

Switzerland's relations with the European Union

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Table of contents

1. <i>Introduction: Background on Switzerland's relations with the EU</i>	2
2. <i>Bilateral agreements: Substance and institutional arrangements</i>	3
2.1. Phase 1 (1956-1971): Tentative beginnings	3
2.2. Phase 2 (1972-1992): From a shallow FTA to EEA rejection	4
2.3. Phase 3 (1993-2000): 'Bilaterals I' package – access to (and participation in) the internal market	5
2.4. Phase 4 (2002-2004): 'Bilaterals II' package – beyond the internal market	6
2.5. Phase 5 (since 2005): Further bilateral cooperation and pending negotiations	9
2.6. Phase 6 (2014-21): Politicization of the draft Institutional Framework Agreement	10
2.7. Phase 7 (since 2022): Exploring a way out of the impasse	11
3. <i>The 'Swiss model' compared to the EEA Agreement</i>	12
3.1. Functional scope of Swiss-EU relations	12
3.1.1. Comparison of sectoral bilateralism and the EEA	12
3.1.2. Level of integration and linkages between the 'Bilaterals'	14
3.2. Governance of Swiss-EU relations	15
3.2.1. The characteristics of Swiss-EU institutional relations	15
3.2.2. Differences and commonalities with the EEA Agreement	16
3.2.3. Different understandings of 'two-pillar' structures	19
4. <i>Key challenges in Swiss-EU relations</i>	20
4.1. Legal dimension: Managing regulatory differences	20
4.2. Economic dimension: Maintaining market access	22
4.3. Political dimension: Coping with Swiss Euroscepticism	24
4.3.1. Specifics of the Swiss political system	24
4.3.2. Positions of political parties regarding Swiss-EU relations	25
4.3.3. Attitude of the Swiss population towards European policy	27
5. <i>Reviews of the 'Swiss model' and alternative options</i>	30
6. <i>Conclusion: Future of the 'Swiss model'</i>	34
References	36
Annexes	41

1. Introduction: Background on Switzerland's relations with the EU

Switzerland's relations with the European Union (EU) are close but also challenging. Since the founding of the European Communities in the 1950s, the Swiss government has been pursuing a sectoral approach to cooperation. After the signature of the Agreement on a European Economic Area (EEA) between the EU and the countries of the European Free Trade Association (EFTA) in May 1992, the Swiss Federal Council submitted an application for membership of the European Communities. This bid for accession followed the applications of other EFTA countries: Austria in July 1989, Sweden in July 1991, Finland in March 1992 and finally Norway in November 1992. However, the rejection of the EEA Agreement in a mandatory referendum in December 1992 – by a narrow majority of 50,3% of the votes of the people and a clear majority of the cantons – led to a 'freezing' of the Swiss membership bid, which was formally only withdrawn in July 2016. No other third country has concluded as many agreements with the EU as Switzerland. Of the more than 100 agreements in force, at least 20 can be considered major bilateral agreements (see Table 1 in the Annex). In addition, Switzerland has since 1988 'autonomously' adapted its law to that of the EU in order to ensure the greatest possible compatibility (Oesch and Brugger 2023). Going a step further, in 2010 Switzerland unilaterally introduced the *Cassis de Dijon* principle, which means that products which are lawfully placed on the market in the EEA can, with a few exceptions, also be sold in Switzerland, even where the relevant Swiss technical regulations and standards are not met (ibid., 58-60). Moreover, after the abrupt termination of the Institutional Framework Agreement before its signature in May 2021, the Federal Council launched a review of the Swiss legislation implementing the bilateral agreements with the goal to eliminate inconsistencies with EU law (ibid., 59-65). Switzerland's alignment to EU law is thus both treaty-driven and market-driven, and it has increasingly become fraught with political challenges.

Switzerland is not only geographically surrounded by the EEA, sharing history, languages, culture and values with its neighbours, but its economy is also tightly integrated with the internal market. The country has traditionally pursued free trade in industrial goods while maintaining a rather protected agricultural sector. Despite this like-mindedness and strong economic (inter)dependence, Switzerland remains a 'reluctant European' (Gstöhl 2002). The reasons can be found in specific characteristics of the Swiss history and political system. On the one hand, it is marked by a nation-building history closely tied to a fight for independence, similar to Norway, and a long, strong tradition of permanent neutrality, which dates back to the 16th century, and helped the country escape the religious wars between Catholics and Protestants. On the other hand, federalism and direct democracy – institutionalized in the Federal Constitution of 1848 but with much older roots – and an ethno-linguistic cleavage characterize Swiss politics. A great consensus prevails in Swiss society that these features belong to their historically grown identity (Feller et al. 1992, 39).

Neutrality has been reinforced by a traditional suspicion of foreign influence, encapsulated in the often-quoted fear of 'foreign judges', especially in the German-speaking part. In their famous oath taken on the Rütli Meadow in 1291, which came to symbolize the birth of the Swiss Confederation, well-established communities of largely free peasants swore that "we shall accept no judge nor recognise him in any way if he exercise his office for any reward or for money or if he is not one of our own and an inhabitant of the valleys" (Steinberg 1976, 13). The spectre of 'foreign judges' has since the late 1960s repeatedly played a role in Swiss political discourse, especially with regard to European integration (Kreis 2019).

In contrast to Norway with its strong centre-periphery cleavage, the dominant societal fragmentation in Switzerland has mainly been ethno-linguistic. The results of national referenda have often reflected this (Kriesi et al. 1996), and although the importance of religious or urban-rural cleavages for voting behaviour has been declining, differences based on language have largely remained over time (Goldberg 2017). In addition, European integration and immigration have restructured political conflict

in many countries, including Switzerland, by pitting the winners of globalization who favour integration against the losers who seek demarcation (Kriesi et al. 2012, 73).

For decades, Swiss governments had insisted that membership in a supranational community would constrain federalism and direct democracy and call the credibility of neutrality policy into question (e.g. Federal Council 1960, 859-860; Federal Council 1988, 121-122). This narrative changed only with the end of the Cold War, when neutrality was basically reduced to military neutrality in armed conflicts (Federal Council 1993, Annex, 82-88), and the federal, direct democratic system was interpreted as adaptable to EU membership without endangering national identity (Federal Council 1992, 23-27, 114-123). In 1999, the Federal Council (1999, 319) even stated that “joining the EU would allow Switzerland to bring its identity and specific cultural characteristics to bear, where decisions affecting it are taken”. However, so far, this call was not sufficiently convincing to overcome the reluctance of many domestic actors. As set out below, popular votes have played an important role (see also Table 2 in the Annex).

The next section introduces the development, scope and contents of the Swiss bilateral approach to European integration. Section 3 then compares the ‘Swiss model’ to the EEA Agreement. Section 4 highlights some key legal, economic and political challenges of Switzerland’s bilateral approach in the past decade. Section 5 assesses how the sectoral bilateralism and alternative options have been viewed in Switzerland, and the conclusions briefly address the future of the ‘Swiss model’.

2. Bilateral agreements: Substance and institutional arrangements

The development of the bilateral relations between the EU and Switzerland can be divided into seven phases: from the beginnings in the 1950/60s to the 1972 Free Trade Agreements (FTAs), the ill-fated EEA referendum twenty years later, the subsequent first and second packages of bilateral agreements, the few negotiations launched since 2005 which largely ended in a deadlock, including those on the Institutional Framework Agreement, and the current attempt to launch new negotiations (on the major bilateral agreements, see Oesch 2018; Mazille 2018, 687-715).

2.1. Phase 1 (1956-1971): Tentative beginnings

In 1948 Switzerland was one of the 17 founding members of the intergovernmental Organization for European Economic Cooperation (OEEC). However, like the United Kingdom (UK) and the Nordic countries, Switzerland had no interest in joining the negotiations that led to the creation of the supranational European Coal and Steel Community (ECSC) by France, Germany, Italy, the Netherlands, Belgium and Luxembourg in 1951. Instead, it concluded in 1956 a bilateral consultation agreement with the ECSC and an agreement on railway tariffs for the transit of coal and steel through Swiss territory. Both are no longer in force since the ECSC ceased to exist in July 2002.

In 1957 the European Economic Community (EEC) and the European Atomic Energy Community (Euratom) were created by the six ECSC countries. Switzerland considered EEC membership neither politically nor economically desirable. It regarded the EEC’s supranationality and political goals as well as its *dirigisme* and interventionist policies with suspicion. Instead, the Federal Council, together with the Nordic countries and Austria, supported the British initiative for a wider intergovernmental European free trade area in the framework of the OEEC (Maurhofer 2001). This free trade area was negotiated in parallel to the Rome Treaties but finally failed in 1958. In response, the ‘Outer Seven’ (Austria, Denmark, Norway, Portugal, Sweden, Switzerland, and the UK) negotiated an industrial free trade area among themselves. The 1960 Stockholm Convention that established EFTA also aimed to facilitate closer economic cooperation between the OEEC members. EFTA would help mitigate the effects of trade diversion from the EEC. Finland became an associate member of EFTA in 1961 (and a full member in 1986), and Iceland joined in 1970.

Nevertheless, in 1961/62 the United Kingdom, Denmark, Ireland and Norway applied for EEC membership while the other EFTA countries – including Switzerland – were interested in an association (Zbinden 2006). However, the negotiations ended with the veto of French President de Gaulle against the British membership bid. In 1967, a second application met the same fate even before the negotiations could get off the ground. Denmark, Ireland and Norway did not pursue membership further without Britain, and the attempts of the other EFTA countries to develop bilateral arrangements with Brussels were halted as well. Any trade negotiations between the EEC and individual EFTA countries were basically relegated to the General Agreement on Tariffs and Trade (GATT) – which Switzerland only joined in 1966 (provisionally in 1958). In 1967 Switzerland and the EEC concluded an Agreement concerning trade in products of the clock and watch industry.

The long-awaited first enlargement of the European Communities became possible only after President de Gaulle's resignation in 1969. Negotiations with the UK, Denmark, Norway and Ireland, whose membership applications of 1967 were still pending, opened in 1970. It was agreed that no new trade barriers should be set up between the EFTA countries joining the European Communities and those remaining in EFTA.

2.2. Phase 2 (1972-1992): From a shallow FTA to EEA rejection

The European Commission proposed to negotiate bilateral free trade agreements for industrial goods, rather than a multilateral agreement or an inclusion in its newly established customs union. This minimized the constraints on its own policy, which was *vice versa* also in the Swiss interest. Each EFTA country signed two treaties with the enlarged Communities, one covering most industrial products, the other relating to goods falling under the ECSC (the latter is no longer in force). After the Norwegians rejected accession, the country also concluded such FTAs (Wahl 1988). A large majority of the Swiss people and all cantons approved the FTAs in a referendum. In 1978 Switzerland also signed a cooperation agreement with Euratom in the field of controlled thermonuclear fusion and plasma physics, which was later replaced and complemented by other agreements.

The liberalization timetables in the bilateral FTAs largely coincided with those in the accession treaties. Except for Finland's agreements, an evolutionary clause allowed each contracting party to submit requests to expand the scope of cooperation to new fields. The bilateral agreements were overseen by a Joint Committee, acting by consensus. Disputes had to be settled by negotiation. The Swiss side was satisfied with the contents of the FTA, even though it did not succeed in introducing provisions on arbitration, public procurement and non-tariff barriers to trade, or cooperation on monetary, industrial, regional or environmental matters (Federal Council 1972). On the other hand, it was pleased that the questions of agriculture and migrant workers remained excluded.

In spring 1984, the first joint EC-EFTA ministerial meeting took place in Luxembourg to celebrate the successful implementation of the FTAs. This achievement and the European Communities' internal market project triggered the so-called 'Luxembourg Process' (Hurni 1988). It marked a transition from a bilateral to an increasingly multilateral relationship between the two groups of countries as well as a shift from the elimination of tariffs to non-tariff barriers and issues beyond free trade. Cooperation under this umbrella eventually covered around thirty areas and it pushed the EFTA countries to reinforce their own cooperation as well.

In 1987, the European Commission made clear that the expanding EC-EFTA relations should be governed by three basic principles (De Clercq 1987): (1) the priority of the Community's internal integration; (2) the preservation of the Community's decision-making autonomy; and (3) the maintenance of a balance of benefits and obligations. The latter includes preserving the integrity of the internal market by avoiding 'cherry-picking', ensuring homogeneity and a level playing field. These

principles – to which the jurisprudence of the Court of Justice of the EU (CJEU) added the autonomy of the EU’s legal order (Öberg 2020) – still hold, as the recent negotiations with Switzerland and the United Kingdom have shown.

The Swiss government only presented a first comprehensive report on its integration policy in 1988 (Federal Council 1988). It proposed a ‘third way’ between accession and marginalization in the form of an active, foremost sectoral and bilateral integration policy. By the late 1980s, Switzerland had concluded many sectoral bilateral agreements with the Communities. Noteworthy are in particular three agreements: the Framework Agreement for Scientific and Technical Cooperation signed in 1986, which allowed for project-based participation in EU research programmes; the 1989 Insurance Agreement that opened up the non-life insurance market by providing for reciprocal freedom of establishment; and the 1990 Agreement on the Carriage of Goods by Road and Rail which dealt with the inspections and formalities applying to goods traffic between the EU and Switzerland and coordinated cooperation at border posts (in 2009 replaced by the expanded Agreement on Customs Facilitation and Security). In the context of the EEA negotiations, the politically sensitive issue of Alpine transit had to be dealt with separately in a bilateral Agreement on the Carriage of Goods by Road and Rail and was signed at the same time as the EEA Agreement in 1992 (and which is no longer in force as its duration was limited).

Overall, the Luxembourg Process suffered from the sectoral piecemeal approach and the lack of an appropriate institutional framework, while Europe was witnessing major economic and political transformations. In January 1989 Commission President Delors launched the idea of extending the internal market to the EFTA countries by switching from a sectoral to a global approach of cooperation and by creating “a new, more structured partnership with common decision-making and administrative institutions” (Delors 1989, 17). If EFTA were to strengthen its own structures and speak with one voice, this new partnership could take the form of a ‘two-pillar system’. The Swiss government reacted very positively to Delors’ proposal, considering the EEA project as the crowning achievement of its pragmatic integration policy, misreading in particular the prospects for co-decision (Nell 2012, 76-82, 239-251, 277-289). Although the negotiation outcome more or less fulfilled EFTA’s expectations regarding the contents of the agreement, it was disappointing with respect to the institutional set-up (Gstöhl 1994). If the Community’s *acquis* serves as legal basis and its decision-making autonomy and the sole competence of the European Court of Justice have to be maintained, granting the EEA EFTA countries some influence on future common rules – let alone a real joint decision-making mechanism – while ensuring a homogeneous market are difficult to reconcile. Switzerland, a ‘hardliner’ among the EFTA countries in particular with regard to the institutional provisions, failed to ratify the EEA Agreement. Instead, the Swiss government asked the EU for a bilateral approach.

