

Switzerland's European Policy



**An overview of the Federal Council's Report on
the Evaluation of Switzerland's European Policy**



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Introduction

This brochure presents an outline of the Swiss Federal Council's European policy report of September 2010.

With its Report on the evaluation of Switzerland's European policy, adopted on 17 September 2010, the Federal Council (the Swiss government) has responded to a postulate submitted by National Councillor (Member of the Lower House of Parliament) Christa Markwalder, who requested the government to assess the advantages and disadvantages of the various European policy instruments, and to present a list of priorities containing specific measures relating to Switzerland's future European policy.

Based on the government's 2006 European Policy Report and its 2009 Foreign Policy Report, this study examines the various European policy instruments in the context of recent developments, while giving special consideration to the safeguarding of Switzerland's interests. The examination is based on the following criteria, cited by the Federal Council in its 2006 European Policy Report:

1. Participation in decision making: Switzerland is to enjoy a reasonable right of co-determination within the scope of the bilateral agreements with the EU, and retain sufficient room for manoeuvre for its own policies.
2. Diplomatic feasibility: the EU remains willing to co-operate in efforts to find bilateral solutions to sectorial issues.
3. Economic framework conditions: the economic policy framework conditions (including monetary conditions) shall not change to Switzerland's disadvantage.

Context and current developments

Although Europe's share of the global population and economic output is declining, the EU remains the world's largest economy and is the continent's predominant power. As a major trade partner, a geographical neighbour and an institution that is increasingly setting international standards, the EU is a central point of reference for Switzerland's foreign and foreign economic policies. An active European policy which constantly adapts to the changing circumstances is all the more important for Switzerland because the EU is increasingly expanding its activity into areas which are traditionally covered by organisations of which Switzerland is a full member. This shift therefore threatens Switzerland's influence in key sectors.

With the ratification of the Treaty of Lisbon, the EU has taken another important step towards deepening and consolidating the Union. Thanks to simplified decision-making procedures (such as the principle of qualified majority) it has strengthened its ability to act, and the increased powers of the European Parliament also permit a higher degree of democratic control.

The single currency (the euro) has come under pressure in the wake of the financial and economic crises, and it is conceivable that the problem of economic and fiscal policy discrepancies within the euro zone that lie at the basis of the crisis will be resolved by a further major integration step that will bring the member states of the EU – or at least those of the euro zone – closer together as a political union. Switzerland's export sector, which has extremely close ties with the EU, is now facing additional uncertainties concerning the future economic momentum of its most important trade partner, and with respect to the exchange rate of the euro versus the Swiss franc.

Analysis of the latest developments in the context of the three criteria

An analysis of the situation with regard to the three criteria cited in the introduction indicates a clear tendency towards a narrowing of Switzerland's scope for action in its bilateral relations with the EU.

Although the EU is interested, as before, in concluding bilateral sectoral agreements, it is now demanding the full adoption of both the existing relevant legislation ("acquis communautaire") and of future amendments to this legislation. Furthermore, certain questions are increasingly arising regarding supervision and jurisdiction in the event of differences in application and interpretation of the agreements.

Legal security is another problem. Given the rapid development of legislation in the EU, Swiss exporters, as players from a non-member state, constantly face the risk of new obstacles in EU market access arising, if the EU issues new regulations in a given area, be it a sector that is not covered by the bilateral agreements, or be it an area that is covered by the bilateral agreements, but where change has not been adopted into the agreement concerned.

Such developments must not be allowed to prevent the conclusion of bilateral agreements. In view of the existing close ties, it is assumed that both sides have an interest in seeking contractual solutions and in adapting them to the changing circumstances. However, these most recent developments are increasingly restricting Switzerland's room for action and thus hampering the conclusion of new bilateral agreements.

Analysis of the challenges for Switzerland's European policy instruments

The six European policy options outlined below (the “going it alone” and “customs union” options were regarded as unrealistic and were therefore not included in the analysis) were analysed in terms of their impact on certain key factors such as Switzerland political institutions, parallelism between individual negotiation dossiers, demands by the EU in the area of taxation, market access, economic and monetary policy, and social and environmental policy. In addition, a rough assessment was made of the costs associated with each option.

