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Relations Between the EU and Switzerland

Too Much to Lose,
Too Little to Negotiate?

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Summary

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As the saying goes, for all the time of its peaceful existence, Switzerland has only produced the cuckoo clock. This is not correct, of course, both because the cuckoo clock was invented in Bavaria, and, more importantly, because Switzerland has contributed significantly to Europe's political development. The country is not only the earliest and brightest example of republican and federal governance, but its legal and political ties with the EU have also created the entangled concept of bilateralism. This dynamic relationship has worked well for many years, so it may come as a surprise to discover how fragile it is, especially at a time when every deal must be sealed not only between reasonable counterparts but also with the approval of the respective electorates.

This paper examines how diplomatic dialogue between the EU and Switzerland has evolved since the beginning of the 1990s. Even though traditionally predictable and moderate, both partners have recently encountered difficulties in achieving a comprehensive trade and legal relationship. This would not have been an issue if the existing framework was still reliable, which is currently not the case. Over the past year and a half there has been increasing confusion as to why the EU and Switzerland cannot find agreement, as well as a demonstration of the adverse consequences of damaged trust. By explaining the context and the possible causes of the political stalemate, several takeaways are suggested as ways to resolve it successfully.

Keywords EU–Swiss relations – Bilateralism – Single market – Institutional framework agreement



EU–Swiss relations: the backdrop

Switzerland has traditionally been regarded by the EU as wayward and self-sufficient, and its relationship with the Union has been influenced by this view. Despite this, the EU and Switzerland have always enjoyed a special relationship, with both acknowledging their mutual dependency. One-third of Switzerland's GDP is earned by trading with the EU, making the EU Switzerland's most important economic partner. Conversely, Switzerland is the EU's fourth-largest trading partner, after the US, China and the UK. Between 2018 and 2020 the EU imported Swiss goods totalling a value of around €100 billion, while exporting around €150 billion on its part.¹

Leaving the numbers aside, Switzerland lies at the geographical heart of Europe and cannot overlook the fact that, save for Liechtenstein, it is surrounded entirely by the EU. Notwithstanding its affinity for free trade, Swiss policy has always been to remain as independent as possible by aiming for a third way, where economic integration is achieved without hampering the country's policy decision-making. Consequently, Switzerland was a founding member of the European Free Trade Association (EFTA) but never contemplated the possibility of accession to the European Coal and Steel Community. Instead, it entered into several free trade agreements with the Community, most notably the one concluded in 1972, which was approved in a referendum by a majority of 72.5%.² However, the policy of finding the third way has become increasingly difficult to achieve and has resulted in the EU clashing with Switzerland in ways that it has not experienced with other associated non-member states, such as Norway. For example, before the release of the Swiss cohesion contribution in 2021, Switzerland regularly withheld its financial contributions to the EU as a bargaining chip.³

In general, the Swiss are uniquely hesitant about their country's relationship with the EU, having voted a total of 17 times on it.⁴ In 1992 voters rejected the

¹ L. Virág, 'Where to Next? No Signing of Swiss–European Union Framework Agreement', *Danube Institute*, 11 May 2022.

² M. Vahl and N. Grolimund, *Integration Without Membership: Switzerland's Bilateral Agreements with the European Union*, Center for European Policy Studies (Brussels, 2006), 9.

³ C. de Gruyter, 'The EU's Next Big Problem Is Switzerland', *Foreign Policy*, 22 April 2021.

⁴ R. Schwok, 'Switzerland–EU Relations: The Bilateral Way in a Fragilized Position', *European Foreign Affairs Review* 25/2 (2020), 159.



idea of membership of the European Economic Area (EEA). Following this, in 1999 Switzerland and the EU signed the ‘Bilateral I’ package. This was a collection of seven sectoral agreements concerning the free movement of persons, agriculture, research and, importantly, the mutual recognition of conformity assessments. Significantly, these agreements were based entirely on intergovernmental cooperation without any transfer of sovereign rights to a supranational institution. Any changes to the bilateral agreements require political unanimity between both parties. In 2004 a second bilateral package was signed, which included agreements on Schengen, the taxation of savings, and the fight against fraud and other illegal financial activities. In addition to these two packages, several other agreements were signed in the following years, including on Europol in 2004 and Eurojust in 2008, leading to approximately 120 separate agreements. The historical context of these agreements should not be underestimated. At the time of the conclusion of the first bilateral package Switzerland had just narrowly rejected the idea of accession to the EEA, and the EU was on its way to creating the single market, so this solution was both transitional and tailor made.

