

A Foreign Policy for Switzerland in the 21st Century

Swiss Association for Foreign Policy

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Why Was the Framework Agreement So Controversial Even Though It Was Initiated by Switzerland Itself?

Fabio Wasserfallen

After EEA accession was rejected in the 1992 referendum, the bilateral path established itself as the ‘ideal path’. Swiss voters supported this way of shaping the relationship between Switzerland and the European Union (EU) in more than ten national referendums. Surveys also show that only a minority of Swiss voters prioritise accession to the EU or the EEA – the most plausible alternatives to the bilateral path (Europa Barometer 2020). Against this background, Switzerland’s goal seems clear: bilateral relations should be secured and expanded upon as a tailor-made model. Whether this will be possible after the breakdown of the Framework Agreement is now the big question. But first we need to take a look back, before we venture to look ahead.

In 1999, Switzerland signed market access agreements with the EU on the free movement of persons, land transport, air transport, agriculture, and technical barriers to trade. These agreements have integrated the Swiss economy into parts of the EU Single Market. In 2004, in the Schengen and Dublin agreements, the bilateral agreements were expanded to cover internal security and asylum. As a next step, Switzerland proposed a framework agreement with the EU, with the aim of consolidating the bilateral approach and making it suitable for the future. For Switzerland, the focus was on expanding market access through additional agreements in the electricity and health sectors, but also on the question of retaining market access in the event of further developments in the European Single Market. The EU took up these Swiss concerns and made the creation of a broader institutional framework a prerequisite for the continuation of bilateral relations in their current form (Müller 2020). In retrospect, the fact that Switzerland originally suggested an institutional agreement with the EU on its own initiative may seem paradoxical in view of the domestic political disagreements over the framework agreement, but in principle it was entirely consistent with Switzerland’s aims, which were to secure and expand bilateral relations.

At the end of 2018, however, after many years of negotiations, the Federal Council did not sign the Institutional Framework Agreement (InstA). Instead, the Swiss government initiated a process to determine the extent of domestic political support for the agreement –

an unusual procedure in this context. Consultations with domestic political actors usually take place before and during international negotiations, not afterwards. Based on the opinions of the actors consulted, the Federal Council came to the conclusion that there was ‘insufficient support in Switzerland for the InstA’ (Federal Council 2019, 16). Opposition to the framework agreement increased even further after these consultations. Why was criticism of the InstA so strong, when the framework agreement had been demanded by Switzerland itself, and was meant to secure and expand the bilateral path and thereby make it fit for the future?

To answer this question, it is important to keep in mind a basic premise of Switzerland’s EU policy: without the support of all major parties (except the SVP), the business associations, the trade unions, and the cantons, it is very difficult to achieve a popular majority for proposals regarding the EU. Opposition by even one of these actors jeopardises the success of a vote, as the more than ten EU-related referendums since the rejection of EEA accession in 1992 have shown (Goetschel and Wasserfallen 2021). Broad domestic political support is even more important in the case of a mandatory referendum, because a mandatory referendum requires not only a popular majority but also the support of a majority of the cantons. Since voters in small rural cantons are more sceptical about opening up to the EU, a minority of 45 percent of the electorate voting to reject EU-related proposals is sufficient to block such referendums, since this will translate into rejection by a majority of the cantons (Vatter 2018). Based on these basic premises of Swiss EU policy, the following question arises regarding the domestic political failure of the framework agreement: why was it not possible to motivate the coalition ranging from the SP and the political centre to the FDP – and also including business associations, cantons, and trade unions – to support the InstA? The following four points should help to clarify this question.

The Federal Council did not pursue a unified, integrative InstA strategy

The government failed to integrate all the key actors into the InstA negotiation process in a manner that would have established sufficient confidence and ensured their ultimate support for the outcome of the negotiations. This is exactly what was done successfully in the negotiations on the bilateral agreements of 1999 (Kellenberger 2014, 55). In order to secure domestic political backing, the Federal Council would have needed to involve the relevant actors before and during the negotiations. Holding consultations only after the conclusion of negotiations, as the Federal Council did with the InstA, proved counterproductive. The ex-post-consultation procedure merely led to individual points – points on which Switzerland

had made concessions in order to achieve desired results in other areas – being highlighted out of context in the public debate. This ultimately divided the broad coalition that was actually committed to bilateral relations, while also irritating Switzerland's negotiating partner, the EU.

The cohesive force of economic (export) interests was missing

The interests of the Swiss actors who are in favour of the bilateral agreements are, to some extent, opposed. The cohesive force that held this coalition together was the pursuit of economic advantages through participation in the European Single Market. Swiss exporters in particular benefit greatly from EU Single Market access. However, the business associations were not able to establish this economic benefit as the dominant concern in discussions on the InstA. Moreover, there were no accords with the social partners. In the accompanying measures to the bilateral agreements of 1999, concessions were made to the trade unions. Switzerland negotiated protective clauses for workers so that the agreement would gain the support of a domestic majority and the economic advantages of access to the European Single Market would be realised. Proposals of this kind, including domestic policy proposals, were conspicuously absent from the InstA discussions. For example, the demands of the trade unions for income protection could have been met by establishing minimum wages. The successful formula of the bilateral market access agreements, which involved securing economic advantages for the export sector by making concessions to the trade unions, was not reactivated for the InstA. This is surprising, given that the trade unions and FDP Federal Councillor Karin Keller-Sutter both opposed the SVP Limitation Initiative in complete harmony (Federal Department of Justice and Police 2020). In general, it can be said that the cohesive effect of the benefits of economic exports has diminished. This loss of importance can also be made out in the views of the populace – for example, in the referendum of 7 March 2021, in which only 52 percent voted in favour of the free trade agreement with Indonesia.

