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# Switzerland and the European Union



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## Introduction

Switzerland has often figured in the debate on Brexit, and although there are many differences between its political and economic situation and ours, Switzerland's relations with the EU offer an interesting point of comparison for Britain, particularly at a moment when we are negotiating our future relationship with the EU, while the Swiss are debating the new 'framework agreement' which they have negotiated with the EU.

This paper:

- Summarises the development of Switzerland's relations with the EU, including the Swiss referendums on immigration in 2014 and 2020
- Analyses the EU-Switzerland Framework Agreement, finalised in 2018 but not yet signed
- Surveys Swiss attitudes to Brexit, and the role of Switzerland in the British debate on Brexit ('the Swiss model')
- Compares the UK's situation in relation to the EU with the experience of Switzerland.

## A. Switzerland and the European Union

### Development of relations

Switzerland was a founder member of the European Free Trade Association (EFTA) in 1960, and signed a Free Trade Agreement with the European Economic Community (EEC) in 1972. Switzerland applied for EU membership in May 1992, but after a referendum said 'no' to the European Economic Area (EEA) in December 1992, the membership application was suspended and later withdrawn in 2016.

As Switzerland did not join the EEA, as all other EFTA countries did in 1994 it followed a 'bilateral' path, negotiating a series of agreements with the EU, sector by sector, to obtain favourable access to the European market by accepting the corresponding EU rules. Under these agreements, much of EU law applies in Switzerland. But while the EEA means that most EU Single Market rules apply automatically in Norway, Iceland and Liechtenstein, the Swiss model requires fresh negotiation when EU policies change. Switzerland has more than 100 bilateral agreements with the EU: a first series came into force in 2002, and a second series in 2004. An agreement on free movement of persons concluded in 1999

includes a clause, known as the 'guillotine clause', which means that if Switzerland ends this agreement, all the agreements with the EU in the first series are automatically ended.

Switzerland is an important financial centre but, unlike the EEA countries, it has no agreement with the EU on free movement of services, including financial services, except for a limited agreement on non-life insurance.<sup>1</sup> It is subject to the EU's 'equivalence' regime whereby the European Commission checks financial regulation in detail, and if equivalence is approved, relevant services may be traded across borders. This approval, in the case of Switzerland, is time-limited, and the EU can rescind it, thus halting trade in the services concerned. From 2021 onwards, the UK will be in a similar situation.

Switzerland joined the EU's Schengen Agreement and Dublin Convention in 2008. Since it is not in the EU's Customs Union, there are customs checks but EU trade agreements mean that most goods (except agricultural goods) are free from tariffs and quotas.

For access to EU programmes and agencies, Switzerland has to make a contribution to the EU budget, but in return it gets back most of its contribution, and sometimes more.<sup>2</sup> Switzerland agreed to pay 1.25 billion Swiss francs in 2007-2019 directly to the EU's new Member States to support their economic development.<sup>3</sup> It has agreed to pay 1.3 billion Swiss francs over the next decade for development programmes in the poorer EU states.

The Swiss 'bilateral approach' has posed problems of principle for the EU from the outset. Unlike the EEA, it does not provide for automatic take-over of new EU legislation. In the EEA, the EFTA Surveillance Authority and the EU Court of Justice have supervisory roles, but the Swiss model lacks external supervision and enforcement. This has led to frustration and legal uncertainty for firms and citizens, both in the EU and in Switzerland. The need for each bilateral agreement to be managed by a Joint Committee creates a complex structure. These difficulties led the EU's member states (including the UK) to resolve in 2012 to make no more market access agreements with Switzerland unless it accepts a "new institutional approach" in which the Swiss model would become more like the EEA.

### Swiss referendums on immigration

Under the Swiss constitution, referendums may be held on a popular initiative which requires 100,000 signatures. Popular initiatives are often used by political parties as a means of obtaining changes in national policy.

Switzerland's agreement with the EU on free movement of persons has frequently been criticised by the conservative Swiss People's Party (SVP Schweizerische Volkspartei), and this has led to two referendums on immigration.

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<sup>1</sup> This agreement grants mutual and equal freedom of establishment to companies in the field of direct insurance for damage (household, motor vehicle, travel and liability insurance, etc.).