Legally speaking, the fragile efficiency of the bilateral packages stems from the ‘guillotine clause’, pursuant to which all the agreements in the package entered into force simultaneously and will be collectively terminated should any individual agreement be terminated.⁵ This mutually beneficial situation, which entails a strong incentive to avoid political confrontation, has resulted in a working solution that both was never expected to be permanent and is rightfully defined as a ‘close but complicated’ relationship.⁶ The shortcomings of the bilateral packages are evident: every time the EU amends its own legislation, it has to be updated with unanimous agreement from both parties—in much the same way that a mobile phone becomes unusable if it is not updated.⁷ In particular, the agreements do not provide for binding dispute settlement—a major component of any deal, even with the most trusted party—which is indicative of the fact that this mechanism was never meant to be a permanent solution. Instead, only ‘mixed committees’, that is, political bodies making decisions on the basis of unanimity, can resolve disputes about interpretation or update the bilateral agreements.

⁵ M. Maresceau, ‘EU–Switzerland: Quo Vadis?’, *Georgia Journal of International & Comparative Law* 39/3 (2011), 734.

⁶ S. Walter, ‘Quo Vadis, Swiss–European Union Relations?’, *Bruegel*, 7 June 2021.

⁷ L. Knöpfel and C. Najy, ‘Negotiating Single Market Access With the EU: Institutional Lessons from Switzerland’, *Brexit blog*, 4 October 2018.



Switzerland also enjoys considerable leeway under the bilateral packages, referred to as the *acquis helveto-communautaire*.⁸ This means that, except for the Schengen and air transport agreements, the Swiss are not required to follow the relevant EU *acquis*, nor can any institution such as the Court of Justice of the European Union (CJEU) rule on whether Switzerland is applying European law correctly.

The major reason why the bilateral packages have not been replaced with another regime for so many years is that for some time Switzerland continued to contemplate accession. When it became clear that this would not be the case, and the Swiss membership application was withdrawn, the EU began to demand the conclusion of a comprehensive agreement covering all the bilateral agreements that grant access to the single market.⁹ In 2008 the EU stated that the loose institutional setting of these agreements had hampered the development of the internal market, as the loopholes and uncertainties had simply become too numerous and the homogeneity of the internal market seemingly too dependent on goodwill.¹⁰

Unlike the ‘legal homogeneity’ that is the cornerstone of the EEA, or the legal ‘approximation’ which is the equivalent term in the framework of the European Neighbourhood Policy, the EU–Swiss relationship is governed by the ‘equivalence of legislation’, which infers that the EU, exceptionally for its bilateral ties, is not the policymaker in the relationship.¹¹ However, this contradicts the single market’s requirement of the uniform application of supranational rules.

At the EU’s insistence, Switzerland and the EU began negotiating an Institutional Framework Agreement (IFA) in 2013, as the EU was unambiguous in its decision not to conclude any new market-access agreements without an overarching institutional arrangement.¹² Initially, the Swiss were sceptical. The country had been compliant with its obligations and disputes were few. Moreover, from the very beginning the Swiss government feared a loss of sovereignty through, for example, an increased role for the CJEU. Nevertheless, it was also fully aware that for the EU there was no falling back on to purely the bilateral agreements.

⁸ S. Lavenex, ‘Switzerland’s Flexible Integration in the EU: A Conceptual Framework’, *Schweizerische Zeitschrift für Politikwissenschaft* 15/4 (2009), 551.

⁹ Y. Kasperovich, ‘EU–UK Institutional Arrangements and Brexit: A View From Switzerland’, *Europe and the World: A Law Review* 5/1 (2021), 11.

¹⁰ Maresceau, ‘EU–Switzerland: Quo Vadis?’, 743–4.