2.3. Phase 3 (1993-2000): ‘Bilaterals I’ package – access to (and participation in) the internal market

Bilateral negotiations finally began in late 1994 and took five years. They covered seven different issue areas: technical barriers to trade, research, public procurement, agricultural products, air and land transport, and the free movement of persons. By way of bilateral sectoral agreements, the Swiss government – which had initially submitted 15 negotiation topics – hoped to come close to EEA membership in substance. The bargaining process was fraught with challenges, especially regarding the liberalization of transit traffic and the free movement of persons. The European Union had made it clear from the outset that Switzerland could not pick and choose but had to take (or leave) the whole package deal, including the free movement of persons and agriculture as well as better access for EU trucks on Swiss roads. In other words, there was to be a ‘parallelism’ linking the ratification of the various sectoral agreements.

The EU demand to allow trucks of more than 28 tons for transit led to heated debates and several popular votes in Switzerland (Schwok 2021, 39-41). In 1992 a referendum was held on the construction of two new trans-Alpine railway lines and tunnels at very high costs. In February 1994 the Swiss voters and cantons accepted the 'Alps initiative', which aimed at shifting transit traffic through the Alps from roads to railways, and delayed the start of the negotiations since it seemed to put the 1992 transit agreement with the EU in question. The Swiss government needed to assure its partner that the initiative would be implemented in a non-discriminatory manner (Kriesi and Trechsel 2008, 178). In September 1998, a referendum against a federal law on a toll for heavy vehicles failed, clearing the way for an agreement on land transport.

The Agreement on Technical Barriers to Trade (or Mutual Recognition Agreement, MRA) ensures the mutual recognition of conformity assessments regarding products for which the EU has adopted technical regulations (harmonized sectors such as machinery, medical devices, toys or motor vehicles). It does not apply to non-harmonized sectors, where the *Cassis de Dijon* principle applies in the EU, which implies that any product lawfully placed on the market in an EU member state can also be marketed and sold in the other member states, and which Switzerland has unilaterally introduced in 2010. The Agreement on Trade in Agricultural Products improves mutual market access by granting tariff concessions, removing certain technical barriers and protecting the geographical indications for some goods.

The Agreement on the Free Movement of Persons gives Swiss and EU citizens the right to enter and reside in the contracting parties' territory, whether for an economic activity or not, and with the same working conditions. It includes the coordination of social security schemes and the mutual recognition of professional qualifications and was complemented by Swiss flanking measures against wage and social welfare dumping. Unlike in the EU and EEA, the freedom of establishment only applies to natural persons and the delivery of services is limited to 90 days per year. Since the Agreement on the Free Movement of Persons counts as a mixed agreement in the EU, it needs to be revised in case of every EU enlargement.

Since 1986 Swiss researchers could participate to varying degrees in multi-annual EU research framework programmes. In 2004 (and then again in 2007) Switzerland became a fully associated country with all rights and obligations, including representation in the various committees (6th and 7th Framework Programmes).

Finally, a 'guillotine clause' ensures that all seven agreements will come to an end if any one of them is terminated (except for the multi-annual agreement on research). From the EU's point of view, this was necessary in order to guarantee that the free movement of persons could not be the only agreement failing Swiss ratification. The Federal Council consulted widely all relevant political actors early on and concessions in the form of compensatory measures had to be made to various domestic actors to forestall their opposition by way of referendums (Kriesi and Trechsel 2008, 179). In May 2000, the Swiss electorate approved the seven agreements with a two-thirds majority. They entered into force in 2002, almost ten years after the rejection of the EEA Agreement. In the same year, a second series of sectoral consultations began.

2.4. Phase 4 (2002-2004): 'Bilaterals II' package – beyond the internal market

Switzerland was interested in cooperation in the fields of internal security and asylum policy, as well as on the 'leftovers' from the first round of negotiations such as statistics, environment, and education. The European Union, on the other hand, was eager to integrate Switzerland into its planned system of cross-border taxation of savings and to increase cooperation in the fight against fraud in the area of indirect taxes. Moreover, in view of its Eastern enlargement, the Union seized the opportunity to request from Switzerland a financial contribution to funding its economic and social cohesion.

Switzerland adopted a federal act in this regard, running over a ten-year period, which was in 2006 approved in a referendum (Kriesi and Trechsel 2008, 182-183). In 2017 this federal act was renewed.

This time it was not the EU but the Swiss government that insisted on parallelism and a balanced outcome – and on safeguarding the interests of the Swiss financial sector (*ibid.*, 180). Since the only subject likely to generate a call for a referendum was a Swiss negotiation request – the Schengen/Dublin association –, there was no need for the EU to demand a linkage between the sectoral agreements in the form of a ‘guillotine clause’. Only the Schengen and Dublin agreements are directly interlinked.

The Schengen Association Agreement allows Switzerland to participate almost like a member state in return for implementing and applying the Schengen *acquis* (Wichmann 2009). This means no internal border checks on persons (yet checks on goods are still possible for customs purposes), a common policy for visas for up to 3 months and on returning illegally staying third-country nationals, as well as cooperation on police matters and mutual legal assistance in criminal matters. As a Schengen state, Switzerland also participates in Frontex, the European Border and Coast Guard Agency, with voting rights on the management board. The Dublin Association Agreement enables Switzerland to participate in the common European system dealing with asylum applications. It establishes which country is responsible for examining a request for asylum based on the presumption that all Dublin states respect the asylum-seekers’ fundamental rights. The 2015 ‘refugee and migration crisis’ has put this system under great pressure for reform.

Negotiations on liberalizing trade in services were abandoned in May 2003 as a result of too diverse interests. The Cooperation Agreement to Combat Fraud covers crimes in the area of customs, state aid, public procurement, indirect taxes and money laundering. The agreement between Switzerland and the European Police Office, whose scope was extended in 2008, covers international crimes such as drug and human trafficking. The Agreement on Customs Facilitation and Security expands on the 1990 agreement, and the Agreement on Processed Agricultural Products amends the FTA.

With the MEDIA programmes the EU has since the 1990s supported the audiovisual industry in Europe. Switzerland joined with an agreement concluded as part of the ‘Bilaterals II’ in 2004. Both sides also agreed to formalize Swiss participation in the EU’s Lifelong Learning Programme, which *inter alia* includes Erasmus, and the Youth in Action Programme. Switzerland has participated in EU education programmes since 1992, but with full association only in 1992-1994 and 2011-2013. In addition, bilateral agreements on cooperation with Eurostat and with the European Defence Agency were signed. Moreover, agreements were reached on Switzerland’s participation in the European Environment Agency and the European Environment Information and Observation Network, on avoidance of double taxation of retired EU officials residing in Switzerland, and on the taxation of savings income.

Even though an optional referendum would have been possible against seven of the nine new agreements, it was only launched against the Schengen/Dublin association. After a controversial campaign, the Swiss voters approved the agreement in June 2005.

Overall, three main types of bilateral agreements can be distinguished: cooperation agreements, market access agreements, and integration agreements. Switzerland’s ‘bilaterals’ comprise all three types, whereby the largest number are cooperation agreements and the smallest integration agreements. Baur (2019, 23-24) makes a distinction between ‘access to’ the internal market in terms of reciprocal liberalization and ‘participation in’ the internal market which contains the obligation for the third countries to apply, implement or incorporate in their domestic legal order a predetermined selection of EU *acquis*. However, this telling distinction has not found its way into the official discourse.

From an institutional perspective, the 'Bilaterals II' have further increased the variety of Swiss-EU relations. As mentioned before, starting with the 1989 Insurance Agreement, the bilateral agreements are largely based on EU law, with implicit or explicit references. Explicit references mean that agreements are either based on taking over EU law in order to achieve a strong homogeneity (air transport and Schengen/Dublin association) or on the equivalence of EU and Swiss law. This equivalence has two aspects: the mutual recognition of rules and the alignment of Swiss law to EU law (Mazille 2018, 185-237). Like air transport and Schengen/Dublin, the Agreement on the Free Movement of Persons also refers to EU acts which become part of the bilateral *acquis*, yet without the obligation to dynamically incorporate relevant new EU law. In addition, a few agreements expect that the case law of the CJEU prior to the signature of the agreement plays a role for the interpretation. Whereas the Agreement on the Free Movement of Person asks that the jurisprudence is 'taken into account', the Air Transport Agreement requires an interpretation 'in conformity with' the CJEU's case law. To a very large extent, later case law is also respected by Swiss courts. For the Schengen/Dublin association the Joint Committee keeps case-law developments under constant review.

The substance of EU-Swiss relations comprise several agreements dedicated to trade in goods: the FTA on trade in industrial goods and processed agricultural products (1972), technical barriers to trade (1999), trade in agricultural products (1999) and in processed agricultural products (2004, a revised protocol to the FTA), and customs facilitation and security (1990, 2009). With regard to trade in services, the Insurance Agreement (1989) enables agencies to take up self-employed direct insurance services in some fields, the Agreement on the Free Movement of Persons (1999) allows for the supply of services of short duration, the Agreement on Land Transport (1999) liberalizes transport services between countries for the carriage of goods and passengers by rail and road, and the Agreement on Air Transport (1999) grants the operation of air services to EU and Swiss air carriers. Beyond the Agreement on the Free Movement of Persons, other agreements deal with specific aspects of free movement such as the Insurance Agreement and the Agreement on Air Transport regarding the right of establishment or the Schengen Association Agreement regarding no checks on persons when crossing borders. Justice and home affairs are addressed in the Schengen and Dublin associations, the fight against fraud, and cooperation with Europol and Eurojust. Regarding competition law, there are specific provisions in some agreements on state aid and on anti-competitive behaviour of undertakings (e.g. FTA, air transport), a bilateral Agreement on Certain Aspects of Government Procurement (1999) and an Agreement on Cooperation of Competition Authorities, based on the equivalence of laws (2013).

Each agreement comes with its own institutional setting, usually a Joint Committee (respectively two committees in the case of the 1999 Agriculture Agreement – a veterinary committee and an agricultural committee), thus following traditional patterns of public international law. Decisions in the currently 21 Joint Committees are taken by consensus between Switzerland and the EU (and, in case of mixed agreements, the EU member states). Although their tasks may vary, the Joint Committees normally decide on new law, settle disputes and ensure a follow up on relevant case law (Mazille 2018, 271-278, 515-602). As a general rule, international law takes precedence over national law in Switzerland although exceptions are possible. Each party is responsible for the good functioning of the agreements with respect to their implementation, application, surveillance and interpretation (Oesch 2018, 27-48). Only the Air Transport Agreement gives the responsibility for surveillance and judicial review to the European Commission and the CJEU.

The current Swiss approach is essentially static, and the parties are not obliged to incorporate new EU acts in a bilateral agreement. If they do so, this act becomes treaty law. An exception is the Schengen/Dublin association in order to ensure the proper functioning of the system. In this case, the European Commission notifies Switzerland of any new legal act which is relevant to the agreements. Switzerland then has a maximum of two years for the incorporation, a time span that allows to fulfil the constitutional requirements, especially if a referendum is launched. In case a legal act is not transposed on time and the Joint Committee fails to reach an acceptable solution within 90 days, the

agreement is terminated. In return for this obligation, the associated third countries can participate in the drafting or 'shaping' of new legal acts. The European Commission thus informally seeks advice from Swiss experts as it does from experts of the other EFTA countries and EU member states when preparing its proposals. These countries can also participate in comitology committees, Council working groups and usually also in the respective Council of Ministers.

The Agreement on Customs Facilitation and Security of 1990, respectively 2009, also contains specific provisions on the incorporation of new EU acts. Non-compliance may lead to rebalancing measures, including (partial) suspension. The proportionality of such measures can be assessed by an arbitration panel. The Insurance Agreement and the Europol Agreement foresee the possibility of establishing an arbitration panel for a binding ruling. This option has so far not been used.

2.5. Phase 5 (since 2005): Further bilateral cooperation and pending negotiations

Since the 'Bilaterals II' only a few new bilateral agreements have been concluded, such as the already mentioned 2009 Customs Facilitation and Security Agreement. The 2003 Agreement on the Taxation of Savings Income was in 2015 amended and renamed Agreement on the Automatic Exchange of Financial Account Information to Improve International Tax Compliance. Exploratory talks to improve mutual market access for financial services were held in the framework of the negotiations on automatic exchange of information, yet did not lead to any negotiations.

Moreover, the EU and Switzerland agreed on the latter's participation in Europol (2006), Eurojust (2007), the European Defence Agency (EDA, 2012) and the European Asylum Support Office (EASO, 2014). In 2013 the EU and Switzerland signed the Cooperation Agreement on the European Satellite Navigation Programmes, that is, Galileo (the European satellite-based navigation system) and the European global satellite-based navigation system (EGNOS). Swiss participation in the EU agency in this field, the European Union Agency for the Space Programme (EUSPA), still needs to be negotiated. The increasing 'agencification' in the EU is thus also reflected in EU-Swiss relations (Chamon 2023). For each agency a separate agreement has to be found, with varying degrees of participation.

The EU's position that no new market access would be granted as long as an Institutional Framework Agreement is lacking has blocked many files, as has the approval of the 'Mass Immigration Initiative' in 2014. Although in 2010 the EU and Switzerland signed, as foreseen in the 'Bilaterals II', an agreement on Swiss participation in the EU's educational programmes, negotiations on the Erasmus+ programme (2014-2020, 2021-2027) have been suspended by the EU. A full association of Switzerland was also planned for the 8th Framework Programme 'Horizon 2020', yet as a result of the approval of the 'Mass Immigration Initiative' and the subsequent failure to sign the Protocol on the extension of free movement of person to Croatia, the European Commission suspended the negotiations, but later reintegrated Switzerland partially. Only in 2017 Switzerland was again fully associated after it had ratified the Croatia Protocol. However, in the current 9th Framework Programme 'Horizon Europe', which runs from 2021 to 2027, Switzerland is again not associated given its refusal to sign the Institutional Framework Agreement. Also cooperation with the new 'Creative Europe' programme in support of the cultural and creative sectors, including MEDIA, has been suspended due to the approval of the 'Mass Immigration Initiative' and the failure of the Institutional Framework Agreement.

