most important countries.

## 2 What is covered by the bilateral agreements and what is not covered?

The Free Trade Treaty of 1972 establishes a Switzerland-EU free trade zone for industrial products. It prohibits any form of customs duty or quotas in trade in industrial products.

The Insurance Agreement grants reciprocal freedom of establishment to insurance companies (excluding life insurance)

The seven bilateral agreements of 1999 (Bilaterals I) are mainly liberalisation and market opening agreements. The following topics are concerned:

* Free movement of persons
  + - * 1. The agreement provides for the equal treatment of Swiss and EU citizens in taking up residence and work
        2. It regulates reciprocal, gradual and controlled opening up of labour markets (transitional arrangements)
        3. Recognition of professional diplomas
        4. Coordination of the social security systems
        5. “Accompanying measures” were introduced to protect employees (ensuring compliance with pay and working conditions in Switzerland)
* Technical barriers to trade
  + - * 1. for most industrial products: reciprocal recognition of conformity ratings (checking of product regulations, e.g. in connection with consumer or environmental protection)
* Public procurement markets
  + - * 1. extends WTO rules on public procurement markets
        2. a new feature is that larger tenders by municipalities or licensed entrepreneurs are subject to compulsory tendering
* Agriculture
  + - * 1. The agreement simplifies trade in agricultural products between Switzerland and the EU by reducing customs duties and eliminating non-tariff barriers to trade
        2. It partly liberalises the agricultural market (free trade for cheese from 1 June 2007)
* Civil Aviation
  + - * 1. The agreement regulates the reciprocal access to aviation markets for airlines
* Overland transport
  + - * 1. The agreement regulates the introduction of a vehicle tax and the increase of the maximum weight limit for trucks to 40 tonnes
        2. It should help to shift freight crossing the Alps from road to rail
        3. It coordinates Swiss transport policy with that of the EU in order to meet the demands of increasing mobility and protection of the environment
* Research
  + - * 1. The agreement covers the participation of Swiss research (universities, companies, individuals) in EU research programmes

The bilateral treaties I contained a « guillotine clause » which implies that the seven treaties are canceled if one of the treaties is canceled.

The nine bilateral agreements of 2004 (Bilaterals II), which strengthen cooperation in the economic sphere and extend cooperation to include such political areas as security, asylum (Schengen and Dublin), environment and culture. More concretely :

* Schengen
  + - * 1. The agreement facilitates travel by abolishing identity checks at the Schengen internal borders
        2. It pretends to guarantee security thanks to closer cross-border cooperation between the police and justice systems, inter alia through the Schengen Information System, SIS (August 2008)
        3. It extends the area of application of the Schengen visa (valid for 3 months) to Switzerland (especially an advantage for Tourisme)
* Dublin
  + - * 1. The agreement coordinates national responsibilities for asylum procedures
        2. It prevents multiple applications in different countries
        3. It gives access to the EURODAC fingerprint data bank
* Taxation of savings
  + - * 1. The agreement permits cross-border taxation of the savings of individuals liable to taxation in the EU
        2. withholding tax; increases on a phase basis to 35%(2009 = 20%)
        3. revenue is shared: 75% EU states / 25% Switzerland
        4. voluntary exchange of information or on request in cases of tax fraud
        5. no taxation on dividends or license-fee payments between associated companies
* Processed agricultural products
  + - * 1. The agreement eases trade in processed agricultural products (= food such as confectionery, noodles, etc)
        2. It permits duty-free export of Swiss food industry products
* MEDIA
  + - * 1. The agreement regulates the participation of Swiss film-makers in the EU's MEDIA programmes
        2. “MEDIA 2007” primarily supports the distribution and marketing of European films across national and linguistic borders. Budget (2007-2013): euro 755 millions Euro

The EU wanted to inforce by the MEDIA treaty the common application of TV-rules on advertisment for alcohol and on religious and political TV-Spots. In subsequent negociations, the interdiction of religious and political advertisment as well as of advertisment for strong alcohols and alcopops could be maintained. Spots for beer and wine would be permitted.