¹¹ Lavenex, ‘Switzerland’s Flexible Integration in the EU’, 551.

¹² Knöpfel and Najy, ‘Negotiating Single Market Access With the EU’.



The opening of the negotiations coincided with another delicate episode in EU–Swiss relations. The trigger event for this was the success of a popular initiative, launched by the Swiss People’s Party (Schweizerische Volkspartei, SPP), against ‘mass immigration’. This is considered to have been the beginning of the current crisis since it directly contravened the pillars of the internal market and, more precisely, the Agreement on the Free Movement of Persons with the EU that came into force in 2002.¹³

By voting in favour of bringing back strict quotas for immigration from EU countries, the Swiss violated the existing agreement on the protection of people’s right to free movement, which forms part of the first bilateral package. The referendum was indicative of what turned out to be chaotic policymaking in Switzerland. The SPP had launched the initiative without mentioning the EU, not least because they could not garner any support for the referendum’s goals from the other parties. In the end, the slight majority of 50.3% that voted in favour of the limitations had been mistakenly led to believe that they were targeting non-European foreigners, even though these people were already subject to quotas.¹⁴

As the tension in communications with the EU escalated, Switzerland contested parts of the IFA, but the issue really became controversial in 2019 when the government decided to put the negotiations on hold in order to hold domestic consultations on the draft agreement, which the EU had considered finalised.¹⁵ Consequently, the EU viewed the situation as ‘unbalanced’ and, while acknowledging that ‘the door is always open’, it clarified certain aspects of the agreement without making any further concessions.¹⁶ As a result of this stalemate, the first expired agreement concerned medical devices, which had previously been covered by the provisions of the EU–Swiss Mutual Recognition Agreement. Since the entry into force of the EU Medical Devices Regulation on 5 June 2021, such goods have not been allowed to enter the EU from Switzerland.

Given this background, the outcome of the ongoing dialogue may be less surprising. On 26 May 2021, the Swiss government unilaterally decided to end negotiations on the IFA. What was most surprising about this was not that this happened despite the alleged agreement of the draft text at the end of 2018, but the dramatic way in which events unravelled—the Federal Council, the executive body of the Swiss government, took this action despite the Swiss Parliament urging it to continue the talks. The Swiss government’s argument was that any

¹³ Schwok, ‘Switzerland–EU Relations’, 161.

¹⁴ *Ibid.*, 168.

¹⁵ Walter, ‘Quo Vadis, Swiss–European Union Relations?’

¹⁶ European Parliament, ‘EU–Swiss Trade Relations and the Institutional Framework Agreement’, 19 July 2021.



further discussion would be fruitless, as three areas remained too delicate to be resolved—state aid rules, wage protection and the application of the 2004 EU Free Movement Directive.¹⁷

All three demands involve exceptions for Switzerland that EU countries themselves would never receive. Nevertheless, the EU had granted certain concessions. For example, it had agreed that the state aid rules defined by the IFA would not be relevant to interpretations of the state aid rules in the Free Trade Agreement. It had also conceded that Switzerland could still adhere to its ‘flanking measures’ of protecting high wages if such measures were applied in a proportionate and non-discriminatory manner. Currently, Switzerland demands that EU companies provide notification of at least eight days prior to the posting of workers to Switzerland. While the EU wished to remove this restriction, the parties had agreed on a four-day rule, but this was then deemed insufficient by Switzerland.¹⁸ As to the free movement of persons, the EU had been explicit that the concept of EU citizenship would not be incorporated into the agreement. The EU also did not require automatic incorporation of the single market provisions but had allowed for a dynamic approach, with a delay of three years, to enable gradual adoption by the Swiss, including the potential holding of referendums.