In 2017 the EU and Switzerland signed an agreement on emissions trading which links their systems for CO₂ emissions rights. In the same year, a federal act on the cohesion funds was delayed after the European Commission unexpectedly decided to limit the equivalence of the legal and supervisory framework applicable to the stock exchanges in Switzerland to one year, pending on progress made towards the signature of the Institutional Framework Agreement (Pirker 2023, 262-263). The cohesion funds were only released in September 2021.

In 2019, an agreement was signed allowing Switzerland to participate in the police cooperation scheme established by the so-called Prüm decisions, which aim for a faster and more efficient exchange of police information. At the same time, the protocol on Eurodac was added to the Dublin Association Agreement, a system which stores and processes the digitalized fingerprints of asylum seekers and irregular migrants who have entered a European country.

Among the problematic issue areas are new negotiations on Switzerland's participation in the European electricity market which had started in 2007. A bilateral agreement would regulate cross-border electricity trading and secure access to the European electricity market. In 2008, the Federal Council also adopted a mandate for negotiations with the EU on agriculture, food safety, product safety and public health. However, negotiations were only conducted in the areas of food safety and public health, yet without any outcome so far. Food safety entails cooperation with the European Food Safety Authority (EFSA) and participation in the Rapid Alert System for Food and Feed (RASFF). Like electricity, food safety would classify as market access agreement and thus depends on a prior solution of the institutional questions. In public health, Switzerland aims at cooperation with the European Centre for Disease Control and Prevention (ECDC), participation in the Early Warning Response System (EWRS), in the new EU-wide mechanism in the event of serious cross-border health threats and in the EU Multiannual Health Programme.

Overall, the bilateral agreements are a "fair-weather construction [... which] lacks legal certainty, transparency and efficiency" (Oesch 2018, 48). In the words of the Council of the EU (2010, para 42): "Due to a lack of efficient arrangements for the take-over of new EU *acquis* including ECJ case-law, and for ensuring the supervision and enforcement of the existing agreements, this approach does not ensure the necessary homogeneity in the parts of the internal market and of the EU policies in which Switzerland participates".

The EU has, therefore, insisted on the conclusion of an agreement that provides the market access agreements with an appropriate institutional framework (Tobler and Maresceau 2023, 22-26), yet such a draft agreement was only achieved ten years later.

2.6. Phase 6 (2014-21): Politicization of the draft Institutional Framework Agreement

Bilateral negotiations on an Institutional Framework Agreement began in 2014 and aimed to provide an umbrella for the governance of existing and future market access agreements (Federal Council 2018). Five bilateral agreements would have fallen under the scope of the new institutional framework: free movement of persons, overland transport, air transport, technical barriers to trade, and agriculture. By contrast, the 1972 FTA and the agreement on public procurement would have been subject to a separate modernization.

On the one hand, the negotiations on an institutional framework agreement were complicated by the internal EU debate on its future relations with the UK (Tobler 2021). On the other hand, the EU insisted that the 'Swiss model' of a selective sectoral approach was not an option for the UK. The general objective was to ensure legal certainty, homogenous conditions and equal treatment in those areas where Switzerland participates in the internal market. The agreement would have entailed a dynamic adoption of relevant developments in EU law and, in turn, granted Switzerland more 'decision-shaping' access and introduced dispute settlement with an arbitration panel (Federal Council 2021b; Kaddous 2023). The jurisdiction of the CJEU would have been limited to interpreting EU law adopted by Switzerland. Potential rebalancing measures in case of non-compliance could have included the suspension of agreements. In fact, in 2012, the Swiss government had initially suggested national supervision and enforcement. After this was rejected by the EU, the government seemed prepared to accept the CJEU. However, in the end, the preferred option was the establishment of an arbitration panel if the Joint Committee was unable to resolve a dispute. Regarding EU law incorporated in the

agreements, the arbitration panel would need to request the CJEU to provide a binding ruling. This arrangement corresponds to the provisions in the EU's Deep and Comprehensive Free Trade Area (DCFTA) with countries like Ukraine. Moreover, a 'super guillotine clause' in the institutional framework agreement implied that the five sectoral agreements of the interlinked 'Bilaterals I' would also have ceased to exist if the framework agreement itself was terminated without an agreement being found within a few months.

The negotiations were concluded in late 2018. In February 2019 the Council of the EU (2019, para 8-9) reiterated again that "the present system of bilateral agreements has reached its limits, due to its complexity, its incompleteness and the resulting lack of homogeneous conditions for citizens and businesses in the areas of the internal market in which Switzerland participates" and that the agreement on an institutional framework was "a precondition for the EU for the conclusion of future agreements".

Despite its initial support, the Swiss government did not endorse the outcome of the negotiations. Requests for further clarifications with the EU were not fruitful and after domestic consultations, it rather surprisingly declared in May 2021 the end of the agreement (Federal Council 2021b). Among the issues that led to the rejection were concerns over state aid and safeguarding Swiss wage levels and social security costs. The Swiss People's Party (SVP) was ready to campaign for a referendum.

Since 2014 several popular votes initiated by the SVP threatened the bilateral agreements (Schwok 2021, 41-47): first, the February 2014 'Mass Immigration Initiative' aimed to introduce quotas and annual caps on immigrants and was accepted. The EU did not agree to renegotiate the agreement, and it took the Swiss government almost three years to find a solution to the dilemma. The legislation to implement the new constitutional article does not impose quotas or enforce the principle of national preference. It only stipulates that employers need to consider job seekers already residing in Switzerland first when there is high unemployment in certain sectors or regions. Second, the November 2018 'Self-determination Initiative' suggested that the Swiss Constitution should take precedence over international law and was rejected. Third, the 'Limitation Initiative' of September 2020 called for a termination of the free movement of persons agreement and was rejected. Moreover, two referendums threatened the Schengen/Dublin association agreements and were rejected: the May 2019 referendum against the implementation of the EU Firearms Directive and the May 2022 referendum against the increased funding for Frontex (see Table 2 in the Annex).

The European Commission expressed its disappointment inter alia by not extending its decision on stock exchange equivalence, by not updating the technical barriers to trade agreement in response to the new EU medical devices regulation, by not continuing Swiss participation in certain EU programmes, and by delaying the negotiations on new fields of cooperation such as electricity or health. Since then, Switzerland has been searching for ways to overcome this deadlock.

2.7. Phase 7 (since 2022): Exploring a way out of the impasse

In February 2022, the Swiss Federal Council (2022b) adopted guidelines for a future negotiation package with the EU. It aims to 'vertically' embed provisions on the dynamic updating of agreements and on settling disputes in every single market access agreement instead of the 'horizontal' approach of the institutional framework agreement, while for monitoring and legal interpretation both sides would keep their independent responsibilities. Exploratory talks have been held since then.

In June 2023, the Federal Council published a 'situation assessment' of EU-Swiss relations. It found that relevant regulatory differences which led to tensions with the EU mainly existed in the free movement of persons and were manageable, provided some exceptions and safeguards for essential interests would be possible (Federal Council 2023a, 50). The core objective of Switzerland's integration policy

remains “the best possible mutual participation in the internal market as well as cooperation in selected areas of interest, while maintaining the greatest possible political room for maneuver” (ibid., 3). Compared to accession to the EEA or EU membership, the bilateral approach is still viewed as the best option, albeit with the need to find solutions for the institutional issues. EEA and EU membership would supposedly bind Switzerland in a disproportionate manner (ibid., 48).

After reaching a ‘common understanding’ with the European Commission on possible landing zones in new negotiations, the Federal Council (2023c) issued a report on the exploratory talks and adopted draft negotiating guidelines in December 2023. A few days later, the European Commission (2023) also proposed a negotiation mandate to the Council. The new negotiations in 2024 are expected to cover electricity and food safety as new market access agreements, cooperation on public health, Switzerland’s participation in EU programmes on research, space and education and a regular Swiss financial contribution. State aid rules are to be embedded in the air transport, land transport and electricity agreements, for which both sides would have their own supervision procedures. Finally, a regulatory dialogue on financial markets and a high-level dialogue could be established. Hence, Switzerland is now pursuing a sectoral approach also regarding the institutional issues as well as a potential ‘Bilaterals III’ package (although it is not officially labelled as such). A package approach has the advantage that Switzerland and the EU no longer exclusively focus on institutional solutions. A modernization of the free trade agreement is not foreseen. In the fields where Switzerland participates in the internal market a dynamic alignment would be introduced, with possible exceptions, and access to the decision-shaping process. Disputes should be settled in the respective sectoral committee but in case of no agreement, parties would be able to turn to an independent arbitral tribunal. Concerning the interpretation or application of provisions involving concepts of EU law, these should be interpreted in accordance with relevant CJEU case law, both prior and subsequent to the signature of the agreements, in order to ensure homogeneity and a level playing field. For this purpose, the arbitral tribunal should refer the question to the CJEU if its interpretation is relevant and necessary for a decision, and the resulting ruling would be binding on the arbitral tribunal. In case of non-compliance, a party would be able to take proportionate compensatory measures.

Based on this overview of the evolution of EU-Swiss relations, the next section compares the Swiss model to the EEA Agreement.

3. The ‘Swiss model’ compared to the EEA Agreement

In order to compare the ‘Swiss model’ and the European Economic Area, the functional scope is distinguished from the governance. The functional scope comprises the policy areas and thus the legal integration between the EU and Switzerland, whereas the governance describes the institutional relations between the two sides and thus rather the political integration of Switzerland with the EU.

3.1. Functional scope of Swiss-EU relations

This section discusses the substance of Switzerland’s relations with the EU by comparing the sectoral approach to the EEA and the resulting level of integration.

3.1.1. Comparison of sectoral bilateralism and the EEA

The internal market is of utmost importance for all the EFTA countries. In the area of trade in services, Switzerland has only very few agreements with the EU. As a result, the scope of Swiss-EU relations in this field is limited to specific regulatory subjects and strongly deviates from the scope of the EEA Agreement. Regarding trade in goods, Switzerland-EU relations extend much further, but are still not as comprehensive as the EEA. For example, the *Cassis de Dijon* principle does not apply reciprocally,

but has only been implemented by Switzerland. Similarly, the Swiss-EU agreement on technical barriers to trade (or MRA) includes fewer chapters and thus product categories than the corresponding annex of the EEA Agreement. Although agricultural policy is not part of the EEA Agreement, the cooperation regarding veterinary matters, plant protection and foodstuffs extends beyond the level of cooperation between Switzerland and the EU based on the bilateral agriculture agreement. Switzerland is also not a member, but only an observer, of the European Food Safety Authority. The Federal Council (2023a, 8) also sees close cooperation with the EU as the best way for Switzerland to ensure the “resilience of supply chains” and acknowledges the strong position of the EU as a setter of regulatory standards to which Switzerland must orient itself (*ibid.*, 12). Finally, Switzerland forms a customs security area with the EU/EEA, but not a customs union, and neither of the EFTA countries participates in the EU’s common commercial policy.

In various policy areas that are currently not covered by Swiss-EU relations, further cooperation is at least intended. In this context, the pending negotiations between Switzerland and the EU in the electricity sector, in the food sector, or in the area of public health are worth mentioning. However, as long as a solution to the institutional issues is lacking, no further substantial agreements between Switzerland and the EU can be expected. In the electricity sector, Swiss interest is particularly high as the lack of cooperation threatens its grid stability and the security of supply. The various examples of ongoing negotiations show that Switzerland’s sectoral approach does not necessarily lead to the level of integration desired by Switzerland. It is not a ‘pick and choose’ model since the EU increasingly insists on a ‘level playing field’ and a fair balance of rights and obligations between the EU and Switzerland. Moreover, specific policy interests may be overridden by institutional issues.

In some bilateral agreements, Switzerland has been granted specific exceptions. For example, the land transport agreement opens the road and rail transport market for the cross-border transport of passengers and goods between Switzerland and the EU but cross-border rail passenger transport (e.g. night trains) can still not be offered by rail companies from the EU alone, only in cooperation with a Swiss rail company. Another difference with the EEA concerns small-scale cabotage, that is, domestic transport by foreign transport companies within Switzerland or an EU member state, which is not permitted. The EEA EFTA states also benefit from certain exceptions in some policy areas. This applies in particular to Iceland and Liechtenstein and can often be explained by their small size or special geographical circumstances. Nevertheless, compared to the EEA, Swiss-EU relations are less consistent in the individual policy areas covered by the sectoral agreements.

As set out above, the nature of the bilateral agreements is, in principle, static. This means there is no obligation and thus no pressure to agree to update their annexes. Hence, regulatory discrepancies can arise over time. Probably the most prominent example is the Agreement on the Free Movement of Persons, which was concluded before the EU adopted the EU Citizenship Directive in 2004. Despite respective demands from the EU, Switzerland refused to include its provisions into the main agreement and the annexes, respectively. As a result, the free movement of persons between the EU and Switzerland is less comprehensive than that between the EU and the EEA EFTA states.

Since an institutional solution is pending, updates of the Swiss-EU sectoral agreements only take place when they are in the interests of the EU. For example, the air transport agreement continues to be regularly updated. In contrast, important areas of the MRA (e.g. medical devices or machinery), the land transport agreement or the agreement on agriculture have not been updated anymore since 2018. This leads to a creeping erosion of Switzerland’s level of integration, which makes it more difficult for Swiss companies to access the EU market. In a recent resolution the European Parliament (2023, para 24) therefore expressed its concern that “basic bilateral agreements are slowly phasing out and no longer secure frictionless market access”.

Due to the low degree of institutionalization of Swiss-EU relations, there is no mechanism to clarify different interpretations, whereas in the EEA the EFTA Court and the EFTA Surveillance Authority are

responsible for the surveillance of EEA law in the EEA EFTA states. In some areas, Switzerland and the EU disagree as to whether Swiss national law complies with the requirements arising from the bilateral agreements. The most prominent example of this concerns the posting of workers (see section 4.1).

Overall, the differences between the EU and Switzerland can be roughly divided into five categories: 1) policy fields and regulatory areas that are not covered by Swiss-EU relations and where no cooperation is currently planned; 2) policy areas that are not covered by Swiss-EU relations but where further cooperation is intended; 3) specific exceptions in a regulatory area covered by a Swiss-EU agreement; 4) specific deviations in the scope of application due to a lack of updating the agreements; and 5) a deliberate implementation practice on the part of Switzerland that does not conform to European law.

Table 3 in the Annex compares the scope of the Swiss-EU relations and the EEA Agreement.