<sup>2</sup> The Swiss government has reported that Switzerland was a net beneficiary of research funding in the period 2007–13, paying in 2.3 billion and receiving 2.5 billion Swiss Francs.

<sup>3</sup> These payments in 2007-2019 averaged 12 Swiss francs per year per head of population, equivalent to about £10. It is difficult to make a direct comparison with the payments made to the EU by Norway as a member of the EEA, since they are different in nature. However, it is clear that the Swiss paid less than the Norwegians, whose gross contribution to the EU in 2014-2020 averaged £125 per person per year. Meanwhile in 2014 the UK's gross contribution to the EU budget was £292 per person, while its net contribution, taking account of the rebate, and receipts from the EU budget, was £89 per person. Figures for Norway and the UK are from Carl Emmerson *et al.*, *Brexit and the UK's public finances*, Institute for Fiscal Studies, IFS Report 116, 25 May 2016, pp. 13-14

*Referendum "against mass immigration", 5 February 2014*

This initiative, sponsored by the SVP, was accepted narrowly by 50.3 per cent. Its purpose was to impose quotas on immigration into Switzerland, which would have breached the agreement with the EU on free movement of persons. It was supported in rural areas and by a majority in the Italian-speaking canton of Ticino, but rejected in metropolitan areas and French-speaking regions. This led to a chill in Switzerland's relations with the EU, which halted the Erasmus student exchange programme, marginalised Swiss participation in EU research programmes, and suspended the negotiation of new agreements.

To implement the vote, the Swiss Parliament in December 2016 made a limited change in the law so that job vacancies have to be advertised to persons (Swiss or non-Swiss) registered locally for employment, before being made available more widely. Since this measure was non-discriminatory in terms of nationality, the EU made no objection, and a crisis was avoided but the SVP condemned it as inadequate.

*Referendum "for moderate immigration", 27 September 2020*

The purpose of this initiative, sponsored by the SVP, was to terminate the EU agreement on free movement of persons within one year. In the referendum, postponed from May 2020 because of coronavirus, the initiative on immigration was rejected decisively by 61.7 per cent. Among Switzerland's 26 cantons it gained a majority only in Italian-speaking Ticino and three rural German-speaking cantons.

Switzerland's Framework Agreement with the EU

Following the EU's request for a new institutional approach, negotiations began in 2014 and concluded in 2018, resulting in an agreement which has not, however, been signed because of problems on the Swiss side. The new agreement would serve as a kind of 'umbrella' for five areas already covered by bilateral agreements (free movement of persons, land transport, air transport, technical trade barriers, and agriculture).<sup>4</sup> Its scope may be extended to other fields.

The agreement is a compromise between the two parties. It means that:

- Although no supranational authority is introduced, the European Commission can monitor Swiss implementation of the agreements, and can initiate dispute settlement in the event of non-compliance. The tribunal for dispute settlement will be composed of an equal number of persons appointed by Switzerland and the EU. If a dispute concerns the interpretation or application of EU law (which is usually the case), the tribunal must refer the matter to the EU Court of Justice, whose ruling will be binding.
- If Switzerland does not implement a decision made by the tribunal under guidance from the EU Court of Justice, or if the EU decides that Switzerland has contravened a ruling, the EU can retaliate by imposing compensatory measures.

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<sup>4</sup> Details of the Framework Agreement (or 'Institutional Agreement') including the text (in French, Italian, German), a 'fact sheet' and 'key points' (in English) are published at Swiss Confederation, 'Switzerland's European policy', 6 August 2019. A good analysis of the agreement is in 'Switzerland-EU Relations: The Bilateral Way in a Fragilized Position', René Schwok, *European Foreign Affairs Review*, 25(2) (2020), pp. 155-317, pp. 159-176

- For the adoption of EU laws, there will be a “dynamic approach” under which Switzerland decides on each case in accordance with its constitutional procedures (including referendums). If it does not implement a law, the EU may initiate dispute settlement.
- Switzerland will have to have a system for monitoring state aids equivalent to that of the EU. Although this applies initially only to the agreement on air transport, it will apply to all future market access agreements. According to the Swiss Government, “state aids are one of the principal means of ensuring a level playing field in the single market”.<sup>5</sup>
- In future Switzerland, like the EEA countries, will be able to participate in EU committees and will be consulted in the development of EU law.
- Several issues which emerged during the negotiations illustrate difficulties that Switzerland will face under the ‘dynamic approach’. These issues – too detailed for discussion here – relate to EU rules on posted workers, the co-ordination of social security systems, and the protection of the rights of EU citizens.