Another fissure in the relationship emerged in July 2021, when the EU declared Switzerland a ‘non-associated third country’ under the EU Horizon programme, thus excluding Swiss researchers from funding opportunities. By comparison, the last Horizon Europe programme (2014–20) had been pivotal to Swiss science, with the country coordinating 1,185 projects and its researchers granted a total of \$1.1 billion, representing 40% of total European funding to Switzerland.¹⁹ The intention of the Swiss to solve this issue was indicated by the release of its cohesion contribution, which was followed by a series of bilateral talks. In February 2022 Swiss President Ignazio Cassis stressed that the instability of the relationship could not continue long term,²⁰ and the parties agreed on a roadmap out of the stalemate after a series of exploratory talks with European Commission Vice-President Maroš Šefčovič.

¹⁷ C. Church, ‘Switzerland Is Facing a Dual Crisis Over Its Relations With the EU’, *LSE Blog*, 29 June 2021.

¹⁸ Schwok, ‘Switzerland–EU Relations’, 165.

¹⁹ Y. Flückiger, ‘Why Is Horizon Europe Important for Switzerland and the European Union?’, *Swissinfo*, 16 July 2021.

²⁰ *Swissinfo*, ‘Unstable Relations With Switzerland Are Harmful to EU, Says President’, 6 February 2022.



As of October 2022, there has been no definite outcome, as neither party is willing to make any concessions. However, this stalemate in the EU–Swiss relationship is damaging for both parties, especially Switzerland, without any back-up plan. During his presidency, former Swiss president Guy Parmelin stated that ‘the EU would damage itself by torpedoing trade relations with one of its most important trading partners’.²¹ However, a 2015 survey, conducted by the Swiss State Secretariat for Economic Affairs, showed that it is in fact the other way around. The loss of the bilateral agreements would reduce Switzerland’s GDP by between 460 billion and 630 billion Swiss francs in the period 2018 to 2035.²² Furthermore, a 2019 study found that the single market boosts the annual per capita income of Switzerland by €2,900 per year—well above the EU average of €1,000 per capita per year—while financial contributions to the EU cost the Swiss less than €14 per capita per year.²³ This shows that either steps should be taken or certain events should occur to move closer to the only possible resolution—a comprehensive new deal.

What can be done?

Analysing the situation, some commentators see a parallel with the consequences of Brexit, which has even led to widespread talk of ‘Brexit envy’ as one of the triggers of the current crisis.²⁴ However, this is very unlikely to be the case as no research has indicated a major trend in public opinion against the EU in Switzerland. In fact, most Swiss citizens favour closer ties with the EU and prefer the option of bilateralism to disintegration.²⁵ For example, a survey from February 2021 shows that two-thirds of the respondents viewed the bilateral packages very or somewhat positively, compared with only 16% who viewed them somewhat or very negatively. This was further evidenced on 27 September 2020 when voters rejected a proposal to end the accord with the EU that allows the free movement of people by a majority of 62% to 38%. For the average Swiss person, the status quo is the ideal outcome for Swiss–EU relations.²⁶ Unlike the UK, which in es-

²¹ S. Bühler and D. Friedli, ‘Guy Parmelin warnt die EU vor Nadelstichen’, *NZZ magazin*, 29 May 2021.

²² Ibid.

²³ *Bertelsmann Stiftung*, ‘Almost 1,000 Euros a Year’, 8 May 2019.

²⁴ S. Bondolfi, ‘“Brexit Envy” Grows in Switzerland’, *Swissinfo*, 28 December 2020.

²⁵ Church, ‘Switzerland Is Facing a Dual Crisis Over Its Relations With the EU’.

²⁶ Walter, ‘Quo Vadis, Swiss–European Union Relations?’.



sence concluded a comprehensive free-trade agreement with level-playing-field provisions, Switzerland intends to remain at the core of the internal market.²⁷

The Brexit parallel, however, can be useful in other ways. It shows that voting patterns can be influenced by current events of a similar kind, as the post-Brexit chaos has had similar effects on both pro-EU and anti-EU voters.²⁸ It has also highlighted the red lines for the EU in negotiating trade agreements. The EU is not willing to conclude additional market access agreements without an institutional framework, as treating all countries alike matters not only for the integrity of the single market, but also for the EU's political viability.²⁹ If the EU were to grant non-members privileges that even members do not have, more member states might head for the exit. A key element of this is that no institutional framework can exist if disputes can only be resolved in the diplomatic sphere—as is the case with the bilateral agreements—and not in the legal one.³⁰