3.1.2. Level of integration and linkages between the ‘Bilaterals’

The different levels of integration of the EEA and Swiss-EU relations becomes even more apparent when looking at EU secondary legislation. The Federal Council maintains a database containing all EU secondary legislation to which the Swiss-EU sectoral agreements refer (Fedlex 2023a). In total, the ‘Bilaterals’ refer to more than 4’300 EU acts. By far most references to such legal acts can be found in the Swiss-EU agriculture agreement (1’675), followed by the MRA (818), the air transport agreement (573), the Schengen agreement (387) and the agreement on statistics (327). The high number of references to EU secondary law confirms that the nature of Swiss-EU relations is less ‘static’ than could have been assumed. For instance, more than 60 percent of the EU acts to which the four market access agreements from the ‘Bilaterals I’ (agriculture, air transport, land transport, MRA) refer were not part of the initial agreements but have been added by decisions of the Joint Committees or constitute relevant amendments of an EU act included in the initial agreements. Nevertheless, if measured by the number of references to EU secondary acts, except for the Schengen and Dublin associations, Swiss-EU integration is much lower than the level of integration of the EEA EFTA states. Thus far, more than 12’500 EU acts have been incorporated into the EEA Agreement and approximately 400 EU acts are linked to the EFTA states’ association to Schengen and Dublin. The proportion of EU legal acts marked as ‘EEA relevant’ has risen sharply in relation to the total number of EU legal acts adopted in recent years. This can be explained by the fact that the EU’s legislative activity in the policy areas covered by the EEA Agreement has increased, for instance regarding financial services. This is then not reflected in EU-Swiss relations. Overall, EU secondary legislation plays a less important role in Swiss-EU relations than in the EEA.

The ‘Bilaterals I’ are linked by a guillotine clause that threatens to suspend all agreements if one agreement is terminated. In addition, Switzerland’s association to the Schengen and Dublin agreements is considered to be linked to the free movement of persons (Federal Council 2023a, 43). Hence, if the free movement of persons was terminated, in addition to the ‘Bilaterals I’ also the various agreements related to the Schengen/Dublin association would cease to be applied. Beyond this, there are various factual links between the individual agreements, for example due to established administrative practices. A dismantling of Swiss-EU relations through the termination of individual agreements is therefore very unlikely. Rather, a termination of key agreements would put Switzerland’s relations with the EU on a completely new footing. This is also in line with the Brexit experience, which showed how difficult the process of disintegration is.

The historical development of the relations between Switzerland and the EU outlined in section 2 has shown that in the beginning the focus was on economic integration. Since the 2000s, however, Switzerland’s interest in integration beyond access to the EU’s internal market has increased. The best example of this is the association to Schengen and Dublin. In its 2021 security policy report, the Swiss Federal Council (2021a, 35) also refers to the opportunities “for more cooperation, including military

cooperation within the framework of permanent structured cooperation” that could arise from the further development of the EU’s security and defence policy. Some projects for selective cooperation are currently being explored. However, Switzerland wants to continue conducting its own foreign and security policy against the backdrop of its neutrality and with a view of providing good offices (Federal Council 2023a, 30).

It is also worth mentioning that Switzerland, like the EEA EFTA countries, is financially contributing to promote the economic and social development of disadvantaged regions in the EU. The financial mechanisms are not identical, and Switzerland appears to pay much lower contributions compared to the more integrated EEA EFTA states (Pirker 2023, 263). While the EU side repeatedly claims a binding character for the continuity of cohesion payments, the EFTA countries question any legal obligation to do so. In the case of Switzerland, the EU views the payments “as a price for market access” (ibid., 277), while Switzerland seems to perceive them “predominantly as a political bargaining chip” in its relations with the EU (ibid., 256).

In sum, compared to the integration of the EEA EFTA states, Switzerland-EU relations may cover a similar number of policy areas, but Switzerland’s integration is significantly less deep due to gaps in the substance and a lower speed in the incorporation of relevant new EU secondary legislation. With the high number of agreements and their varying depth and breadth also comes a certain complexity. It is therefore difficult to determine the functional scope and the level of integration in Swiss-EU relations. This lack of clarity can lead to legal uncertainty and difficulties in planning for citizens and companies. Finally, from both an economic and a political perspective, the good functioning of Switzerland’s rather selective integration strongly depends on a policy of European compatibility and autonomous adaptation that has been pursued at the national level for several decades. This strong alignment of national legislation to EU legislation can be seen as a restriction of the political room for maneuver. At the same time, an autonomous implementation often does not create legal certainty.

3.2. Governance of Swiss-EU relations

Before comparing the governance of the ‘Swiss model’ to that of the EEA Agreement, the most important aspects of the Swiss-EU governance are summarized in the next subsection. The subsequent part analyzes the institutional framework agreement and compares its provisions with the two-pillar structure of the EEA.

3.2.1. The characteristics of Swiss-EU institutional relations

At their core, the bilateral agreements are static in nature and there is no transfer of decision-making authority from the Swiss state to joint institutions, let alone supranational EU institutions. In other words, each party executes the agreements on its own, and there is no provision for overarching supervisory and judicial authorities. The Joint Committees, which are composed of representatives of Switzerland and the EU, manage the implementation of the agreements and take decisions by mutual agreement. Each bilateral agreement has its own Joint Committee, with the exception of agreements governing administrative assistance, such as the automatic exchange of financial account information and the agreement on pensions.

The Joint Committees monitor the proper implementation of the bilateral agreements. In particular, they have the task of making adjustments within the scope of their competencies. They also ensure the exchange of information between Switzerland and the EU and settle any differences. Normally, they meet once a year. There are currently 21 Swiss-EU Joint Committees. Most bilateral agreements follow the principle of equivalence of legislation. The relevant EU secondary legislation is listed in the respective bilateral agreements. Likewise, Swiss legal provisions that are considered by the contracting parties to be equivalent to these legal acts are listed. The incorporation of a new EU legal act into a bilateral agreement (i.e. the updating of a bilateral agreement) therefore presupposes the updating of

the corresponding Swiss legal provisions. A unilateral elimination of possible differences between EU and Swiss rules does not ensure that market accesses is granted.

There are also some agreements with different governance or a deviating practical interpretation of this governance. Over the past 20 years, Swiss-EU relations were much more active than it could be expected from their static conception (see Fedlex2023b for an overview on the decisions of the Joint Committees). This is especially true for highly technical agreements such as the MRA or the agreement on agriculture. Moreover, the governance of the bilateral agreements cannot be viewed in isolation from domestic political practice. Switzerland generally follows the relevant legal developments in the EU in the areas covered by the treaties. This policy of EU compatibility aims to make Swiss legislation more 'Europe-friendly' through an autonomous adaptation to EU law (Oesch and Brugger 2023, 37-38). In addition, for domestically initiated laws, the conformity of the principles and objectives of EU and Swiss law is assessed, and potential conflicts are reported to the legislator. The aim of Swiss legislation is not always to ensure that Swiss law is fully compatible with EU law, but rather to examine their compatibility by comparing them and identifying where an alignment promises an economic or other added value (ibid., 39). It is also important to emphasize that compatibility is not controlled by any independent institution, as is the case in the EEA through the EFTA Surveillance Authority. Similarly, the jurisdiction of the Swiss courts regarding the law affected by bilateral agreements is strongly guided by the jurisdiction of the EU courts, both within and outside the scope of the bilateral agreements (ibid., 49).

A prominent example of autonomous alignment is the unilateral introduction of the *Cassis de Dijon* principle by Switzerland (ibid., 58-60). From Switzerland's point of view, this was a step in the fight against the high prices in Switzerland. Yet, it also illustrates that Switzerland can be very pragmatic in its European policy when this serves its own interests. In other words, Switzerland is prepared to limit its regulatory authority on a specific issue to strengthen its long-term independence as the political pressure for rapprochement with the EU would be much higher without such an alignment. At the same time, it keeps the feasibility of alternative integration options open. In certain circumstances, Switzerland has no real choice but to align to EU law, for instance with regard to data protection and financial market law (ibid., 49).

3.2.2. *Differences and commonalities with the EEA Agreement*

Despite the much lower degree of institutionalization of Swiss-EU relations, Switzerland faces similar challenges as the EEA EFTA states when it comes to governance. This includes the question of how decisions of the Joint Committees, which are regarded as treaties under international law, are ratified. In principle, these treaties must be signed and ratified by the Federal Council and approved by the Federal Assembly and may then be subject to a popular vote. However, a delegation of competence from the Parliament to the Federal Council may be provided for in the form of an authorization to amend or supplement these treaties or their annexes. The content and scope of the decisions on the agenda of the Joint Committee determine whether parliamentary approval is required. Thus, before a decision can be taken on the adoption of new law, the precise impact of their adoption on Swiss legislation must be examined. The delegation of competences between parliament and government for the Swiss-EU relations is therefore similar to the procedures foreseen in the EEA EFTA states based on Article 103 EEA Agreement. The number of decisions taken by the Swiss-EU Joint Committees, however, is significantly lower than the number of decisions taken by the EEA Joint Committee.

In view of the strong politicization of European policy in Switzerland, it can be assumed that the requirement of a more dynamic adoption of EU law is a much bigger challenge for Switzerland than for the EEA EFTA states. This is already illustrated by Switzerland's Schengen association, where so far three decisions by the Swiss-EU Joint Committee have been subject to a popular referendum. In view of the very time-consuming domestic decision-making process in Switzerland, the EU has granted generous transition periods. The draft Institutional Framework Agreement equally stated that if

constitutional requirements exist, Switzerland has two years to incorporate a new EU act and even three years in the event of a referendum. In the EEA, no such deadlines exist vis-à-vis the EEA EFTA states. In practice, however, the pressure exerted by the EU on the EEA EFTA states in case of a delayed adoption has so far been limited (Frommelt 2020).

Like the EEA EFTA states, Switzerland faces various democratic challenges as a result of its close alignment with the EU. These include, in particular, a strengthening of the executive branch (i.e. the government and administration), the low transparency about the actual level of integration and the processes of decision-making as well as the limited possibility to ‘upload’ Swiss national preferences to the EU level and the corresponding limited democratic responsibility of Swiss politicians as policy takers. Nevertheless, the bilateral approach was confirmed in various referendums. Politically speaking, Switzerland’s EU policy is thus more legitimized by the people than in the EEA EFTA states where there have been no public votes on European integration since the 1990s. However, the EEA enjoys great support in the EEA EFTA states, which is why the question of a fundamental discussion on integration policy or even a referendum has not yet arisen.

Legitimacy consists not only of an input dimension but also of an output dimension. The bilateral approach is often criticized for its low decision-making efficiency and high legal uncertainty. Their effectiveness is undoubtedly lower than in the EEA. However, the overriding goal of market access is generally ensured within the existing legal framework between Switzerland and the EU. In the exceptional case that Switzerland is not willing to adopt relevant new EU law and the market access is no longer granted, the consequences have so far been “manageable” for Switzerland (Federal Council 2023a, 50).

Switzerland is much less involved in the EU legislative process than the EEA EFTA states (Gstöhl and Frommelt 2023). For instance, Switzerland lacks access to the numerous EU comitology committees which are granted important implementing powers and where the EEA EFTA states have full access, except for the right to vote. Switzerland is also not involved in numerous EU agencies and other EU authorities as well as EU programmes. As a result, Switzerland has not only less influence on the future development of EU policies or law, but also lacks an exchange of information and knowledge that is of great importance for the implementation of EU policies and policy-making in general. The ‘decision-shaping’ foreseen in the draft institutional framework agreement would have increased Switzerland’s potential influence. With regard to the proposed new ‘package approach’, the Federal Council (2023a, 51) argues that

[s]imultaneously with the introduction of the principle of a dynamic adoption of law as required by the EU, the autonomy of Swiss legislation is preserved. This is done by giving Switzerland the right to participate in the drafting of relevant EU law (decision-shaping), through procedures in conformity with the Constitution (including the possibility of a referendum) and through the possibility for Switzerland to reject specific legal adaptations (opting-out with proportionate compensatory measures).

However, it should be noted that Switzerland’s experience with ‘decision-shaping’ is based primarily on its Schengen and Dublin associations. The participation rights granted by those agreements go much further than the participation rights within the framework of the EEA, since EEA membership only allows access to the bodies of the European Commission but not of the Council of the EU. Against this background, the expectation of gaining considerably more influence under an institutional framework agreement can be questioned.

Table 4 shows various venues for associated non-member states to influence EU law and compares the access of Switzerland to the EEA EFTA states.

Table 4: Switzerland's access to EU law making

Institutional venues	Access by Switzerland compared to EEA EFTA states
<i>Joint bodies</i>	
Joint Committees	currently 21 Swiss-EU Joint Committees, meeting less regularly than the EEA Joint Committee
Association Council	no EU-Swiss Association Council comparable to the EEA Council
<i>EU bodies</i>	
Expert groups of EU Commission	more limited access compared to EEA EFTA states but still participation in more than 150 experts groups (compared to more than 300 for Norway)
EU programme committees	Switzerland's participation in EU programmes is currently on hold; full access for EEA EFTA states if they participate in EU programmes
EU agencies	Switzerland participates in very few agencies with the status of an observer; EEA EFTA states participate mostly as full members except for the right to vote
EU comitology committees	no legally granted access for Switzerland; full access for EEA EFTA states
EU Council working groups	equal access for Switzerland and EEA EFTA states within Schengen/Dublin; no access under other Swiss-EU sectoral agreements or the EEA
EU COREPER	equal access for Switzerland and EEA EFTA states within Schengen/Dublin; no access under other Swiss-EU sectoral agreements or the EEA
Informal Council meetings	Switzerland is not invited on a regular basis in contrast to the EEA EFTA states
<i>Other institutional venues</i>	
Seconded national experts	very limited number of seconded national experts from Switzerland
Access to EU consultation	same access for all non-member states
Written comments	no established procedure comparable to the so-called EEA EFTA comments that are distributed to the EU side by the EEA EFTA states and that are often followed up with discussions between the EEA EFTA states and the EU
Parliamentary cooperation	Swiss Members of Parliament have only observer status when Members of Parliament of EEA EFTA states and the EU meet
Judicial dialogue	no established dialogue in sectoral agreements and EEA Agreement but informal exchange between EFTA Court and CJEU

Source: own compilation.

Altogether, the governance of Swiss-EU relations is multi-layered and very complex. This is the consequence of Switzerland's political objective to maintain the greatest possible independence and political leeway. Political leeway, however, does not necessarily require formal and legal independence. According to the Federal Council's situation assessment report, "Switzerland is less concerned with formally establishing its independence than with ensuring that it can maintain its autonomy in the community of states with the greatest possible political leeway" (Federal Council 2023a, 15). Hence, it seeks "equal rights with its partners on a level playing field, as well as the possibility of exercising those rights within institutions that it joins based on its own free will" (ibid.). Ensuring this room for maneuver is a "difficult balancing act between preserving autonomy and expanding cooperation on the basis of treaties under international law" (ibid.). This means that for certain policy areas, political leeway could be better ensured by having access to the EU institutions

that make the relevant decisions even if this implies a commitment to a dynamic adoption of relevant new EU law.