* Environment
  + - * 1. The agreement regulates Switzerland's participation in the European Environment Agency. The Agency collects and analyses data on the environmental situation, and advises the European Commission on environmental policy
* Statistics
  + - * 1. The agreement adjusts Switzerland's standards of statistical data collection to those of Eurostat, the statistics office of the European Communities
        2. It provides access to a European-wide basis of comparable data on economic, political and social questions
* Fight against fraud
  + - * 1. The agreement improves cooperation in the fight against smuggling and other offences relating to indirect taxes (customs, VAT, consumer taxes)
* Pensions

1. The agreement abolishes double taxation on the pensions of former EU officials living in Switzerland.

* Education, vocational training, youth - echange of letters

1. The agreement regulates Switzerland's participation in the EU’s education programmes
2. It tries to improve the offer and mobility in education and vocational training

Some further treaties concern the following subjects:

Customs facilitation and security 1990 and 2009

1. The agreement regulates the controls and formalities for goods transport at the border between Switzerland and the EU
2. It aims to simplify customs processing as much as possible

Europol 2004  
Eurojust 2008  
Education, vocational training, youth 2010

## 3 Institutional framework for the agreements, including how the agreements change.

The institutional arangments for Free Trade Treaty of 1972 are quite typical for most of the bilateral treaties of Switzerland with the EU. That’s why a closer look to them is worth while.

For the free trade treaty of 1972 a joint committee was established, responsible for the administration of the agreement and his implementation. For this purpose, the committee can make recommendations and take decisions in the cases provided for in the agreement. These decisions have to be put into effect by the contracting parties in accordance with their own rules. The joint committee consists of representatives of the EU (then the EC), on the one hand, and of representatives of Switzerland, on the other. The joint committee has to act by mutual agreement. Each contracting party has the right to preside in turn over the joint committee. The chairman has the duty to convene meetings of the joint committee at least once a year in order to review the general functioning of the agreement. The joint committee has, in addition, to meet whenever special circumstances so require, at the request of either contracting party.

Where a contracting party considers that it would be useful in the interests of the economies of both contracting parties to develop the relations established by the agreement by extending them to fields not covered thereby, it could submit a reasoned request to the other contracting party. The contracting parties can instruct the joint committee to examine this request and, where appropriate, to make recommendations to them, particularly with a view to opening negotiations.

The agreements resulting from these negotiations will be subject to ratification or approval by the contracting parties in accordance with their own procedures.

Either contracting party may denounce the agreement by notifying the other contracting party.

Whereas the institutional arangements for this treaty are quite typical for most of the bilateral treaties of Switzerland with the EU, there are nevertheless some exceptions. In the treaty on aviation in the section about „competition and aids“ Switzerland had to take over existing EU-legislation and the jurisdiction of the Court of the EU. The instances of the EU got the competences of control – and Switzerland got the right to take part in these instances – without voting right. In a common committee, the "Joint Committee", questions with respect to other questions of the treaty should be decided by mutual agreement. There was no serios objection to this point in Switzerland as the treaty on aviation was considered as purely technical in character.

A second – more controversial - exception to the ordinary treaties is comprised in the Schengen treaty : The provisions of the Schengen acquis as they apply to the Member States of the EU have to be implemented and applied by Switzerland. If these provisions are replaced and/or developed or if provisions are adopted persuant to the Schengen Convention, they have to be implented and applied by Switzerland. Again a mixed committee is installed. A representative of the Swiss Government has the right to make suggestions in the committee. The Commission or any Member State can consider such suggestions with a view to making a proposal or taking an initiative, in accordance with the rules of the EU for the adoption of an act or measure of the EU. The adoption of new measures is reserved to the competent institutions of the EU. Such acts and measures have to enter into force simultaneaously for the EU, its Member States and Switherland, unless these acts or measures explicitly state otherwise.

If the contents of such an act or measure can become binding on Switzerland only after the fulfilment of constitutional requirements (mainly the possibiltiy to have a referendum), Switzerland has to inform the Council and the Commission. Where a referendum ist not demanded by the population, notification of the take over of the regulations shall take place as soon as the referendum deadline expires. If a referendum is required, Switzerland shall have a maximum of two years from the date of the Councils’s notification within which to make its notification of the take over of the regulations. From the date laid down for the entry into force of the act or measure for Swittzerland and until is has given notification that the constitutional requirements have been met, Switzerland has to, where possible, implement the act or measure in question on a provitional basis.