Various ways of escaping the deadlock have been proposed in Switzerland—ranging from the Swiss Parliament urging the government to continue negotiations³¹ to the escalation of a popular initiative forcing the government to do so.³² A more fundamental approach has also been proposed—the entry of Switzerland into the EEA has been defended as an ‘elegant solution’, since Switzerland would be able to influence decision-making in the EEA and any changes would require its consent.³³ This suggestion highlights the fact that the last popular direct vote on an EU–Swiss agreement was in 2009, which was too long ago from the Swiss point of view.³⁴

The key takeaway from all the proposed solutions is that the conflict is to a large extent presented as unsolvable by the Swiss government rather than being genuinely unsolvable. Various proposals have been made to overcome Swiss reluctance to the country being included in the jurisdiction of the CJEU. One such idea is to subject the IFA to the institutions of the EFTA's ‘docking’

²⁷ G. Riekeles, ‘Switzerland’s Brexit Moment’, *European Policy Centre*, 15 June 2021.

²⁸ S. Walter, ‘Brexit Domino? The Political Contagion Effects of Voter-Endorsed Withdrawals From International Institutions’, *Comparative Political Studies*, 54/13 (2021), 2042.

²⁹ Riekeles, ‘Switzerland’s Brexit Moment’.

³⁰ Knöpfel and Najj, ‘Negotiating Single Market Access With the EU’.

³¹ P. Blunzli, ‘“Autonomer Nachvollzug” bis EU-Beitritt: Das sind die Optionen der Schweiz’, *Watson*, 27 May 2021.

³² F. Benini, ‘Nach dem Aus für das Rahmenabkommen: Befürworter planen Volksinitiative für den Beitritt der Schweiz zur EU – oder zum EWR’, *Aargauer Zeitung*, 26 May 2021.

³³ D. van der Weijden, ‘The Future of the Swiss–EU Relationship’, *Foraus*, 25 July 2022.

³⁴ S. Jenni, ‘Which Future for EU–Swiss Relations? A Citizens’ Perspective’, *TEPSA Briefs* (2018), 5.



model, which has even been endorsed by the former president of the EFTA Court.³⁵ By joining the EFTA institutions, Switzerland would not become part of the EEA but would have the right to nominate one judge to resolve future disputes.³⁶ More generally, the idea that conflict over a dispute-settlement mechanism could hinder the agreement is hard to believe since Switzerland has repeatedly proclaimed that there has never been an overarching legal conflict between the parties. This was confirmed at the beginning of October 2022 in a joint statement by the chairs of the EFTA/EU Delegation and the Delegation for Northern Cooperation and for Relations with Switzerland and Norway and to the EU–Iceland Joint Parliamentary Committee and the EEA Joint Parliamentary Committee, who reiterated that, ‘there are no unsurmountable political differences between Switzerland and the EU’.³⁷

In fact, the inconsistencies in the Swiss position can be partially explained by the domestic political climate, as tensions there have been transferred to the negotiation process, thus politicising EU–Swiss relations.³⁸ The ruling SPP has been torn between the devil and the deep blue sea ever since the 2014 referendum against mass immigration. The vote was meant to act as another domestic political dividend for the party after the 2002 initiative ‘against asylum abuse’ and the 2009 referendum ‘against the construction of minarets’. Its main purpose was to prompt the termination of the agreement on the free movement of persons with the EU, but this was not explicitly stated before the vote, and nor was the subsequent amendment to the Swiss constitution designed to be enforceable. Therefore, in 2020 the SPP initiated a new referendum, this time with the clear message that the agreement with the EU would be abandoned within one year of passage of the law, should the vote succeed. As noted above, the proposition failed by 62% to 38%, thus affirming that the Swiss voters were aware of the only possible consequence of a successful vote—the termination of every bilateral agreement with the EU by virtue of the guillotine clause.³⁹ As a result, the current state of affairs seems to be the only way for the SPP to appear consistent in its position.

³⁵ C. Baudenbacher, ‘Why Did EU–Swiss Negotiations on a Framework Agreement Fail?’, *Brussels Report*, 27 May 2021.