Thus far, however, reality contradicts this rather pragmatic understanding of political leeway mentioned in the situation assessment report. The governance of the current Swiss-EU relations focuses primarily on preserving Switzerland's formal independence rather than ensuring its ability to influence the development of relevant EU law. The history of relations between Switzerland and the EU shows that institutional issues are of central importance and that reservations about political integration hamper Switzerland's integration much more than its EFTA partners.

3.2.3. *Different understandings of 'two-pillar' structures*

Since 2008 the EU has emphasized "that the present system of bilateral agreements has reached its limits, due to its complexity, its incompleteness and the resulting lack of homogeneous conditions for citizens and businesses in the areas of the internal market in which Switzerland participates" (Council of the EU 2019, para 8). In 2012, the EU confirmed its willingness and desire to negotiate a solution equivalent to the institutional framework of the EEA (Federal Council 2021b, 9). In the negotiations between Switzerland and the EU, however, it became relatively quickly apparent that, while certain principles such as the dynamic adoption of law could be 'copied' from the EEA, a different form of monitoring and ensuring consistent interpretation had to be found in the bilateral setting between Switzerland and the EU. In this context, it is striking that the Swiss government views the relations envisaged with the EU under the failed draft institutional framework agreement – as well as the forthcoming new negotiations anchoring the institutional provisions in the key sectoral agreements – as a 'two-pillar' structure (ibid., 2), given that the same term is also used for the institutional framework of the EEA. This is not unproblematic for the EEA EFTA states since the Swiss understanding of a two-pillar structure differs significantly from the EEA.

According to the Swiss understanding, the first pillar comprises the EU with its institutions and the second pillar is constituted by national Swiss institutions. By contrast, in the EEA, the second pillar does not involve national institutions, but institutions created jointly by the EEA EFTA states and whose task and processes are similar to those of the European Commission and the Court of Justice of the EU, respectively. Moreover, the two pillars are linked by common principles anchored in the EEA Agreement such as the principle of homogeneity or the duty of sincere cooperation. By contrast, in the 'Swiss pillar', the monitoring of the implementation of Swiss-EU law would have to be carried out exclusively by the national authorities in Switzerland. Although the European Commission can raise objections in the Joint Committee, no systematic transposition or control of application is envisaged, as it would be done by the EFTA Surveillance Authority in the EEA. In case of a future agreement between Switzerland and the EU on institutional affairs, it could be important for the EEA EFTA states to emphasize such differences vis-à-vis the EU. If the institutional arrangements between Switzerland and the EU cannot ensure comparable monitoring and judicial enforcement, the EU could rightly be expected to grant the EEA EFTA states further advantages compared to Switzerland.

In sum, the objective of preserving independence appears to be more present in the European policy of Switzerland than in the European policy of the EEA EFTA states. However, this does not mean that Switzerland also has more political leeway. Due to the selective and largely static integration, Switzerland can currently more easily avoid the adoption of unwanted EU law than the EEA EFTA states. However, Switzerland's access to EU law making is very limited and its interests are not well protected in the event of a conflict. Likewise, Switzerland always needs the EU's goodwill for new integration steps. Finally, there is no question that the bilateral approach in its present form is outdated. Some of these aspects are subject to change if the forthcoming negotiations will succeed.

Table 5 summarizes this section by comparing the institutional arrangements in the EEA and in the Swiss-EU-relations.

Table 5: Comparison of institutional arrangements in the EEA and in Swiss-EU relations

	EEA Agreement	Swiss-EU relations
Nature	dynamic incorporation of relevant <i>acquis</i> into the EEA Agreement; homogeneity of EU and EEA law as the core principle	mainly static agreements based on the principle of equivalence of laws but regular updates of various agreements by Joint Committees; dynamic adoption for customs security and Schengen/Dublin and the largely <i>acquis</i> -based air transport agreement
Decision-making regarding new <i>acquis</i>	EEA Joint Committee	various Joint Committees
Policy shaping	decision-shaping via access to EU committees such as Commission expert groups or comitology committees	no access to EU law making except for dynamic agreements (Schengen/Dublin); access to certain expert groups for non-governmental experts; exchange of information in EFTA institutions with EEA EFTA experts participating in EU committees
Surveillance	EFTA Surveillance Authority in EEA EFTA countries	Joint Committees; except for air transport (European Commission)
Judicial enforcement	EFTA Court in EEA EFTA countries; EEA Joint Committee constantly reviews relevant EFTA Court and EU case law; national courts may ask EFTA Court or CJEU for opinion; Schengen/Dublin Joint Committee reviews EU case law	Only bilateral diplomacy in Joint Committees, except for air transport regarding decisions of EU institutions (CJEU); in free movement of persons and air transport selective (quasi-) obligations of national authorities to follow relevant past EU case law (Joint Committees may also discuss post-signature case law); for Schengen/Dublin Joint Committees constantly review Swiss and EU case law to ensure uniform interpretation

Source: own compilation based on Phinnemore and Gstöhl (2019, 180-181).

4. Key challenges in Swiss-EU relations

The analysis in this section focuses on specific legal, economic and political aspects in Swiss-EU relations that have been posing challenges in recent years. In the legal dimension, the focus is on regulatory differences; the economic aspects provide an overview of the importance and the challenges of the bilateral economic relations; and the political dimension focuses on the specific features of the Swiss political system and the persistent Euroscepticism.

4.1. Legal dimension: Managing regulatory differences

This section analyses specific regulatory differences between Switzerland and the EU (see, in particular, Federal Council 2022a). The focus is on the most controversial area, the free movement of persons. Beyond that field, differences prevail also in air transport (e.g. age restrictions for helicopter pilots), land transport (e.g. procurement), agriculture (e.g. tariff quota administration), and state aid (*ibid.*). The regulatory differences, which can be found at both the federal and cantonal levels, concern mainly differences in law, but in some cases identical provisions are interpreted differently, or there are different practices based on identical regulations. They are mostly a direct consequence of Switzerland's selective and static integration approach, but they can also result from different (or changing) preferences in Switzerland.

Regarding posted workers, there are differences in the surveillance, control instruments and administrative cooperation (see Pärli 2023). In general, Switzerland has various measures in place that do not exist in the EU member states. The EU also objects to various Swiss flanking measures which it considers discriminatory and disproportionate. The following measures have been criticized by the EU while Switzerland takes the position that they are in principle compatible with the Agreement on the Free Movement of Persons:

- the eight-day prior notification requirement;
- the deposit requirement;
- the sanction and control system including enforcement cost contributions, fines, service suspensions, civil and administrative sanctions; and
- documentation requirements for self-employed service providers.

Switzerland has not been willing to incorporate the EU Citizenship Directive into the Agreement on the Free Movement of Persons (Melin 2023, 87-94). Comparing the existing legal framework with the requirements of the EU Citizenship Directive, the Swiss Federal Council (2021b, 9) identifies differences in seven areas: short-term residence, job seekers, self-employed persons with freedom of establishment, former employed persons, non-employed persons, permanent right of residence and increased protection against expulsion (reservation of public policy).

Moreover, the cantons interpret certain requirements concerning the granting of residence and cross-border commuters differently and some of these interpretations may at times not be compatible with EU law. Further regulatory differences concern access to education and vocational training for cross-border workers and their family members, cantonal regulations of the priority of residents on the labour market, the conditions for the admission of doctors to the compulsory health insurance scheme or the recognition of professional qualifications (Federal Council 2022a, 11-14). Most of those regulatory differences are small and thus not subject of major conflicts between the EU and Switzerland.

In addition, as of 2023, Switzerland has restricted access for Croatian nationals to the Swiss labour market because the number of workers from Croatia has risen sharply. It invoked the safeguard clause as the threshold figure defined in the Agreement on the Free Movement of Persons was exceeded. Although this step is covered by the agreement, it was not welcomed by the EU (European Parliament 2023, para 21). Another example of regulatory differences is the result of the expulsion initiative by the Swiss People's Party (SVP) to which the Swiss population said yes in 2010. Criminals with foreign citizenship, including EU nationals, can be expelled since the initiative has been implemented in 2015. The more or less automatic nature of the expulsion contradicts the Directives listed in the Agreement on the Free Movement of Persons and their interpretation by the Court of Justice of the EU.

Regarding the future development of EU law, the Federal Council is particularly worried about changes of the unemployment compensation for cross-border commuters from state of residence to state of employment. Switzerland would then be responsible for compensation for unemployed that were commuting to Switzerland before losing their job. Due to the high number of commuters, this could have some impact on the financing of the Swiss social security system.

The feasibility of reducing these regulatory differences varies greatly: in some cases, it would be enough to simply change the practice, for instance by adapting directives or circulars, whereas in other areas changes at the level of ordinances or laws are required or even the enactment of a completely new regulation. It is therefore no surprise that such regulatory differences are reduced at different speed (Federal Council 2022a, 32).

In the exploratory talks led in 2023, it was agreed that Switzerland would adopt the Citizenship Directive but obtain an exception regarding the expulsion of EU citizens under criminal law; the right

to permanent residence for after five years in the country – which so far does not apply to all EU citizens – would only be granted to gainfully employed persons; and the current wage protection measures regarding posted workers would remain (with a non-regression clause for future amendments). Switzerland had also refrained from the introduction of biometric identity cards which are mandatory for all EU states, but is now expected to do so, leaving it up to Swiss citizens to apply for such cards, and with a long transition period for travel to the EU with non-biometric identity cards.

Overall, there are significantly more regulatory conflicts and incompatibilities in Swiss-EU relations than between the EEA EFTA states and the EU. As a result, the legal uncertainty for businesses and people is higher in the ‘Swiss model’ than in the EEA.

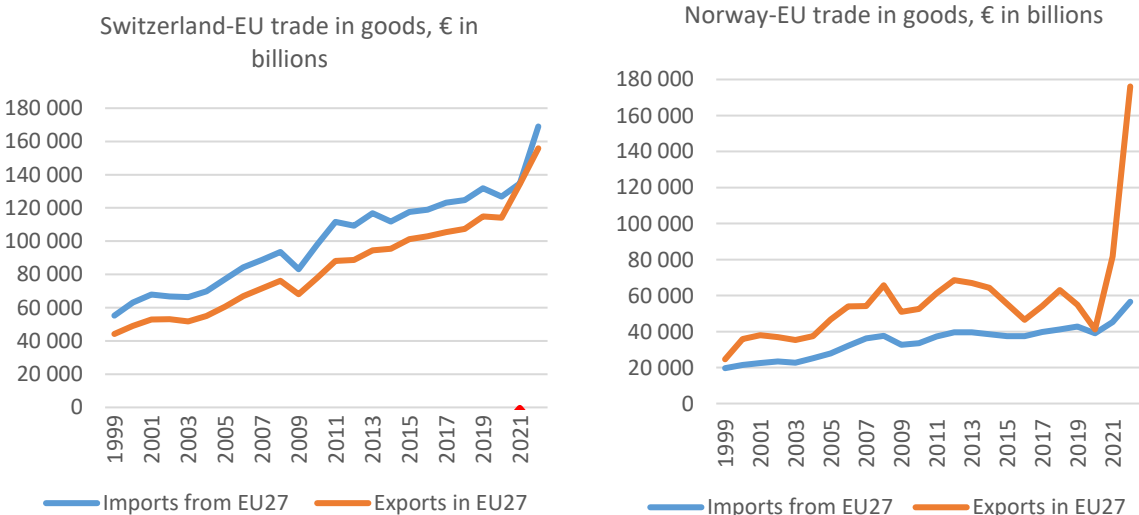
4.2. Economic dimension: Maintaining market access

This section presents some data on the importance of market access for the Swiss economy, the likely economic impact of different integration scenarios and the position of the Swiss business community.

Switzerland’s integration with the EU was from the very start strongly motivated by economic interests. Switzerland has a very strong economy. In 2022, the GDP per capita was EUR 62’820, with about 74 percent of Swiss GDP generated by the services sector, about 25 percent by industry and less than one percent by agriculture (Federal Council 2023b, 2). Furthermore, Switzerland has a low unemployment rate of 4.3 percent, and the expenditure-to-GDP ratio is among the lowest in the world at 35.2 percent. The foreign trade ratio of 119 percent in 2018 was one of the highest in international comparison, and trade accounted for approximately 40 percent of Swiss GDP.

The EU is Switzerland’s most important trading partner. In 2022, the EU accounted for 58 percent of Switzerland’s total trade in goods. This volume amounted to CHF 298.77 billion, of which CHF 137.71 billion were exports and CHF 161.07 billion imports (ibid., 6). Looking at the figures of the last two decades, one can see that Switzerland has always been in a slight trade deficit with the EU regarding trade in goods. This is in stark contrast to Norway, which for the last two decades has constantly had a trade surplus with the EU. While Switzerland usually imported slightly more goods from the EU than it exported, Norway sometimes exported almost twice as many goods to the EU as it imported due to its energy exports and the high energy prices in recent years. Figure 1 shows the development of trade between Switzerland and the EU as well as Norway and the EU since 1999.

Figure 1: Swiss and Norwegian trade in goods with the EU



Source: own compilation based on Eurostat international trade statistics.

The EU is not only a key trading partner for Switzerland, but also vice versa: with 6 percent of the volume of trade in goods, Switzerland was the EU's fourth most important trading partner for goods in 2022. The economic importance of Switzerland for the EU is particularly evident in the border regions. In 2022, almost 400'000 cross-border commuters from the EU worked in Switzerland. Also, almost 1.5 million EU nationals are resident in Switzerland, which corresponds to about 16 percent of the total population of Switzerland (ibid., 32).

With 42 percent of the trade volume, the EU is Switzerland's most important partner for trade in services. The volume amounted to CHF 123.57 billion in 2022, of which CHF 55.54 billion were exports to the EU and CHF 68.1 billion imports from the EU. Vice versa, Switzerland is also very important for the EU since it accounts for 9 percent of the EU's trade in services, making it the third most important trading partner in this field (ibid., 20).

The EU is also the most important foreign investor in Switzerland. In 2021, 66 percent of the foreign investments in Switzerland came from the EU (ibid., 21). 40 percent of the Swiss foreign investments went to the EU. A total of 8 percent of foreign direct investment originates from Switzerland. This means that Switzerland recorded the third highest level of direct investment in the EU after the United States and the United Kingdom.

