

27. Switzerland and the European Union

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Abstract: Switzerland has a unique relationship with the European Union (EU). Through more than 120 bilateral agreements, Switzerland is integrated into parts of the single market, is an associate member of Schengen and Dublin, and participates in multiple EU programs. This model of integration has been developed over the last three decades but remains highly contested. The EU is among the most salient topics in Switzerland, while the EU transformed into a community, which has fewer understanding for Swiss demands. The recent developments in the EU and Switzerland politically alienated both sides. This chapter provides an analysis of Swiss integration into the EU, the politicization of the EU in Switzerland, and the perspective of the EU on the joint relations. The final part highlights how the relationship further deteriorated. Despite all the difficulties, however, both sides have a vital interest in comprehensive and deep relations.

Keywords: Switzerland, EU, bilateral relations, bilateral agreements, free movement of persons, political integration, economic integration.

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1) Introduction

As a small and open country in the middle of Europe, Switzerland is socially, culturally, economically, and politically closely intertwined with its neighbours (see chapter ‘Switzerland’s Position in Europe and the World’ in this handbook). Institutionally, Switzerland is one of the 46 members of the Council of Europe, the European guardian of human rights, democracy, and the rule of law—but as far as the European Union (EU), the most extensive project of integration in Europe, is concerned, Switzerland stands apart. Critical for this non-membership was when Swiss voters rejected the accession to the European Economic Area (EEA) in a historic referendum in 1992. Since then, Switzerland and the EU have developed a unique relationship, with more than 120 bilateral agreements. Although Switzerland is not a member of the EU, these bilateral agreements significantly integrate Switzerland into the EU, most notably into parts of the single market and the Schengen and Dublin frameworks. The unique Swiss-EU relationship is the result of a stepwise process over three decades, which has recently come to a standstill. Instead of further developing the Swiss model of integration, the recent developments have induced much uncertainty regarding the resilience and sustainability of Swiss-EU relations.

How and why did the Swiss model of EU integration become so contested? Why is it a possible scenario that Swiss-EU relations will likely further deteriorate instead of consolidating and expanding, given that both sides have established a broad net of cooperation and have a vital interest in realizing further mutual gains with updated and extended agreements? This book chapter aims to shed light on these questions by analysing (a) the milestones of Swiss-EU relations over the last 30 years, (b) the EU’s politicization in Switzerland in the context of direct democracy, and (c) the EU’s transformation into the EU-27. Before exploring these developments, the first part of the chapter discusses several aspects of the history of EU integration that are relevant for Switzerland. Key insights from the history of EU integration are that economic and political integration require one another and that national resistance to political integration is not a genuine Swiss phenomenon. Overall, this part highlights that the Swiss case resonates well with the experience of EU member states, which is an important finding

standing in contrast with the Swiss political discourse emphasizing the narrative of Switzerland as a ‘Sonderfall’ (special case).

A defining moment strengthening this narrative was the Swiss electorate’s rejection of EEA membership in 1992, which came as a shock for the Federal Council and most of the political and economic elite. Without a plan B, the Swiss government had to find a model of cooperation with the EU under the context of a highly politicized domestic discourse. Against this backdrop, the Swiss government sought to integrate Switzerland into the single market with minimal political integration. The most important milestone on that path was realized in 1999 with the Bilateral Agreement I, which integrates Switzerland into parts of the single market, including an agreement on the free movement of persons. Five years later, the bilateral relations were extended with the accession to Schengen and Dublin.

Since the EEA’s rejection in 1992, 14 public votes have confirmed and established the Swiss model of integration through bilateral agreements (see chapters ‘Direct Democracy’ and ‘Direct Democratic Votes’ in this handbook). The only exception to this continuous support is one initiative against migration in 2014, which aimed at restricting migration to Switzerland, including demands which were in conflict with the agreement on the free movement of persons. Overall, however, direct democracy has shaped Swiss-EU relations and highly legitimized the Swiss model of EU integration (see chapter ‘Foreign Policy’ in this handbook). The public votes also show that a very large domestic coalition has to support integration steps to be successful at the ballot box (Wasserfallen 2021). Forming this large supportive coalition is the key challenge for continuing and further developing Swiss-EU relations.