³⁶ van der Weijden, ‘The Future of the Swiss–EU Relationship’.

³⁷ B. Würth and A. Schwab, ‘Joint Statement on the Status of Bilateral Relations Between Switzerland and the European Union’, *parliament.ch*, 7 October 2022.

³⁸ A. Veuthey, ‘Negotiating Privileged Partnerships: EU–Switzerland Relations and the Joined-up Approach in Practice’, *College of Europe Policy Brief* (2020), 2.

³⁹ Schwok, ‘Switzerland–EU Relations: The Bilateral Way in a Fragilized Position’, 168–9.



Another key element is the confusion among the leading Swiss parties as to which approach to the EU they should take to gain advantage with the electorate over their political competitors. Presently, the Swiss Social Democratic Party (Sozialdemokratische Partei der Schweiz) finds itself in the same boat as the SPP with regard to the IFA, which seems absurd but is the result of a split within the socialist party. In the socialists' view, Switzerland should be able to access the EU and, as a result, apply every EU act, but because this would require the implementation of the IFA, it would also lead to the adoption of EU legislation that would hamper workers' protections—a clear downside for the party.⁴⁰ Although the centre–left is traditionally the main supporter of closer ties with the EU, the sole issue of wage protection has caused the trade unions to oppose the IFA.⁴¹ At the same time, the Liberals (Die Liberalen), led by the current President Cassis, prefer the model of bilateralism, while other parties such as the Green Liberal Party (Grünliberale Partei der Schweiz) foster the idea of accession to the EEA.⁴² As Switzerland cannot decide on its fundamental attitude, it has chosen the easiest alternative, that is, to do nothing. The peculiarity of the Federal Council as a collective executive organ further aggravates the problem, as the SPP, the Social Democrats and the Liberals each have two members out of a total of seven and it is not unusual for the Council's members to differ in their policy opinions. The governance model of *Konkordanz*, requiring unity in the federal council, tends towards inaction and inertia.

Sovereignty and neutrality are core elements of the Swiss identity. However, the question of sovereignty has evolved drastically since the beginning of the Swiss republic. An example of how sovereignty is misinterpreted is the fact that the Swiss reluctance to enter into a deal was praised in some circles as being an 'assertion of the country's independence',⁴³ despite the fact that isolation from a key trading partner without a viable alternative can hardly be defined as any kind of assertiveness. Admittedly, the EU and Switzerland have always differed in their approaches, both economically and legally. Switzerland has a well-known tradition of direct democracy without any equivalent of a constitutional court. Furthermore, its economy constitutes a market-oriented welfare system based on insurance and contributions, while most EU systems are budgeted for by the state.⁴⁴

⁴⁰ Ibid., 171.

⁴¹ Virág, 'Where to Next?'

⁴² Church, 'Switzerland Is Facing a Dual Crisis Over Its Relations With the EU'.

⁴³ M. Meulenbelt et al., 'Herring or Cheese? The Swiss/European Union Relationship Without an Institutional Framework Agreement', *Sidley*, September 2021.

⁴⁴ H. Schneider, 'Swiss–EU Trade Talks: Sovereignty at Stake', *GIS Report*, 2 August 2021.



However, these differences have never been the subject of any negotiations or concerns from the Swiss and nothing in the draft IFA would justify the fear that its conclusion could be the first step towards ‘creeping EU accession’.⁴⁵ moreover, aside from the clichés, Switzerland has already developed a practice of following the EU *acquis*, especially regarding the internal market. This has even influenced Swiss domestic law without any loss of sovereignty whatsoever.⁴⁶ Even now, some argue that Switzerland enjoys a kind of ‘passive EU membership’.⁴⁷ The influence of EU principles is evident in the bilateral packages as well—unlike other agreements concluded in the 1970s and 1980s, the negotiations in the 1990s concerned various areas simply because the EU had introduced the ‘appropriate parallelism’ principle.⁴⁸

As to the EU, although it has often been criticised for being too soft in its approach to negotiations, its position on the future of agreements between the EU and Switzerland is both perfectly clear and easy to explain. If there is no comprehensive agreement with Switzerland on the outstanding institutional questions, individual sectoral agreements will gradually become obsolete, and this seems entirely reasonable from both a political and a commercial point of view. Nobody believes that 120 different agreements, each with their different scopes and need for updating, can provide a workable solution. Moreover, the EU does not need to do anything to prove this other than expand and update its own legislation, which in turn will lead to the gradual erosion of the bilateral packages, as has already started to happen. Conceding to any demands for exemptions that even EU member states are not granted would cause serious political damage and risk the unity of the EU as a whole.