An understanding of how the EU has changed is lacking in Switzerland

There is a lack of understanding in Switzerland of how the EU has changed over the last 20 years, and of how these changes affect bilateral relations. Jakob Kellenberger, who successfully negotiated the bilateral agreements of 1999 as State Secretary, has aptly summarised this problem (Kellenberger 2014, 54): the 'development of the EU [...] seems to be of only incidental interest in a Helveto-centric world view.' An essential point in this

context concerns the EU's eastward enlargement. The new member states from Central and Eastern Europe had to adopt EU legislation in its entirety. Accordingly, the Swiss model of selective access to the Single Market is incomprehensible to them. In the enlarged 27-member EU, the role of the European Commission has also become stronger, especially in the management of the EU's external relations. For Switzerland, this means that its direct line to Berlin, Rome, Paris, and Vienna has lost importance. Moreover, the EU is in a consolidation phase due to the various crises of recent years (euro, migration, Brexit, and Covid-19). The widespread assessment in Switzerland that the EU has been weakened by these crises falls short of the mark. Decisive for the EU's relationship with Switzerland is the fact that the EU-27, as a reaction to these crises, is once again focusing more strongly on the single market. The EU is upholding the advantages of the single market, along with the principles of legal certainty and equal conditions for all who wish to participate in this Single Market (European Commission 2017). Accordingly, Brussels is demanding of Switzerland that it adopt evolving EU Single Market rules as a condition for barrier-free access to the Single Market. Whoever participates in the market ought also to conform to the applicable rules. On this point, the EU is maintaining a fundamental principle that is deeply anchored politically in the EU-27. The EU has therefore also made it clear to Switzerland that without an institutional framework there will be neither a continuation nor an expansion of bilateral relations. From the EU's perspective, this logic is coherent and long-term. Little will change here, even after the failure of the framework agreement.

The InstA was hardly compared with (viable) alternatives

Parts of the opposition to the InstA like to promote a free trade agreement as a promising solution for the future, especially in the wake of Brexit. However, free trade agreements do not allow free access to the EU's Single Market. Goods that are exported or imported within the framework of such agreements are inspected, controlled, and registered, and must fulfil various regulatory conditions – a situation quite different from Switzerland's current unhindered access to the Single Market. Of course, it is in principle conceivable that the bilateral treaties could be replaced with free trade agreements. However, such a model would represent a large step backwards from the sectoral market access that the bilateral treaties allow. On the other side of the political spectrum, EEA or EU accession are being put forward as alternatives to the framework agreement. Polls show, however, that EU accession would have no chance in a referendum (Europa Barometer 2020). Interestingly, the InstA has also been strongly criticised in the public debate with the argument that it would restrict

Switzerland's political autonomy (Schneider-Ammann 2020). This restriction would be much more pronounced in the case of EEA or EU accession. In either of these two alternatives to the InstA, Switzerland would have to adopt EU legislation more extensively and systematically, although in the case of EU accession, participation in EU legislation would cushion the loss of sovereignty. 'Criticism based on considerations of sovereignty' ('Souveränitätskritik'), thus accused the framework agreement of having a weak point that would actually have been an advantage in comparison with the EEA or EU membership models (as long as the relationship with the EU is not reduced to a free trade agreement). Basically, the InstA was not discussed enough in the context of the actual existing alternatives and their advantages and disadvantages.

Conclusions and outlook

The discussions that took place about the InstA within Switzerland led the Federal Council to end the negotiations on the framework agreement on 26 May 2021. Following this governmental decision, the question of the nature of the future relationship between Switzerland and the EU remains open. In the long term, the Federal Council will not be able to unilaterally carry on with bilateral relations that advantage Switzerland. The hope remains that the EU will soften its basic principles in the interest of mutual economic benefit – and that Switzerland will be able to rely on the help of its neighbouring countries if necessary. However, these assumptions – that the EU will not stick to its principles and that Switzerland can play off Brussels with direct contacts to Berlin or Paris – are based on an outdated understanding of the EU. Today's EU-27 is no longer comparable to the EU-15 of more than 20 years ago, when the first bilateral agreements were concluded.

During the negotiations on the framework agreement, the prospect of a creeping erosion of bilateral relations remained abstract in Switzerland. The termination of stock exchange equivalence, the failure to conclude the electricity agreement, and the problems with market access for medical technology did little to change this. From the point of view of the EU-27, however, these issues were not only a matter of negotiating tactics, but also about basic principles and coherence.

Now that the negotiations on the framework agreement have ended, bilateral relations will continue to deteriorate. The exact nature and speed of this erosion remain unclear. In all likelihood, measures and countermeasures by the EU and Switzerland will be accompanied by mutual recriminations, which could further increase mutual incomprehension. This dynamic could develop in two fundamentally different directions: the deterioration of

bilateral relations could either serve as a basis for new negotiations or further increase mutual alienation and resentment between Switzerland and the EU, which would make a political rapprochement even more difficult. The future is even more uncertain than it used to be.