The Swiss Government launched an extensive consultation on the new agreement, which met with criticism from the labour unions and business. In June 2019, the Government sent a letter to the European Commission asking for changes in the agreement, but the EU declared that no further compromise would be possible. In August 2019 the Commission decided not to extend ‘equivalence’ to the Swiss stock exchange, and Switzerland responded by banning any Swiss stock listed or traded in Switzerland from being traded in the EU.<sup>6</sup>

The prospects for the Framework Agreement are uncertain. In Switzerland the Socialist Party argues that it would weaken social protection. The SVP has announced that, if the agreement is approved at the federal level, it will ensure that it is submitted to a referendum. Although the Liberal and Christian Democrat parties are ready for an agreement, they are in a minority in the Government. It is possible that the Socialist Party, which traditionally has been friendly to the EU, may move towards a solution if it can obtain concessions from conservative and business circles on the protection of workers, as it did during the ratification of the bilateral agreements.

A Swiss commentator has described this situation as “an accumulation of blunders, combined with misperceptions of the actual power relations, which could prove fatal.”<sup>7</sup> However, since the recent referendum which rejected the proposal to end free movement of persons, there is now a chance for the Swiss Government to move forward to a conclusion on the Framework Agreement with the EU.

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<sup>5</sup> Graham Avery, ‘News from the Alps: Switzerland and the EU’, 30 September 2020

<sup>6</sup> The effect of the Swiss counter-measures was twofold. First, they resulted in the restrictions under Article 23(1) of the EU Markets in financial Instruments Regulation (MiFIR) no longer applying to Swiss stocks, so enabling EU investment firms to trade Swiss shares on exchanges outside the EU. Secondly, by banning Swiss stocks listed or traded in Switzerland from being traded in the EU, they effectively required EU investment firms wishing to trade Swiss shares to do so on the Swiss stock exchange or on exchanges in other non-EU countries.

<sup>7</sup> René Schwok, *supra* n. 4, p. 159

## **B. Switzerland and the United Kingdom**

### Swiss attitudes to Brexit

Initially some Swiss thought that, if the UK obtained concessions from the EU in the Brexit negotiations, Switzerland could also hope to obtain concessions from the EU. In 2016 Micheline Calmy-Rey (former President of the Swiss Federal Council) told the BBC that she wanted the UK and Switzerland to work together to get a new settlement from Brussels: "I think we could collaborate together, it would be fruitful".<sup>8</sup> However, when the Swiss realised that the EU was taking a tough line with the UK over Brexit, they began to see Brexit as the reason why the EU was taking a tough line with them over the Framework Agreement.

Switzerland has been among the first to sign post-Brexit bilateral agreements with the UK. Under its 'Mind the Gap' strategy, the Swiss Government has concluded agreements with the UK on air transport (2018), insurance, land transport, trade, citizens' rights, access to the labour market and police cooperation (2019).<sup>9</sup> Both Switzerland and the UK have an interest in developing closer links, as the two significant non-EU financial centres in Europe.<sup>10</sup> The Chancellor of the Exchequer and his Swiss counterpart have issued a Joint Statement inaugurating negotiations for an "ambitious, outcomes-based mutual recognition agreement".<sup>11</sup>

### Switzerland in the Brexit debate

Switzerland has frequently played a role in the British debate on leaving the EU. In 2012 Daniel Hannan MEP wrote: "What is the alternative to EU membership? Consider, as an example, Switzerland: the Swiss have all the advantages of commercial access without the costs of full membership".<sup>12</sup> In 2016, a contributor to BrexitCentral wrote "the bespoke relationship most pertinent to Brexit is the example of Switzerland. It can sign its own Free Trade Agreements, and has retained much of its national sovereignty while still enjoying privileged access to the EU market".<sup>13</sup> Nigel Farage, leader of the Brexit Party, said in 2020 that "Switzerland was an inspiration for the United Kingdom on leaving the European Union".<sup>14</sup>

In caricature, Switzerland is seen as a courageous little country which defies the big EU. There is a widespread idea that it enjoys favourable access to the EU's Single Market through its bilateral agreements, on a pick-and-choose basis, cost-free, and without the interference of the EU Court of Justice. But this perception fails to take account of the fact that Switzerland has to apply many EU rules, including free movement of persons, makes payments to the less prosperous EU members, and has been obliged to negotiate a new agreement with the EU, under which it would accept rulings of the EU Court of Justice on disputes referred to it concerning EU law.