Adherence to the bilateral way without concluding new agreements

The choice not to conclude new bilateral agreements while adhering to, and developing, the existing ones could ease the problems relating to parallelism, i.e. of the EU making concessions in one area of negotiation conditional on obtaining concessions in another. However, it would be a fallacy to assume this would avoid pressure since the EU could still make demands in connection with the necessary further development of existing agreements, and in certain cases could even go so far as to threaten to terminate existing agreements. The existing

Facts & figures

Intense commercial relations Switzerland–EU

- Switzerland exports goods worth CHF 111.9 bn / EUR 74.2 bn to the EU. This represents 59.7% of all Swiss exports.
- Switzerland imports goods worth CHF 131.7 bn / EUR 87.3 bn from the EU – that is 78% of Swiss imports.
- The EU is by far the most important commercial partner of Switzerland. For the EU, Switzerland is the second largest customer (after the USA, before China and Russia), the fourth largest supplier and the fourth largest commercial partner (both after the USA, China and Russia).

Source: Federal Customs Administration, Eurostat (figures of 2009)

degree of market access to the EU could erode, for example as the result of regulatory developments in the EU, and as a consequence of this, adhering to the contractual status quo could potentially give rise to deterioration in the economic framework conditions. While Switzerland's economic and monetary policy autonomy would remain intact, in practice the pressure to adapt would not be lessened.

Adherence to, and further development of, the bilateral way

If the path of bilateral agreements is to be adhered to and expanded, i.e. if new negotiations are initiated in areas of interest to both sides, then the context of the developing relations between Switzerland and the EU has to be taken into account. Here a balance has to be found between an effective adaptation of the agreements to developments in EU legislation and the safeguarding of Switzerland's sovereignty. For Switzerland, an automatic adoption of legal developments in the EU into the bilateral framework is not an option. Switzerland is entitled to be involved in shaping decisions that directly affect it. Its internal decision-making processes, including the option of referenda, must be respected. If Switzerland does not adopt a given legal development, it should be possible for suitable compensatory measures to be implemented, short of terminating the entire agreement concerned. These principles, for which models already exist in some of the current agreements, should be applied in connection with all new negotiations with the EU. Solutions also need to be found concerning the supervision and jurisdiction of the bilateral agreements, particularly in the event of a differing application and interpretation of these agreements. Given that both sides have an interest in securing a homogeneous interpretation of the agreements, it should be possible for mutually acceptable solutions to be found.

At the level of Switzerland's political institutions and federal structure, it could, in the event of the general introduction of these principles, be beneficial to consider certain reforms in order to optimally safeguard Switzerland's interests and secure the smooth implementation of the agreements.

With the ratification of the Treaty of Lisbon, the circle of players of relevance to Switzerland within the EU has broadened. In particular, the European Parliament now has additional powers relating to the conclusion of international treaties, and this means that contacts with this body are of particular importance during the preparatory stages of decisions which concern Switzerland.

A careful balancing of the interests of both parties in all aspects of their bilateral relations is a prerequisite for the successful pursuit of the bilateral path. This means that, in its efforts to conclude new agreements in areas that are of interest to it, Switzerland also has to take the interests of the EU into account, such as taxation. On the other hand, issues raised by the EU also have to be placed in the overall context of the bilateral relations. In this connection it is also important to point out that Switzerland acts as a firm partner of the EU in pursuing common European goals, for example by developing major infrastructure such as the New Transalpine Rail Link (NEAT), and that, through its involvement in multilateral peace building missions, it supports the EU's efforts to promote peace and prosperity in Europe. Furthermore, Switzerland also demonstrates its solidarity by contributing towards the reduction of economic and social disparities within the enlarged EU.

The further development of the bilateral agreements approach also specifically includes the conclusion of agreements aimed at securing

Facts & figures

Switzerland – an important and committed partner of the EU

- second most important economic partner
- intense mobility thanks to free movement of persons
- contribution to the efforts to reduce social and economic disparities in the enlarged EU (enlargement contribution)
- participation in peace promotion missions of the EU
- easier EU-cargo traffic thanks to the New Transalpine Rail Link (NEAT)

better mutual market access. Negotiations are in progress in the areas of energy, as well as agriculture, product safety, food safety and public health and satellite navigation (GALILEO and EGNOS), while co-operation in the chemicals sector (REACH) and in the area of cooperation between competition authorities is under discussion. In these areas, an autonomous approach is not sufficient on its own. Due to the constantly developing legal provisions within the EU, the Swiss economy is permanently exposed to a risk of discrimination, and these regulations and provisions are therefore a source of legal uncertainty that needs to be countered by expanding the range of bilateral agreements.

Even with an increase in scope of the bilateral agreements, Switzerland essentially remains autonomous when it comes to foreign economic, monetary, trade, labour market, structure and growth policy, with all the inherent advantages and disadvantages. The option of concluding new bilateral agreements represents a significant opportunity for the Swiss economy.