The 'Bilaterals I' are of particular economic importance as a tailor-made legal framework for Swiss access to the EU's internal market. In 2016, a study commissioned by the Swiss State Secretariat for Economic Affairs (SECO) concluded that there would be a sharp decline in economic activities if the 'Bilaterals I' were discontinued (Ecoplan 2015). GDP in 2035 would be 4.9% lower than if the 'Bilateral I' agreements were still in force. Furthermore, there would be a loss of income of CHF 1'900 per capita in Switzerland in 2035 compared to the baseline scenario. Overall, the Swiss economy would be weakened without the 'Bilaterals I', and there would be a relocation of production sites. By contrast, the EU would even benefit from the weakened Swiss economy. Hence, the 'Bilaterals I' are relatively more important for Switzerland than for the EU.

Another study commissioned by SECO expected even stronger effects, with a GDP that would be CHF 64 billion or 7.1 percent lower in 2035 without the 'Bilaterals I' (Bakbasel 2015). The cumulative loss from 2018 to 2035 would be CHF 630 billion, which corresponds to about one year of total economic output in Switzerland. The welfare loss would be CH 3'400 per capita in 2035. Cumulatively from 2018 to 2035, this loss would be as much as CHF 36'000 per capita. Annual GDP growth without the 'Bilaterals I' would fall from 1.6 percent per year to 1.2 percent.

In Swiss-EU relations, the free movement of persons is a particularly controversial issue. Negative economic consequences such as increased social security costs or lower wages are by some politicians associated with immigration. These fears, however, have been refuted in various scholarly studies on the effects of the free movement of persons. For example, it is undisputed that immigrants from the EU/EFTA region are net contributors to the Swiss social security system and therefore have a positive impact on the financing of the Swiss pension system (Bundesamt für Sozialversicherungen 2017). A large-scale study by the KOF Swiss Economic Institute also found little evidence of wage pressure and no displacement effect on domestic workers (KOF 2019). Rather, an overall positive effect of immigration on economic growth was found. In light of these studies, critics of the free movement of persons and of immigration are now using economic arguments less frequently and focus instead on socio-political and environmental aspects such as increasing traffic and the expected loss of green space and agricultural land.

A recent study has assessed the options of both a termination of the 'Bilaterals' and of a Swiss EU membership (Felbermayr et al. 2023). A complete disintegration of bilateral trade relations between

Switzerland and the EU would mean that the 1972 Free Trade Agreement and the 'Bilaterals I and II' would be terminated and Switzerland would withdraw from the Schengen area. Bilateral trade would be based on WTO terms only. This scenario would have serious consequences for Switzerland. Swiss exports in general would fall by 9.3 percent and imports by as much as 11.2 percent. Exports to the EU would fall by 19.4 percent, imports by 18.1 percent. Overall, Switzerland's gross value added would fall by 1.6 percent and the real income by 2.6 percent.

By contrast, by joining the EU as a full member, Switzerland's gross value added would increase by 4 percent and real incomes by as much as 7.2 percent (ibid.). Switzerland's total exports would increase by 21.6 percent and imports by as much as 24.7 percent. However, Switzerland would have to reckon with annual costs for the EU budget. Furthermore, full membership would also entail economic and political harmonization costs, which is why the actual net effects of EU membership are uncertain.

The exact costs of the failure to update the sectoral agreements are difficult to quantify. In a report on the consequences of the failure of the Institutional Framework Agreement, the Swiss Federal Council refers to studies according to which, for example, a trade deficit of almost 1 billion CHF per year could arise in the food sector and additional costs of over CHF 100 million per year for the medtech sector (Federal Council 2021b, 30-31). In general, the Swiss economy loses attractiveness as a location and competitiveness if the sectoral agreements continue to erode.

In sum, there is no doubt that the bilateral agreements are a success story and have contributed significantly to Switzerland's economic growth over the past 20 years. The business community supports close cooperation with the EU. The economic sectors are currently calling for a solution to the institutional issues to ensure that the bilateral path can be continued. Voices in favour of larger integration steps such as EEA or EU membership are, however, rare.

Yet, there are increasing concerns emphasizing the costs of further economic growth. The prospects of more growth are therefore not sufficient to win support for more integration with the EU. The focus of Switzerland's European policy, also on the part of the business community, is primarily on maintaining the existing level of integration with selective expansions in a few specific, primarily technical areas.

Against this economic background, the next section will address the political dimension of the Swiss-EU relationship.

4.3. Political dimension: Coping with Swiss Euroscepticism

This section provides an overview of the particularities of the political system, the positioning of the political parties vis-à-vis the EU, and the public attitude regarding Swiss European policy.

4.3.1. Specifics of the Swiss political system

Direct democracy plays a crucial role in Switzerland's European policy, in particular two instruments: referendums and initiatives. A referendum can be held against a bill or against an international treaty, certain international treaties are even subject to a mandatory referendum, which automatically leads to a vote and does not require signatures to be collected. The possibility of a referendum exists when new treaties are concluded, when they are revised or when their annexes are amended by the incorporation of new EU law based on decisions of the Joint Committees. The threat of a referendum may limit the Federal Council's room for maneuver in negotiations with the EU. Likewise, the Federal Council may feel compelled domestically to enact certain compensatory measures to win a referendum. For example, Switzerland's flanking measures for the posting of workers, which are often criticized by the EU, are an explicit concession to the labour unions in order to prevent them from opposing the free movement of persons together with the SVP.

A popular initiative can call on the government to take concrete action, such as examining accession negotiations or terminating a certain agreement. Popular initiatives that violate mandatory international law are not allowed but there are no specific requirements regarding their compatibility with EU law. Hence, initiatives can be launched that implicitly or explicitly request the repeal of a law or treaty with a European dimension (as was the case with the 'Mass Immigration Initiative').

In case of a mandatory referendum, not only a majority of the people but also a majority of the cantons has to vote in favour of a legislative bill or an international agreement. This has the effect that the population in small cantons is relatively overrepresented, raising the hurdle for European policy proposals, given that rural areas are more critical of European integration.

A good example of the sluggishness of the Swiss political system in terms of creating and maintaining EU compatibility is the reform of corporate taxation. After several years of consultation with the cantons and the business community, a new bill was put to the vote in February 2017. It was intended to address the criticism of the taxation of certain companies voiced by the EU since 2008. The bill was rejected by the people for purely domestic reasons. Only in May 2019 an EU compatible tax reform was accepted by the people and the cantons.

Besides direct democracy and federalism, the formation and composition of the government is another special feature of the Swiss political system. The Federal Council is composed of the four strongest political parties, which means that very different political groups are represented in the government. The Federal Council has been accused of a lack of political leadership in the negotiations on the institutional framework agreement. It has also been questioned on several occasions whether the Federal Council should be reformed by increasing the number of government members from currently seven to nine Councillors. However, such a reform is currently just as unlikely as a reform of direct democracy. Regarding the latter, reference can be made to Liechtenstein, whose direct democracy is structured very similarly, but popular initiatives are explicitly checked for their compatibility with EEA law, thus reducing conflicts between direct democracy and European integration from the outset.

4.3.2. Positions of political parties regarding Swiss-EU relations

The question of Switzerland's relations with the EU has shaped the Swiss party system more than any other question in the recent past. The vote on the EEA Agreement in 1992 marked the beginning of the rapid rise of the right-wing populist Swiss People's Party (SVP) from the smallest party represented in the Federal Council to the party with by far the largest number of voters. The SVP was the only major party to speak out against joining the EEA. The image of the 'anti-Brussels party' has remained to this day. In the 1990s, the SVP's opposition was mainly directed against a perceived loss of Swiss independence and sovereignty caused by European integration. In the 2000s, the free movement of persons, which was associated with a loss of identity and the risk of undermining Switzerland's social security and welfare systems, moved to the centre of the party's political programme. The SVP mobilized against the free movement of persons primarily with the help of popular initiatives (see also Table 2 in the Annex). In this way, it succeeded in gaining support among the working class, which had once voted largely for the Social Democratic Party (SP). Today, voters from the lower income strata are more likely to vote for the SVP than for the SP. The SVP is usually also the only party that puts European policy on its election campaign agenda and questions the current bilateral approach. The focus of the SVP is on defending Switzerland's neutrality and independence. Concerning the institutional framework agreement, the party has contributed significantly to the creation of the narrative of 'foreign law' and 'foreign judges', which strongly characterizes the opposition to further rapprochement to the EU. These narratives are now also being used in the campaign against the new negotiations.

In the early 1990s, the two centre parties, the FDP (Free Democratic Party) and the CVP (Christian Democratic Party), were still pursuing a pronounced pro-European course and even temporarily

envisaged accession to the EU as a strategic goal. Their constituencies, however, were always considerably more skeptical in this regard. This discrepancy between the party elites and the party base came to light in the EEA vote, which led to a change of course in both parties. From then on, the bilateral approach was the preferred option ('Königsweg'), which the two centre parties also supported successfully in related popular votes. As far as the institutional framework agreement with the EU is concerned, both parties have reservations. While the FDP is very united in its support for a continuation of the bilateral approach, there are a few voices in the CVP calling for a renewed consideration of EEA membership.

The goal of EU accession is still anchored in the SP's party manifesto. The Social Democrats have consistently adhered to this goal since the 1970s. However, due to growing EU skepticism among the population as well as among the party's own traditional working-class voter base, EU accession was not prominently promoted in the 2023 election campaign. The SP also found itself in a real dilemma during the negotiations on the institutional framework agreement. The labour unions rejected the framework agreement because of what they saw as a weakening of wage protection, which they were unwilling (or unable) to accept. The SP supported the unions' position although this step led to various party resignations. In 2022, the SP also supported the referendum against the adoption of the EU Regulation on the European Border and Coast Guard. A success of the referendum and thus the rejection of the Regulation would probably have led to the termination of Switzerland's association with Schengen and Dublin.

The Green Party Switzerland (GPS), on the other hand, rejected EEA accession in 1992 because it feared this would undermine environmental and consumer protection. In the late 1990s, however, a radical repositioning took place, and the Greens have since been pursuing a decidedly EU-friendly course. Still, integration policy is not one of their core issues, nor is it an issue with which voters primarily associate the Greens. In addition, the openness toward Europe is at times questioned, for instance in the recent opposition to Switzerland's membership in Frontex, since the Greens accuse Frontex of an inhumane migration policy.

The Green Liberal Party (GLP) is a relatively young party. It has replaced the SP as the most EU-friendly party. It is unreservedly in favour of an institutional framework agreement and openly declared its support in the 2023 federal election campaign. Together with other pro-European politicians, representatives of the GLP have expressed the idea of relaunching a popular initiative for an institutional agreement with the EU. However, since even the proponents of the initiative see little chance of success at the ballot box, a vote will most likely not happen as a defeat would risk setting back their goal by years, if not decades.

The positioning of the political parties on EU issues shows that opposition to an active rapprochement with the EU can be found in both the left and right political spectrum. In the left-wing camp (SP, GPS), however, this opposition is limited to specific issues, while in the right-wing camp, reservations are more fundamental in nature. A business-friendly attitude of the Swiss parties leads to a certain pragmatism allowing for an active European policy in the framework of the sectoral agreements. The challenges only become apparent when this framework no longer functions, as it is currently the case.

Table 6 summarizes the positions on European policy of the main Swiss parties.

Table 6: Positions on European policy of the main Swiss parties

	Strength (2023)*	Position on bilateral approach	General attitude to European policy
Green Party (GPS)	9.80% (0)	Supporting	Supportive as long as EU law fulfills party objectives better than Swiss law; growing Euroscepticism regarding asylum
Social Democratic Party (SP)	18.30% (2)	Supporting if wages are protected	Appeal to European identity but growing opposition in social policy; support for European policy in exchange for domestic policy concessions from centre parties
Green Liberal Party (GLP)	7.60% (0)	Strongly supporting	Cosmopolitan attitude and openness to international integration; cooperation to shape Europe's future
The Centre (formerly CVP)	14.10% (1)	Cautiously supporting	Focus on stability in political and economic cooperation
Liberals (FDP)	14.30% (2)	Cautiously supporting	Focus on economic interests (especially market access but also regulatory niches and deviations from EU law)
Swiss People's Party (SVP)	27.90% (2)	Rejecting due to institutional and policy specific concerns	Identity-led reservations towards immigration and loss of sovereignty; opposition in the fields of agriculture, financial services, cohesion payments to the EU, and neutrality policy

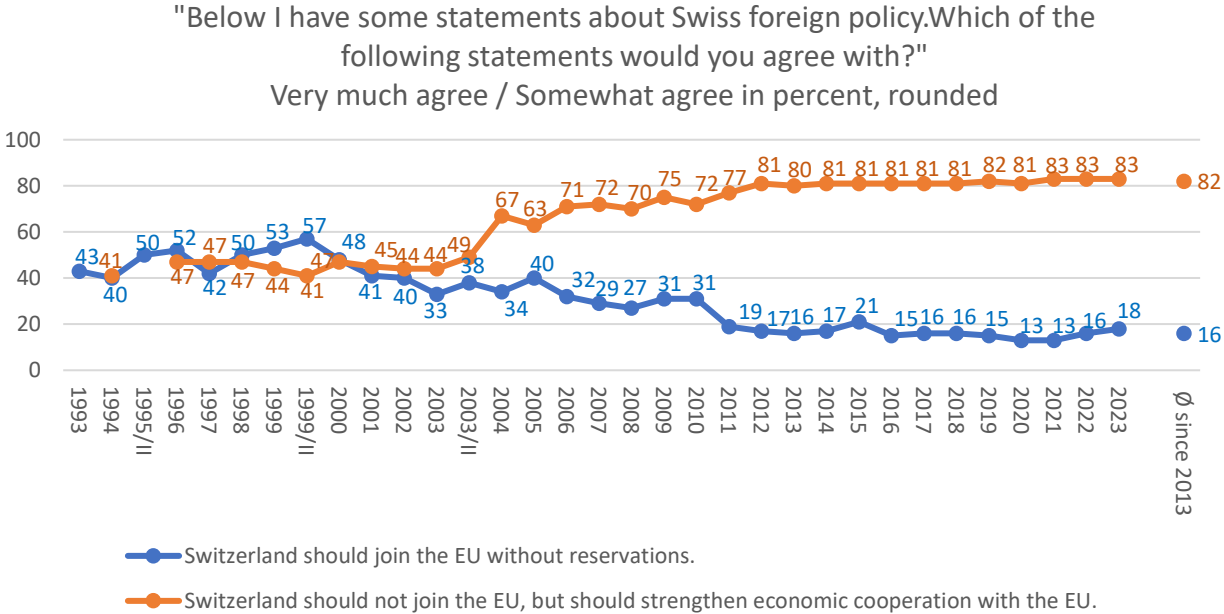
* The number in parentheses indicates the number of Federal Council seats held by the party (as of October 2023). Source: own compilation based on parties' websites.