The EU has openly put all its cards on the table during the IFA negotiations. Therefore, the main policy recommendation should be to refrain from any more substantial concessions that would risk overall EU unity. Ultimately, Switzerland is an important partner, but the Swiss economy is more dependent on access to the EU’s single market than the other way around. Thus, the EU’s goal should not be to finalise an agreement at any cost—first, because this would inevitably include inadmissible concessions, and second, because it would legitimise the SPP’s anti-EU message without any guarantee that future conflicts could be avoided.

⁴⁵ S. Walter, ‘What Swiss Voters Expect to Happen Next, After EU Talks Fail’, *Bruegel*, 31 May 2021.

⁴⁶ Maresceau, ‘EU–Switzerland: Quo Vadis?’, 737.

⁴⁷ de Gruyter, ‘The EU’s Next Big Problem Is Switzerland’.

⁴⁸ L. Goetschel, ‘Switzerland and European Integration: Change Through Distance’, *European Foreign Affairs Review* 8 (2003), 324.



In light of the above, another major takeaway is that the EU should engage multiple stakeholders, especially in Switzerland, in the discussions. Any future solution must pass the test of a referendum in Switzerland. Therefore, alongside continuing with the ongoing exploratory talks with the Swiss government, the EU should engage in discussions with Swiss trade unions, employers and the cantons to better explain the EU's view and help dispel any concerns these key stakeholders might still have since the failure to agree on the draft IFA. The next Swiss Federal elections will take place in October 2023. There has been no significant shift in Swiss public opinion on the EU and time can work only in the EU's favour—the SPP will run out of rhetoric once the citizens fully experience the effects of the disruption of trade with the EU. Therefore, in addition to stakeholders, the Swiss voters' voice should be sought more frequently.

Conclusion

Misunderstandings and stubbornness are an integral part of any negotiation process. However, the likelihood that renewed negotiations would resolve the outstanding institutional issues and enable the conclusion of new agreements is low if the Swiss government does not identify the outstanding issues that it can solve through entirely legal means. Without this, the politicisation of EU–Swiss relations will sacrifice the interests of Swiss citizens, who are overwhelmingly in favour of an amicable and stable relationship with the EU. The silver lining is that there is nothing new about this situation—the political rhetoric of self-sufficiency has been popular in Switzerland ever since the bilateral packages entered into force, even though the country has effectively deepened its relationship with the EU with a mutually successful outcome.⁴⁹

At the same time, the mere fact that the SPP has managed to persuade the vast majority of voters that, for example, the involvement of 'foreign judges' in the CJEU is disrupting the talks means that the drafting of an agreement should always be coordinated with a clear presentation of how the discussions are developing and the benefits of the agreement for the average citizen. In this regard, the EU might also learn from the ongoing crisis.

In any case, Switzerland is too clever to opt out of a secure relationship with the EU, and a political movement that promises a new version of the third way

⁴⁹ Goetschel, 'Switzerland and European Integration: Change Through Distance', 327.



has no prospect of success. It is still unclear whether the Swiss government believed it could negotiate better terms and has had its bluff called, or whether its refusal to enter into an IFA reflects genuine political disunity in the country. In any case, the Swiss Federal Council must now acknowledge that the EU is serious and not bluffing with its principled approach. Therefore, the Swiss government must assume responsibility and show leadership, both in outlining its perceived outstanding problems and in securing the support of trade unions, employers and the Swiss people as a whole. What remains to be seen is whether the Swiss can remain Swiss, not only by sealing the best deal, but also by being pragmatic.



About the author

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