<sup>8</sup> Kamal Ahmed, 'Swiss offer EU solution for Britain', *BBC News*, 8 September 2016

<sup>9</sup> Swiss Confederation, 'Switzerland-UK relations post Brexit', 25 August 2020

<sup>10</sup> See TheCityUK & economiesuisse, *Future-proofing the UK-Swiss financial and related professional services relationship*, 28 April 2020

<sup>11</sup> HM Government, 'Speech by the Chancellor of the Exchequer, Rishi Sunak, on the future relationship between the UK and Switzerland on financial services', 30 June 2020

<sup>12</sup> 'Switzerland and Norway prove we can leave the EU', Dan Hannan, *London Loves Business*, 14 September 2012

<sup>13</sup> 'Is the Swiss model suitable for post-Brexit UK-EU relations?', *BrexitCentral*, 25 September 2016

<sup>14</sup> Swiss Info, 'Switzerland was 'inspiration' for Brexit, says Farage', 17 January 2020

Although the ‘Swiss model’ has been much discussed in the UK, it is often poorly understood. Discussion has tended to focus on the bilateral agreements, but already in 2012 the EU told Switzerland that no more agreements would be made unless it accepted a new approach. The EU-Switzerland Framework Agreement which emerged from negotiations in 2018 is little known in the UK, but is relevant for several reasons. It introduces a new set of rules for the governance of the bilateral agreements, including a dispute-settlement procedure and a tribunal. In the Brexit negotiations the EU has proposed governance rules, but initially this was rejected by the British side. On state aids, also under discussion in Brexit, the Framework Agreement says that Switzerland must have an “independent authority” to monitor state aids and that its monitoring must be “equivalent to that of the EU”.

#### Relations with the EU: Switzerland compared with the United Kingdom

In making a comparison between Switzerland and the United Kingdom in respect of relations with the EU, one must bear in mind that the two countries are different in many ways. Switzerland has a federal constitution in which central government is weak, cantons are independent and direct democracy is active. Switzerland is neutral in international affairs, and does not aspire to a global role. It has a population of 8.6 million – less than London, and one-eighth of Britain’s 67 million. Switzerland is surrounded geographically by the EU – of its five neighbours, four are members of the EU, and the fifth (Liechtenstein) is in the EEA. So, most imports and exports of goods are made with or via the EU. The EU is Switzerland’s largest trade partner, while Switzerland is the EU’s fourth trade partner (after the UK, USA and China). Switzerland’s GDP is nearly one-third of Britain’s, while in terms of GDP per head the Swiss are almost twice as rich as the British.

Against this background of differences, there are nevertheless similarities between Switzerland and the UK. Because of its geographical situation, Switzerland has had to co-operate with the European Union, particularly in relation to the movement of goods and people. It has progressively developed close relations with its big neighbour, to the extent that it now applies many EU rules, and has concluded (but not yet ratified) an agreement which advances the process further. Negotiations have been difficult, but most Swiss appreciate that their economic prosperity depends on maintaining and improving their access to the EU market. They understand that that their relationship with the EU is asymmetric: although Switzerland is rich, it has few illusions about the power dynamics involved in negotiating with the EU with its population of 450 million.

For the UK, the trajectory is different: the British Government is negotiating a reduction in access to the EU market, not an improvement, and its aim is a trade agreement of a limited nature. But the dynamics are similar. The experience of Switzerland shows that dealing with the EU requires an understanding of the asymmetry of power. Although the UK is much bigger than Switzerland, the EU’s 27 members have a population seven times larger, and an economy five times greater, than that of the UK.

**October 2020**



## Senior European Experts

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