For a more complete understanding of the history and current state of Swiss-EU relations, one also has to analyse the EU side, particularly because the EU has changed substantially over the last three decades. For example, with the introduction of a common currency in the Eurozone, the EU member states have further pooled sovereignty and deepened European integration to a new level, while expansions have extended the EU to Central and Eastern Europe. Last but not least, the United Kingdom (UK) has left the EU. The discussions on Brexit were particularly closely connected to the Swiss model of integration with a strong impact on the current Swiss-EU relations. All of these transformations have

consequences for Switzerland. Defending the single market's integrity has become a key principle of the EU-27, which increased concerns about the flexible Swiss model of selective integration into the single market. The EU-27 formulates distinct demands in terms of the legal adoption and enforcement of EU market rules for Switzerland. In sum, developments in the EU and Switzerland have politically alienated both sides, resulting in a deterioration of the joint relationship.

On 26 May 2021, the Federal Council decided—again without having a plan B—to withdraw from the negotiations on an institutional agreement. The main critique in Switzerland against the agreement was related to the free movement of persons and its possible effects on wage protection and the access of EU citizens to welfare benefits. The Swiss government's unilateral withdrawal from negotiations in spring 2021 marks a low point in Swiss-EU relations and seriously questions the resilience and sustainability of the Swiss model of integration. The final part of this contribution formulates several conditions that may be conducive to returning to a successful further development of Swiss-EU relations.

2) Lessons from EU Integration History

On the most basic level, Switzerland's main goal is to participate in the single market with as little political integration as possible. Although the Swiss debate may suggest that this is the specific Swiss approach towards Europeanization, the complexity and interplay between deeper economic integration and political integration is a defining feature of European integration history. The key insight from several decades of integration is that economic integration cannot be intensified without deeper political integration. Economic and political integration are not a trade-off (De Grauwe 2006). Rather, they are complementarity and mutually reinforcing: more economic integration requires a further deepening of political integration.

In the early years of integration, Jean Monnet had already forcefully advocated the idea that economic integration serves as an engine for political integration, and it turned out to be highly successful in the following decades. In the 1950s, Monnet advocated the approach of starting European

cooperation by strengthening economic interdependence to pave the way for political integration. In that spirit, France and Germany, together with Italy, Belgium, the Netherlands, and Luxemburg, created the European Coal and Steel Community (ECSC) in 1951. The ECSC's signatory states pooled coal and steel production—the two industries providing the resources for military capacity.

A few years later, in 1957, the same six countries signed the founding document of the European Community, the Treaty of Rome, with an even more ambitious goal. The member states committed themselves to creating a common economic market, which was supposed to provide wealth and prosperity through increased transnational exchange and interdependence. Deeper integration in the form of a common market should not only provide prosperity. Beyond that, the Rome Treaties were supposed to establish and trigger deeper political integration among their signatory states. To that end, the treaty introduced a supranational institutional structure with the European Commission, Council, European Parliament, and European Court of Justice (Gilbert 2012).

The political science scholarship theorized Monnet's European integration approach of starting with economic integration to trigger further political integration as neo-functionalism (Haas 1961). A core premise of neo-functionalism is the spillover concept. The economic version of this idea is that integration in one industry and sector will increase interdependence and lead to higher demand for integration in other economic sectors (Schmitter 1969). The dynamic of sectoral spillovers should automatically lead to an ever more economically integrated union. In addition to this economic dynamic, neo-functional scholars also theorized, in the spirit of Monnet (1976), that economic integration would spill over into deeper political integration.

In the political science literature, political integration is conceptualized as pooling and delegation (Tallberg 2002). 'Pooling' refers to joint decision-making among member states that goes beyond intergovernmental cooperation and the requirement of unanimous decision-making. Member states pool sovereignty by giving up veto power and introducing qualified majority voting, which enhances policy-making capacities. The concept of delegation also means that member states transfer authority to supranational institutions. The combination of pooling and delegation makes the EU a truly supranational institution and specifies how deeply the EU is politically integrated with authority

transfers from the national to the European level. Pooling and delegation strengthen the political decision-making capacity and the credibility of joint commitments on the supranational level. The more recent term ‘strategic autonomy’, widely used in Brussels, also captures this idea of strong joint EU action on the global stage through pooled sovereignty.