*Remark on Swiss democratic instituitions* :

A) If the parliaments have a project to change the Swiss Constitution, there is a obligatory referendum. The majority of the people (people who participate at the referendum) and the majority of the cantons is required.

B) If 100000 citizens sign a « popular initiative » there has to take place a referendum. Popular initiatives change the constitution. The majority of the people (people who participate at the referendum) and the majority of the cantons is required to accept the initiative.

C)If 50000 citizens sign a « referendum » there hat to take place a referendum on a law decided by the parliament. The majority of the people (people who participate at the referendum) is required to refuse the law.

D) International treaties are subject to a obligatory referendum (both majorities) in case of joining international organisations for collective security and supranational Communities. (the EEA was subject to an obligatory referendum)

Referendum (50000 signatures) and simple majority, if the treaties are without temporal limit and cannot be canceled. The joining of international Organizationes and treaties containing important legal articles and which necessitate the making of federal laws. (Bilaterals I and II, Schengen/Dublin were subject to this kind of referendum)

The treaty demands further a common practice of application of the rules. Switzerland has to inform the Joint Committee on the application of the rules. If there should be a divergent practice of application, the EU can start the mechanisme to end the treaty. This mechanisme can be startet futher by the following facts : the notification of Switzerland not to take over a development of the Schengen-acquis or if Switzerland doesn’t carry out the notification of such an intention. The Not-notification of the take over of the new rules after the referendum deadline or the two years dead-line in case of a referendum. Not-application of the measures on a provitional basis in case of referendum. Enough important divergences of jurisdiction of Swiss and EU-courts.

## 5 Some recent problems with the bilateral treaties

* The EU-Council of 2008 pretends that Switzerland has not fully incorporated the acquis in the field of the Agreement on Free movement of persons, « a factor which jeopardizes the proper functioning of this agreement to the detriment of EU citizens and companies, in particular as regards provisions on posted workers and the rules on prenotification for transborder provision of services ». (<http://register.consilium.europa.eu/pdf/en/08/st16/st16651-re01.en08.pdf>). In fact, Switzerland demands, that in order to work in Switzerland, citizens of the EEA have to announce their activities 8 days before they start to work. The EU claims this not to be compatible with the treaty on the Free movement of persons. The discussions are ongoing.
* The EU-Council of 2008 pretends that the agreement on free trade and competition rules of 1972 implies that certain cantonal tax regimes applied by Switzerland to its companies, are to considered to constitute state aid incompatible with the agreement. The Council calls on Switzerland to abolish these tax incentives and also to carefully intervene to avoid taking internal measures, such as certain aspects of the New Swiss Regional Policy, which would be incompatible with the Agreement and may have the effect of distorting competition between EU border regions and Switzerland. Switzerland denies that the case is covered by the treaty of 1972.
* There are some complaints of Switzerland, that the public tendering of Italy disadvantages Swiss enterprises. The EU Commission studied the complains and started in March 11 a treaty violation procedure against Italy. Further, Italy put Switzerland on different black lists with respect to taxation.

## 5 The recent EU initiatives for the evaluation of the agreements

The EU-Council of 8th december 2008 criticised in the “Council conclusions on EU relations with EFTA countries” that Switzerland would not take over in the domain of the bilateral treaties wholly the developments of the EU legislation » and stresses his position, that “the treaties requires a homogenous and simultaneous application and interpretation of the constantly evolving acquis”. By this, the Council expressed his opinion, that Switzerland should take over the developments of EU-legislation in the field of the treaties - after the conclusion of the treaties and without formal participation (with voting rights) in the elaboration of this legislation. This statement had not a lot of political impact in Switzerland. Last summer, EU-politicians renewed this position – with larger impact on the discussion in Switzerland. In July 2010, European Council President Herman van Rompuy warned Switzerland that it must take up the EU's legal framework – the acquis communautaire – if it wants to access the market. On 19th July 2010 Barroso, the president of the EU-Commission, said „The bilateral treaties between the EU und Switzerland have become complex, difficult to manage“. The Ambassador of the EU in Switzerland, Michael Reiterer expressed the view: „It should not give a EU-legislation and a part a second EU-legislation for third countries as Switzerland (NZZ, 7th July 2010, p. 9)» - as if international treaties were part of the EU-legislation! Following these pressures the European Commission and the Swiss government established a working group to explore the options for simplifying bilateral relations.