Creation of an institutional framework

In view of the institutional issues that constantly arise, it is justified to ask the question whether it is in Switzerland's interest to renegotiate issues relating to the adoption of developments in legislation, market supervision and consideration for relevant case law in each new agreement, or whether a horizontal solution might be preferable. A solution of this kind (framework agreement or similar arrangement) would, through uniform mechanisms, give rise to greater transparency and efficiency of decision-making within the mixed committees, and would ultimately enhance the legal security of the bilateral way. It would have to encompass mechanisms for the integration of new EU legislation that enable both parties to participate in decision-shaping processes in a suitable manner, respect Switzerland's sovereignty and internal decision-making processes, and envisage acceptable compensatory mechanisms in the event of diverging legal developments. Efficient supervision and arbitration mechanisms would also be conceivable. Regular high-level political contacts, which such an agreement could also incorporate, would promote mutual understanding and provide a platform for discussing problems that cannot be solved at the technical level.

Exploratory talks would have to be held in order to determine whether a horizontal arrangement can be found that would be acceptable to Switzerland. It is in any case clear that the EU is interested in finding such a solution to the constantly recurring institutional issues.

Accession to the European Economic Area (EEA)

The EEA Agreement attempts to unite two contradictory objectives with respect to the adoption of the *acquis communautaire*: the legislative autonomy of the signatory states and the homogeneity of EEA law. This cannot be accomplished without inequality between the two parties. The member states of the EEA/EFTA have a right of co-determination in the preparation of business by the European Commission, but they cannot participate in formal decisions of the EU. They, however, are obliged to adopt all legislation that is passed. Indeed, the barriers that arise in the event of non-adoption are so restrictive that this has never occurred in the almost twenty-year existence of the EEA.

If Switzerland were to join the EEA, it would be subject to this quasi-automatic requirement to adopt EEA-related legislation. It would, however, remain subject to its own regulations in areas that are not covered by the EEA (e.g. Schengen, taxation of interest income, fraud prevention).

As far as the central issue of the adoption of legislation within the framework of bilateral agreements is concerned, accession to the EEA would result in a weakening of Switzerland's autonomy to a certain extent, but on the other hand it would enhance legal security. The problems associated with supervision and arbitration mechanisms would be largely resolved through the application of the corresponding EEA instruments, and Switzerland's full participation in various EU programmes would also be secured. At present this has to be negotiated separately for each programme category and programme generation.

Accession to the EEA would not have a direct effect on our country's constitution, but the requirement to adopt legislation to changes in EU law would certainly restrict the freedom of action of the Federal

Council (i.e. the government) and of Parliament, without this restriction being compensated by a right of co-determination at the EU level. The impacts for Switzerland in terms of freedom of action would thus be greater than with the bilateral agreements solution.

Parallelism would no longer be a concern in those areas that are covered by the EEA, but it would remain an issue in all other areas. This specifically applies to taxation, which is not regulated by the EEA. However, European Court of Justice case law concerning state aid also extends to the question whether national tax regimes represent unjustified state subsidies.

As far as market access is concerned, membership of the EEA would result in a considerable improvement in comparison with the current situation, but access barriers in sectors that are not covered by the EEA (e.g. agriculture), would remain in place.

Accession to the EU

Accession to the EU would resolve the question of adoption of legislation insofar as, as a member state, Switzerland would adopt all EU legislative developments, though it would also be able to fully participate in the formulation and decision-making processes. The case law of the European Court of Justice would be legally binding.

Admittedly, as a medium-sized state, Switzerland would not have any guarantee that the decisions of the EU would always be in line with its own interests. However, experiences on the part of similar-sized states have shown that even small nations can have an influence that extends beyond their numerical representation in EU bodies. EU policy increasingly determines Switzerland's scope for action, regardless of whether Switzerland is a EU member or not. In this sense, the possibility of direct co-determination of this policy would represent an improvement compared with the current situation.

An accession to the EU would, however, have consequences for Switzerland's federal institutions and direct democracy. The implementation of EU legislation (which would to some extent be co-

determined by Switzerland as a member state) would be the duty of the federal government, cantons and municipalities. This would affect the authority of the Federal Assembly (i.e. Parliament) and of the cantons, as well as of the electorate. In the case of EU directives, for example, it would be the duty of Parliament and of the electorate to adopt the specified objectives into national legislation. Here Switzerland would have to ensure that the specified deadlines would allow for the organisation of referenda. As for the question of popular initiatives which may be contrary to EU law, the Federal Council's stance is that it would be disproportionate to give Parliament the authority to declare them invalid. The decision should rest with the people. If they decide against EU law, the ultimate option would be to pull out.