In addition to the political parties, there are both pro- and anti-European organizations. The 'Action for an Independent and Neutral Switzerland' (AUNS), which emerged in the late 1980s from a movement against accession to the United Nations, was committed to opposing a rapprochement with the EU and counted around 34'000 members. However, it has lost importance in recent years and is now known as 'Pro Switzerland' after a merger with other associations with similar ideas. The 'New European Movement Switzerland' (NEBS) emerged at the end of the 1990s from various smaller pro-European associations that had previously been involved in the 'Yes to Europe!' initiative, which was, however, clearly rejected at the ballot box. Its membership is smaller than that of 'Pro Switzerland', but it is politically well networked. Overall, such civil society organizations play only a minor role in the policy debate.

4.3.3. Attitude of the Swiss population towards European policy

The attitude of Swiss voters toward the EU is one of the best documented opinions in Switzerland. In the 1990s, EU accession enjoyed strong popular support, before this support declined sharply (see Figure 2). Currently, less than one-fifth of the voters want to join the EU. The EU itself also enjoys limited sympathy among the population, which is one reason why most Swiss parties try to avoid the EU topic in their election campaigns.

Figure 2: Attitude towards EU membership in Switzerland



Source: Szvircev Tresch et al. 2023, 151.

While today only few people now support EU membership, support for the bilateral agreements is high. According to a survey that is regularly conducted since 2015, at least 45 percent of Swiss voters tend to see advantages in the bilateral agreements between the EU and Switzerland. In a recent survey (February 2023), this share reached almost 60 percent, while less than 20 percent saw disadvantages for Switzerland (GFS Bern 2023a, 3). The bilateral agreements are perceived positively by the electorates of all major parties, except for the SVP. The main advantages cited are access to a major export market, to skilled workers as well as to education and research programmes (although this access is currently suspended). Likewise, the right to live, study and work anywhere in the EU is seen by the majority as an advantage. In 2023, almost 80 percent were of the opinion that the bilateral agreements contributed substantively to the wealth of Switzerland. This was the highest proportion since the start of the survey in 2015, which shows the continuing support for the bilateral approach despite the political controversies.

Among the ‘contra’ arguments, the view that Switzerland has lost control over immigration and that domestic wages are under pressure because of the free movement of persons is particularly popular. The difficulty of negotiating the future of the bilateral approach is reflected, among other things, in the fact that over a third of Swiss voters believe that the EU is more dependent on Switzerland than Switzerland is on the EU (ibid.). Hence, it is very likely that these people expect concessions by the EU, and in the most recent survey (November 2023), a majority of 68 percent agreed that the Federal Council should start negotiations on a new package of bilateral agreements (GFS Bern 2023b, 13).

Another indicator of the public attitude is the ‘Worry Barometer’ (‘Sorgenbarometer’), where Swiss voters are asked to select from a list of issues those which they personally consider to be among the five most important problems that Switzerland faces. In 2022, 25 percent chose relations with the EU as one of these five problems (GFS Bern 2022). In the 1990s, relations with the EU were also among Switzerland’s five biggest problems in the public perception. With the entry into force of the bilateral agreements, however, the perception of this issue declined sharply and relations with the EU were no longer among the top 10 concerns. Since 2014, however, the topic has again returned.

The attitude of the population toward the EU and European policy is also reflected in the results of various popular votes. Since 1992, the relationship between Switzerland and the EU has been at stake in more than a dozen votes submitted to the people. The bilateral approach was repeatedly confirmed by the electorate, while proposals calling for either more or faster integration ('Yes to Europe'), but also less integration (e.g. Limitation Initiative, Self-determination Initiative) were rejected. A prominent exception to this was the 'Mass Immigration Initiative' in 2014. In 2020, the initiator of this initiative, the SVP, put forward the same issue again, this time explicitly calling for the termination of the free movement of persons as a possible consequence of its adoption. However, the petition failed by a clear margin. The bilateral approach was thus once again confirmed by the people. The voting history shows that the Swiss electorate is largely satisfied with the 'middle way' provided by the 'Bilaterals': it wants neither a faster pace nor stronger integration, nor a further distancing or even a break with the EU.

Nevertheless, Switzerland still has a reasonably solid basis for its relations with the EU. However, time is currently working against Switzerland. First, the bilateral agreements are over time losing relevance where they are not updated. Second, the pressure to conclude new agreements is growing due to new problems such as the COVID-19 pandemic and cooperation in public health (Tobler 2023), the energy crisis or the management of political crisis, for instance Russia's war in Ukraine (Hillion 2023). Third, Switzerland's negotiating position is weakening because the EU seeks to act more cohesively towards non-member states in general and reduce existing strategic dependencies on third countries. Fourth, the more Switzerland-EU relations erode, the less important Switzerland becomes for the EU and the more Switzerland's negotiating power decreases. Finally, Switzerland is losing goodwill and trust with the EU as time passes by. Here, the differences in governance to the EEA are particularly evident. The EEA Council and the EEA Joint Committee ensure a permanent political dialogue between the EEA EFTA states and the EU. This dialogue enables the EEA EFTA states to confirm their commitment to an active participation in European integration despite occasional problems in the functioning of the EEA. By contrast, the relationship between Switzerland and the EU has been burdened for many years by disputes over a few specific issues, whereas cooperation in various agreements works very well given that Switzerland acts rather pragmatically.

Regarding the Common Foreign and Security Policy (CFSP), Switzerland continues to cherish neutrality but cooperates *ad hoc* with the EU. It maintains no formal political dialogue, and it has not concluded a framework participation agreement despite contributing to selected missions under the Common Security and Defence Policy (CSDP). Switzerland does usually not figure in the list of countries that explicitly 'align' themselves with EU restrictive measures although in practice it follows them on a case-by-case basis (Hillion 2023). Regarding the EU's sanctions in response to Russia's war of aggression against Ukraine since 2022, Switzerland has reluctantly aligned itself with some delay in light of mounting domestic political pressure. In its recent resolution on EU-Switzerland relations, the European Parliament (2023, para 8) "encourages Switzerland to maintain its commitment to the international rules-based order and to closely and consistently apply and implement all adopted EU restrictive measures" and "to prevent their circumvention". The fact that Switzerland is currently prohibiting the re-export of ammunition and war materials produced in Switzerland from EU members states to Ukraine has faced criticism (ibid., para 10). However, a stronger Swiss commitment to the EU sanctions policy can hardly be expected, as Switzerland cherishes its independent foreign policy and takes case-by-case decisions after weighing all political and economic interests, taking into account its tradition of neutrality. However, the Swiss population has become more critical towards traditional neutrality and more open towards international cooperation (Federal Council 2022c, 13). In November 2023, the EU and Switzerland held their first structured security and defence dialogue. It covered a range of issues, including an exchange of views on Switzerland's participation in EU CSDP missions and operations cooperation the European Defence Agency and topics such as cyber and disinformation. It was agreed to hold this dialogue on an annual basis.

Furthermore, Switzerland also values an independent trade policy. It has actively sought to improve Swiss companies' access to foreign markets and to avoid any discrimination resulting from free trade

agreements that its major competitors have been concluding with third countries. Increasingly, Switzerland's trade negotiations are also characterized by the desire to secure competitive advantages over EU states. While Switzerland usually negotiates free trade agreements in association with the other EFTA states, in case of no consensus, it went for a bilateral free trade agreement, such as with China (2014) or Japan (2009). In December 2023, Switzerland and the United Kingdom signed an agreement on mutual recognition in the area of financial services which promotes closer cooperation between these two major international financial centres by recognizing the equivalence of their respective legal and supervisory frameworks in selected areas.

In sum, Euroscepticism in Switzerland is the result of ideologies, which in turn are strongly influenced by the country's particular history and the high value placed on national sovereignty. But it is also the result of specific regulatory preferences, in particular in the fields of financial services and fiscal policy, and a generally liberal economic policy with a low level of regulation, yet with a strong protection of the interests of certain sectors (e.g. agriculture and pharmaceuticals). In view of the growing polarization in the Swiss party system, it can be assumed that political conflicts over specific regulatory issues will increase and that parties and movements that are in principle pro-EU may also contest specific integration steps, like it is currently the case with the SP. In view of Switzerland's economic strength, Euroscepticism is increasingly characterized by concerns about payments to EU states or the 'immigration' into the Swiss social system from the EU. Finally, Euroscepticism in Switzerland is also the result of the specific features of the Swiss political system, and direct democracy will remain a potential stumbling block. The growing urban-rural conflict must also be taken into account because the rural cantons form a majority and in the Swiss federal system and certain issues require not only a majority of the population but also a majority of the cantons. Relations between Switzerland and the EU are therefore likely to continue to be politicized in the coming years. This applies not only to the upcoming negotiations on a further bilateral package, but also to the implementation and interpretation of the agreements and their dynamic further development if an agreement is reached on the institutional questions.

5. Reviews of the 'Swiss model' and alternative options

In this section, several options for the future relations between Switzerland and the EU are presented. They are examined with regard to their scope, governance, political feasibility and prospects to be realized in the near future.

The 2023 situation assessment report presents four European policy options for Switzerland (Federal Council 2023a). These options largely coincide with the options that the Swiss government already examined in its 2006 and 2010 integration policy reports (Federal Council 2006; 2010). The four options are: free trade with the EU, continuation of the existing bilateral path, joining the EEA, and EU membership. Each option is examined in terms of internal market access, cooperation opportunities, political room for maneuver and foreign policy feasibility. According to the Federal Council (2023a, 3), of all the options, the bilateral path offers the best balance between concrete economic benefits and political leeway. In contrast, a mere free trade scenario, based on the existing or a modernized agreement, would not correspond to the Swiss economic interests. In addition, Switzerland would have to forego cooperation outside the internal market, namely the association with Schengen and Dublin, since this presupposes the free movement of persons. While a free trade agreement would grant a high level of formal independence since Switzerland would not participate in the internal market, such an agreement would not fully translate into a greater political room for maneuver given the continued need for autonomous adaptation and the lack of participation in decision-shaping.

With regard to EEA and EU membership, the Federal Council (2023, 48) concludes that they would lead to a "disproportionate restriction" of its scope for action despite improved market access. In the EEA

the lack of voting rights in the EU decision-making process would fall short of compensating for the additional obligations (such as the need of the EFTA countries to speak with one voice, the dynamic adoption of law and the obligation of homogeneous interpretation) in comparison with the bilateral approach. EU membership would, in return for full representation and participation in the decision-making process, require far-reaching further integration steps, such as the adoption of the Common Commercial Policy, the Common Agricultural Policy, the euro and the CFSP (ibid., 47). This would also have consequences for Swiss federalism, direct democracy and neutrality policy.

Table 7 distinguishes two variations for each of the four options presented by the Federal Council in terms of the status quo and a more ambitious form. Hence, free trade could either be based on the existing Free Trade Agreement of 1972 or on a new, more comprehensive free trade agreement. In case of a termination of the bilateral agreements, the 1972 FTA would still be a fallback solution to enable at least a certain degree of facilitated trade in industrial goods. However, it is rather outdated. Instead, Switzerland and the EU could negotiate on a new, modern free trade agreement. This could follow the examples of the EU agreements with the United Kingdom or Canada. In 2015, the Federal Council devoted a detailed report to the option of a comprehensive free trade agreement, concluding that in view of Switzerland's geographical location and the close ties with the EU, such an agreement would not meet the needs of the Swiss economy (Federal Council 2015). Nor would Switzerland necessarily gain any political room for maneuver vis-à-vis the EU. If bilateral economic cooperation decreased, Switzerland would lose importance for the EU, which in turn would make it more difficult to assert its interests. At the same time, Switzerland would still have to align itself with EU standards, and a discontinuation of the Schengen/Dublin association would pose great challenges to Switzerland's migration policy.

Politically, such a broader free trade agreement is currently only supported by the SVP. All other parties favour a continuation of the bilateral path or even further integration (see section 4.3.2). Among the population, however, a free trade agreement seems to find backing. In a representative survey of the Swiss people conducted in February 2023, a free trade agreement received the greatest support of all the integration options presented (GFS Bern 2023a, 15). However, such surveys are not very meaningful without knowledge of the details of the individual options and their implications. The insight gained from the survey is therefore also limited to the fact that, in case of a termination of the bilateral agreements, the Swiss population tends to support less rather than more integration compared with the sectoral agreements currently in place. In this context it is worth mentioning that Brexit and the EU-UK free trade agreement had a rather minor impact on the political and public debate on relations between Switzerland and the EU (Malet and Walter 2023). In general, experiences of other countries and thus other integration models play a very minor role in the Swiss debate. This can possibly be explained by Switzerland's historically grown self-image as a unique political system with an independent foreign and economic policy.

With regard to the bilateral approach, a distinction must be made between the status quo and its potential further development. The political feasibility of the status quo does not seem to be given at present, since the EU insists on a new institutional framework, and the Federal Council recognizes the need to further develop bilateral cooperation. Otherwise, the existing bilateral agreements will no longer be updated, Switzerland will continue to be excluded from the participation in various EU programmes, and the conclusion of new agreements will hardly be possible.

Two different options can also be distinguished with regard to the EEA. The first option is more a manifestation of the further development of the bilateral path. It has been suggested that Switzerland could 'dock on' to the EFTA supervisory institutions in order to clarify the institutional issues in its relationship with the EU (e.g. de Sépibus 2014). At the centre of these considerations was the EFTA Court. It could interpret Swiss-EU bilateral law in a separate composition with the participation of a Swiss judge. In recent years, various Swiss politicians have expressed some sympathy for this type of docking on to the EEA institutions. However, in order to safeguard the authority of the EFTA

surveillance mechanism and to ensure the good functioning of the EEA, any use of the EFTA institutions by Switzerland would only be possible if Switzerland would not only 'dock on' to the EFTA Court, but integrate with the complete EEA surveillance mechanism, including a transfer of certain competences to the EFTA Surveillance Authority. It is highly unlikely that the current EEA EFTA states would accept a limited docking on to the EFTA Court, while they themselves would remain subject to the control of the EFTA Surveillance Authority and the EFTA Court. In turn, an affiliation of Switzerland with the EFTA Surveillance Authority is politically hardly acceptable to Switzerland, after it strongly opposed an independent international surveillance authority in the negotiations on an institutional framework agreement with the EU – and prevailed with this demand vis-à-vis the EU.