On 14 December 2010, the EU Council of foreign affairs adopted new conclusions on relations with EFTA countries, including Switzerland. They state that «In full respect of the Swiss sovereignty and choices, the Council has come to the conclusion that while the present system of bilateral agreements has worked well in the past, the key challenge for the coming years will be to go beyond that system, which has become complex and unwieldy to manage and has clearly reached its limits. As a consequence, horizontal issues related to the dynamic adaptation of agreements to the evolving acquis, the homogeneous interpretation of the agreements, an independent surveillance and judicial enforcement mechanisms and a dispute settlement mechanism need to be reflected in EUSwitzerland agreements. (http://www.consilium.europa.eu/uedocs/cms\_data/docs/pressdata/EN/foraff/118458.pdf)

## 6 Response by Swiss politicians and the swiss people to the demands of the EU and the political situation in Switzerland, regarding the EU relations

The Swiss Government retorted that the agreements are working well. Problems concerning interpretation of agreements can as a rule be discussed between the States concerned or within the framework of the Mixed Committee. The already mentioned working group to explore the options for simplifying bilateral relations is already working at the possibility of dynamically adjusting the agreements to comply with new EU legislation, how to ensure the coherent application and consistent interpretation of future agreements, and the development of an effective dispute procedure. The Swiss Government says to share these aims with the EU. But « any solution must respect the sovereignty of both parties and the efficient operation of their institutions ».

There are tendencies in the Swiss Government to be ready to talk about these institutional matters in the context of negociations of « bilateral treaties III ». The EU stresses until now the position that they only want to talk about futher issues if the institutional matters are solved before. (Some people think that the recent EU-pressure on Switzerland with respect to these institutional matters is the result of an increasing interest in the Swiss way of relations with the EU – especially in Norway, but as well in other countries even in the EU. Taking over the EU view on institutional matters – that is an automatic take over of EU regulation - would in fact signify an arrangment very near to the EEA).

Among all the political parties, economic associations and the trade unions, the demand of the EU of an « automatical take-over » of new EU-regulation is clearly refused. The trade unions and their political allies fear, that the accompanying measures on the free movement of persons would be threatend. The trade unions wouldn’t have backed the free movement of persons without these measures.

The associations of the enterprises as the Swiss Economy fear for their influence on economic matters, especially on taxation and other regulations.

The Swiss People has demonstrated by quite a lot of referenda, that for it the only suitable way is the bilateral way. It refused joining the EEA, it refused a popular initiative that demanded an opening of negociations for joining the EU. It accepted in several referenda all the bilateral treaties and has backed up by referendum a contribution to reduce social and economic disparities in the enlarged EU and, in 2010, the scope of the contribution was extended to include Romania and Bulgaria. The Swiss people wants the bilateral way and is ready to pay for it – for instance as well by constructing tunnels through the alps.

In recent opinion polls, only 16.5% of the swiss population would like to join the EU. 48.2% are opposed by principle and 25.3% prefer to wait and see. Among people being in favor of joining, there is a majority of men, mainly richer people and people older than 35 years. With respect to EEA matters are less clear. 44% Prozent would be in favour, 42% against and 14% undecided. These 14% would tend towards a no – in majority. Anyway, it is very improbable, that that project would find the majority of the cantons.

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## Useful links

Topics and percentages of participation, yes votes in swiss referenda

<http://www.swissvotes.ch/votes/index/list?listmod=list>

Official Swiss Home-page about the Bilateral agreements Switzerland-EU

<http://www.europa.admin.ch/themen/00500/index.html?lang=en>

Official Swiss Home-page about the take over of EU-regulation

<http://www.bk.admin.ch/themen/lang/05225/index.html?lang=de>

(<http://www.bk.admin.ch/themen/lang/05225/05233/index.html?lang=de>)

Official reports of the Swiss goverment on the politics of European Integration

<http://www.europa.admin.ch/dokumentation/00437/00460/index.html?lang=de>

Texts of the agreements

<http://www.europa.admin.ch/dokumentation/00438/00464/index.html?lang=en>

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