In view of the consequences which accession to the EU would have for Swiss institutions and for federalism, certain internal reforms would be unavoidable. In the opinion of the Federal Council (the government), however, accession to the EU on the basis of the Treaty of Lisbon is reconcilable with Switzerland's neutrality obligations.

Accession to the EU would result in significant changes in economic framework conditions. Major instruments of economic, monetary and financial policy would either be delegated or placed on a new footing, and Switzerland would no longer be able to pursue an autonomous foreign economic policy. Switzerland would be obliged to adopt the euro, the Swiss National Bank would have to give up its autonomous monetary and currency policy, and interest rates in Switzerland would adapt to those of the euro zone, which would have a negative impact on economic output, at least in the short term. Accession to the EU would also have permanent impacts on Switzerland's tax system (for example, value added tax would have to be increased to at least 15 per cent, the EU regulations governing state aid would apply and the code of conduct in the area of corporate tax would have to be adopted). The impact on trade within the European single market would probably be positive thanks to the elimination of all remaining barriers, but the effect on trade with third countries could be negative. Finally, accession to the EU would mean Switzerland would have to adopt all

common EU policies, which would certainly have considerable impacts on existing policy areas (e.g. migration and social policies).

Accession to the EU with certain exceptions

Accession to the EU normally requires the country concerned to adopt EU legislation in its entirety. However, in view of the possible further enlargement of the EU it is conceivable that candidates could be granted opt-in or opt-out options, at least in certain sensitive areas such as security policy.

In the case of Switzerland, attempts could be made to negotiate exceptions or long transitional periods in certain sensitive areas. These could include consideration of internal procedures (federalism, direct democracy) in connection with the adoption of legislation; neutrality; the tax system; or the currency.

Conclusions

European policy is an inherent part of Switzerland's foreign policy, the objectives of which are laid down in Article 54 of the Federal Constitution. With respect to its relations with the EU, Switzerland's foreign policy objectives require it to take action to safeguard its room for manoeuvre in the decision-making process, to secure adequate access to the EU market for its economic actors, and to function as a dependable and solidary partner in Europe by adhering to and promoting common values.

Until now, these goals have largely been achieved thanks to the conclusion of bilateral agreements, even if this solution has certain weak points, for example the lack of options for influencing standards that directly concern Switzerland, restrictions of sovereignty in those areas in which Switzerland is required to adapt its legislation to that of the EU in order to avoid competitive disadvantages, the lack of full access to the EU single market, and latent legal uncertainty. The Federal Council is of the view that Switzerland should continue to co-operate with the EU and that it is legitimate to expect the EU to co-operate in efforts to find mutually acceptable solutions, be it concerning the problems relating to Switzer-

land's scope for action with respect to decision-making, concerning market access or the promotion of common values.

Under the present circumstances, the Federal Council is of the opinion that the bilateral agreements are a suitable solution for safeguarding Switzerland's interests in Europe, namely preserving its freedom of action, its prosperity and its values. With respect to the basic orientation of its European policy, Switzerland should continue to pursue its active and strong commitment to help solve the continent's problems. For this purpose the Federal Council will maintain its commitment to the consolidation and further development of the bilateral agreements approach, which it currently regards as the most suitable instrument for safeguarding Switzerland's interests in Europe. This could change, of course, in the future, and for this reason it is important to constantly re-examine Switzerland's European policy instruments so that they can be adapted if necessary.

As far as short and medium term priorities are concerned, the Federal Council intends to bring those dossiers to a conclusion which are currently under negotiation or in preparation. Beyond this it will examine the opportunity of entering into the dialogue requested by the EU concerning various issues relating to taxation (code of conduct in the area of corporate tax, revision of withholding tax arrangements, aspects of information exchange upon request). Together with the EU, the institutional issues need to be examined with a view to finding mutually acceptable solutions that take sufficient account of the sovereignty of the contractual partners and the smooth functioning of their respective institutions. In these matters the Federal Council intends to adopt a co-ordinated approach, in particular with respect to future negotiations.

In view of the fact that our ever-denser network of relations with the EU confronts us with institutional challenges – especially as far as the intensifying legislative process of the EU and its impacts on Switzerland are concerned – the Federal Council intends, together with Parliament and the cantons, to give careful consideration to measures for adapting the working methods of the executive and legislative bodies, as well as to the involvement of the cantons in the area of European policy.