Switzerland's accession to the EEA would probably be relatively easy to achieve. Admittedly, it can be assumed that a Swiss EEA membership would make the EEA's decision-making processes more complicated and thus reduce the EEA's efficiency. Nevertheless, the three EEA EFTA states or the EU would be unlikely to oppose Swiss membership since this option is foreseen in the EEA Agreement (Art. 128). Domestically, the EEA still meets with some sympathy in Switzerland. For instance, in February 2023, the EEA received the support of 60 percent of the people surveyed as a potential alternative to the existing bilateral agreements (GFS Bern 2023a, 15). However, concrete political efforts to work towards an EEA membership cannot be observed in Switzerland.

Switzerland's membership in the EU is currently very unlikely. For this to happen, the reality of European integration would first have to change fundamentally, for example by allowing partial membership, or as a result of severe crises hitting the country. Table 7 summarizes the different options.

Table 7: Overview of different integration models

		Scope	Governance	Political feasibility	Prospects
Free trade	FTA 1972	very limited and purely trade	very little and purely intergovernmental (Joint Committee)	neither in the interest of the EU nor of Switzerland; fallback option if 'Bilaterals I' fail	unlikely
	new modernized FTA	limited and mainly economic scope; very limited room for cooperation beyond		Feasible in terms of foreign and domestic policy, but currently neither in the interest of the EU nor of Switzerland	rather unlikely
Bilateral approach	status quo	various sectoral agreements with little formal linkage; focus on economic integration but also cooperation beyond	little and purely intergovernmental institutionalization based on various Joint Committees	not feasible; outdated from EU perspective; Ongoing loss of relevance if not updated and extended to new policy areas.	temporary solution until a new integration model is found
	new bilateral agreements	package approach: current scope plus new agreements; similar institutional set up for key agreements	new institutional set-up that ensures dynamic adoption and consistent interpretation	feasibility depends on domestic politics	most likely option
EEA	'docking on' to EFTA surveillance mechanism	new bilateral approach	use of EFTA institutions for surveillance and judicial enforcement	feasibility depending on domestic politics and EEA EFTA states' willingness	unlikely
	EEA membership	internal market plus bilateral agreements outside of EEA	full integration in EEA two-pillar structure	feasibility depending on domestic politics; EU and EEA EFTA states support likely	rather unlikely
EU membership	partial EU membership	EU membership with far-reaching opt-outs	full access to EU institutions in integrated policy fields	no existing model; possible development in case further enlargement, but EU reservations to be expected	currently rather unlikely
	full membership	full integration	full institutional integration	not enforceable in domestic politics	very unlikely

Source: own compilation.

Overall, a further development of the bilateral sectoral approach, including a solution to the institutional issues, is now on the horizon. Although the objective of the negotiations on an institutional framework agreement was to find a solution equivalent to the EEA, the option now under discussion has little in common with the institutional framework of the EEA, apart from the dynamic adoption of law. In the EEA, legal interpretation and monitoring is carried out by international institutions that are in close exchange with the EU institutions and follow similar principles. By contrast, the monitoring and interpretation for Switzerland would be carried out by Swiss institutions only. The

main new institutional link between Switzerland and the EU would be the dispute settlement procedure involving an arbitral tribunal and reference to the CJEU in some cases, as well as an overarching high-level dialogue. Switzerland insists that “in the dynamic adoption of legislation and in dispute settlement, exceptions and principles will ensure that in the case of immigration, Swiss social welfare is not abused, current wage levels in Switzerland are protected and the Federal Constitution is respected” (Federal Council 2023c). It thus continues to insist on safeguarding its formal independence, despite some compromises. Likewise, the EU has made concessions to Switzerland and any further concessions may create a precedent that could lead to demands from other third countries, in particular the EEA EFTA states.

6. Conclusion: Future of the ‘Swiss model’

Switzerland is geographically located in the heart of the European Economic Area, economically closely integrated and legally largely aligned with core aspects of the internal market. Its political relations with the European Union have, however, been challenging since the rejection of the multilateral EEA Agreement in 1992. Since then, Switzerland has been lagging behind the EEA EFTA states with regard to European integration. This has to do with Switzerland’s complex political system, which makes quick decisions almost impossible – also because neither the politicians nor the population display particularly pro-European attitudes. Instead, it has concluded a high number of sectoral bilateral agreements. However, this bilateral piecemeal approach has reached its limits in the past decade. The EU has criticized the lack of efficient arrangements for taking over new relevant EU *acquis* by Switzerland and for ensuring the supervision and enforcement of the existing agreements, which risk undermining the homogeneity of parts of the internal market and EU policies. The draft Institutional Framework Agreement, meant to fix these shortcomings, failed as the Federal Council chose not to sign it. It has, in particular, met opposition from an ‘unholy alliance’ of the right-wing SVP and the left-wing SP. The centre parties and the liberal FDP also had reservations on contentious points such as access to social security, limitations of state aid, lower wage protection and a dispute settlement in which Switzerland can be overruled.

Thanks to its economic relevance for the EU and its good relations with individual EU states, especially its neighbours, Switzerland has been able to play for time. It has been a tough bargaining partner, extracting some concession from the EU for new negotiations, but partly also giving in on some of its previous red lines. While the controversial substance primarily concerns social policy linked to immigration, with resistance coming from political parties on the right and left, the institutional issues face some challenges as they touch upon important aspects of the Swiss understanding of national sovereignty. The country needs to find an acceptable balance between, on the one hand, the benefits resulting from its broad participation in the internal market and, on the other hand, the lack of real participation in the EU’s decision-making despite the expected more dynamic adjustment of some of its bilateral agreements with the EU, their consistent application and uniform interpretation and an effective dispute settlement mechanism. The options of joining the EEA or the EU are thereby not on the political agenda. A Swiss EU membership would require a strong integration incentive that most likely can only be triggered a serious economic or political crisis. This is not to say that Switzerland would not benefit economically from EU accession. On the contrary, various studies show that EU membership and other integration steps could be quite beneficial for Switzerland. However, prosperity in Switzerland was and is already very high, and the population is currently confronted with various costs of the strong economic growth such as rising real estate prices or traffic congestion. The business community is not fully in favour of EU accession as membership could increase competition, and especially small and medium-sized businesses also fear an increase in the density of regulations in case of an EU membership.

One consequence of the sectoral bilateral approach is that problems in individual sectors risk pushing possible closer cooperation in other areas into the background. This distinguishes the 'Swiss model' from the EEA. The latter also suffers from functional problems and is repeatedly confronted with delays in adoption. However, these rarely question the overall assessment of the EEA as a well-functioning integration model. The political dialogue established in the EEA also gives the EEA EFTA states more opportunities to show their commitment to an active participation in the European integration process and thus their credibility as reliable partners of the EU. Comparing the two models, the greater institutionalization in the EEA can therefore also be seen as an advantage, although the bilateral approach undoubtedly leaves more room for an independent policy of interests.

Overall, it can be concluded that the current 'Swiss model', consisting of a rather static bilateral approach and a unilateral adaptation to EU law, is not a model for other neighbouring countries of the EU. The future development of this model is subject to successful new negotiations to be launched in spring 2024. In order to find a way out of the deadlock, both sides have made compromises: the EU no longer insists on a horizontal institutional framework agreement as a precondition, but is ready to accept institutional provisions in the key agreements and a package approach that includes a few new sectoral agreements, whereas the Swiss side accepts – with some reservations – the Citizenship Directive, a regular cohesion contribution and a high-level dialogue to better coordinate bilateral relations. If the envisaged broad 'Bilaterals III' package will successfully be concluded, it will have to be ratified by a referendum in Switzerland. EU-Swiss relations are likely to remain challenging.

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Annexes

Table 1: Overview of major EU-Swiss bilateral agreements still in force

Phase	Bilateral agreements
Before EEA	1972 Free Trade Agreement 1986 Framework Agreement for Scientific and Technical Cooperation 1989 Insurance Agreement
<i>EEA Agreement 1992</i>	<i>failed</i>
'Bilaterals I' 1999 (with a 'guillotine clause')	Free movement of persons Technical barriers to trade Public procurement Agriculture (specific products) Land transport (road and rail) Air transport Research (1999, 2004, 2007, 2014)
'Bilaterals II' 2004	Schengen/Dublin association Taxation of savings (in 2017 replaced by automatic exchange of financial account information) Fight against fraud Processed agricultural products Environment Statistics Creative Europe (MEDIA) Education Pensions of retired EU officials in Switzerland
Since 2004	2004 Cooperation with Europol 2008 Cooperation with Eurojust 2012 Cooperation with European Defence Agency 2009 Customs facilitation and security 2010 Education (not renewed in 2014) 2011 Protection of designations of origin and geographical indications 2013 Satellite navigation programmes 2013 Cooperation with competition authorities 2014 European Asylum Support Office 2017 Automatic exchange of financial account information 2017 Emissions Trading Schemes <i>Negotiations on hold:</i> Agriculture Electricity Food safety Product safety Public health
<i>Institutional Framework Agreement 2021</i>	<i>failed</i>

Source: own compilation.

Table 2: Federal popular initiatives and referenda related to European integration

Year of vote	Topic	Outcome
Popular initiatives		
3 December 1972	FTAs with the EEC/ECSC	accepted
20 February 1994	“Protection of Alpine regions from transit traffic” (Alps Initiative) – <i>indirectly against transit agreement</i>	accepted
8 June 1997	“EU membership negotiations before the people!” (to withdraw the EU membership application)	rejected
4 March 2001	“Yes to Europe!” (to start EU membership negotiations)	rejected
28 November 2010	“For the expulsion of foreign criminals” (Expulsion Initiative)	accepted
9 February 2014	“Stopping mass immigration” (Mass Immigration Initiative) – <i>indirectly against free movement of persons agreement</i>	accepted
30 November 2014	“Stop overpopulation – safeguard our natural environment” (Ecopop Initiative) – <i>indirectly against free movement of persons agreement</i>	rejected
28 February 2016	“Enforcement of the expulsion of foreign criminals” (Enforcement Initiative) – <i>indirectly against free movement of persons agreement</i>	rejected
25 November 2018	“Swiss law instead of foreign judges” (Self-determination Initiative) – <i>indirectly against institutional framework agreement</i>	rejected
27 September 2020	“For moderate immigration” (Limitation Initiative) – <i>indirectly against free movement of persons agreement</i>	rejected
Federal referenda		
27 September 1992	Referendum against the construction of trans-Alpine railways	rejected
6 December 1992	EEA Agreement	rejected
27 September 1998	Referendum against federal law on a heavy vehicle toll	rejected
29 November 1998	Financing of public transport (incl. trans-Alpine) infrastructure	accepted
21 May 2000	Bilateral Agreements I	accepted
5 June 2005	Referendum against Schengen/Dublin association agreements	rejected
25 September 2005	Referendum against extension of free movement of persons to new EU member states (Baltic, Central and Eastern European countries)	rejected
26 November 2006	Referendum against cooperation with Eastern Europe (cohesion funds)	rejected
8 February 2009	Referendum against extension of free movement of persons to new EU member states (Bulgaria, Romania)	rejected
17 May 2009	Referendum against biometric passports – <i>indirectly against Schengen/Dublin association</i>	rejected
19 May 2019	Referendum against implementation of the EU Firearms Directive – <i>indirectly against Schengen/Dublin association</i>	rejected
15 May 2022	Referendum against adoption of the EU Regulation on the European Border and Coast Guard (Frontex) – <i>indirectly against free Schengen/Dublin association</i>	rejected

Source: own compilation.

Table 3: Comparison of the scope of the key Switzerland-EU agreements with the EEA Agreement

Policy Area	Key bilateral agreements	Examples of deviation from EEA EFTA states
Goods	Free Trade Agreement (1972), incl. Protocol on processed agricultural products (2004); Agreement on the Removal of Technical Barriers to Trade (MRA) (1999); Agreement on Agriculture, incl. veterinary agreement (1999); Agreement on Government Procurement (1999); Agreement on Customs Facilitation and Security (2009)	Narrower range of products covered than in the EEA; FTA deemed not 'self-executing' by the Swiss Federal Court, i.e. no right for individuals to appeal; competition law and state aid provisions not compatible with those applicable within EEA/EU; government procurement essentially at the level of the World Trade Organization (WTO), not comparable with EEA/EU; currently no updating of MRA and agreement on agriculture
Services	Insurance Agreement (1989); Air Transport Agreement (1999); Land Transport Agreement (1999)	Very restricted scope even within the few existing agreements (e. g. no direct access to rail networks; restricted cabotage); need for equivalence decisions in financial services (e.g. currently not granted for stock exchange)
Persons	Free Movement of Persons Agreement (1999)	Lack of EU Citizenship Directive and other differences (e. g. posted workers)
Capital	No formal agreement	Part of EEA Agreement
Tax framework	Agreement on the Automatic Exchange of Financial Account Information to Improve International Tax Compliance (2015); Anti-fraud Agreement (2004)	Outside the EEA (but bilateral agreements)
Education, research and innovation	Framework Agreement for Scientific and Technical Cooperation (1986); Research agreement (1999; with follow-up agreements of 2004, 2007 and 2014); Education agreement (2010)	Horizon Europe and Erasmus+ programmes are on hold until the institutional questions are solved (i.e. Switzerland has status as non-associated third country); Switzerland is also excluded from other EU programmes and fora
Foreign and security policy	Cooperation Agreement with the European Defence Agency (2012)	Outside the EEA; EEA EFTA states follow bilateral approaches as well; Switzerland more restricted due to its neutrality
Justice and home affairs	Schengen and Dublin Association Agreements (2004); Agreement between Switzerland and Europol (2004); Agreement between Switzerland and Eurojust (2008); Agreement on participation in the European Asylum Support Office (2014); Eurodac Protocol to the Dublin Association Agreement (2019); Prüm Cooperation Agreement (2019)	Outside the EEA; comparable to EEA EFTA states, however without arrest warrant linkage
Environment, climate and energy	Environmental agreement (2004); Agreement on linking the emissions trading systems (2017)	Much narrower scope than EEA: lack of agreement in the field of electricity; cooperation in the field of environmental policy without explicit references to secondary legislation; very limited cooperation regarding the European Green Deal (e.g. Switzerland has not joined the REPowerEU plan nor industrial alliances such as the European Solar Photovoltaic Industry Alliance)
Public health and disaster preparedness	Administrative agreement for humanitarian aid and civil protection of (2017)	Narrower scope than EEA (e.g. no contractually secured participation in the Europe-wide early warning and control system against cross-border health hazards); no participation in health programmes
Culture and statistics	MEDIA Agreement (2004 with follow-up agreement 2007); Statistics Agreement (2004)	No alignment with the Audiovisual Media Services Directive and thus currently no participation in the EU's MEDIA film funding programme; harmonized statistics in various domains (but fewer than in the EEA)

Source: own compilation.