The history of European integration shows that the development towards such deeper integration was accompanied by conflicts and setbacks in the 1960s, 1970s, and more recent decades. The work of intergovernmentalists stresses national governments’ crucial role in this process (Hoffmann 1966; Moravcsik 1998). A critical finding of the intergovernmental literature is that deeper political integration triggers national resistance. In the long run, this resistance, however, could not block the development towards deeper political integration. The following three examples illustrate the pattern of national resistance and integration. First, in the 1960s Charles de Gaulle opposed the planned deepening of integration in agricultural policy by suspending French participation in the European Community’s institutions. Second, for the Federal Republic of Germany, the abandonment of the Deutsche mark, a symbol of German stability and recovery in the post-war period, was a painful loss of national autonomy. And third, during the Eurozone crisis, the national room for manoeuvre in fiscal policy was further constrained, fuelling protest and contestation in the Southern member states of the EU.

These examples illustrate that all European countries were (and are) confronted with the basic problem that higher levels of economic integration (in the single market, agricultural policy, or the Eurozone) require further transfers of political authority to the European level in the form of pooling and delegation and that this process triggers national resistance. All member states face specific institutional and political obstacles in this process. As a general pattern, the history of European integration shows that national resistance may cause temporary gridlock but does not block deeper political integration in the medium and long term. Rather, it leads to opt-outs and increased differentiated integration, which essentially means that not all EU countries are, to the same extent, integrated into specific EU policy areas (Schimmelfennig et al. 2015). Denmark, for example, has not joined the Eurozone, and Ireland is not part of Schengen.

In sum, we can draw three lessons from the history of European integration, which are relevant for Switzerland:

- 1) Economic integration is the main driver of European integration.
- 2) Economic and political integration are complementary (i.e., deeper levels of economic integration require additional political integration).
- 3) Political integration triggers national resistance.

A key insight from this historical perspective is also that the experience of EU member states is not fundamentally different from that of Switzerland. This stands in contrast to large parts of the Swiss discourse, which centres on Swiss exceptionalism, using the term ‘Sonderfall’ (special case), which delimits Switzerland from EU member states (Eberle and Imhof 2007). The short discussion above emphasizes that economic integration, which is Switzerland’s main motivation to maintain its relation to the EU, was also the main driver of European integration. Moreover, any step in the direction of further political integration is contested in Switzerland—just like integration steps fuel national resistance in EU member states.

From this perspective, the Swiss case resonates well with the experience of EU member states. The understanding that deeper economic integration requires some level of political integration, however, is underdeveloped in Switzerland. The EU’s member states have learned this lesson. The Swiss debate still does not acknowledge the complementarity between political and economic integration, which is problematic because this insinuates that deeper levels of economic integration can be achieved without transfers of political autonomy.

The existing bilateral treaties between Switzerland and the EU already include rules on the Swiss adoption of market law, and the Schengen and Dublin association even comes with the obligation of a dynamic updating of EU rules. Swiss legislation is, therefore, highly Europeanized (Jenni 2014). In other words, integration in several EU policy areas is de facto already very substantial, while the Swiss discourse still builds on the premise that Switzerland, as a non-member of the EU, stands apart.

Accordingly, a widely held belief is that Switzerland has successfully resisted any form of political integration—despite the existing deep level of integration in respect to the adoption of EU law—and

that the Swiss-EU relations could be further deepened without any loss of national political autonomy. The often somewhat self-referential EU discourse in Switzerland on the narrative of the ‘Sonderfall’ suggests that losing some national autonomy would be a genuine Swiss concern. While the history of European integration documents that this is a constant feature of integration, the strong involvement of Swiss voters through direct democracy is a particularity of EU politics in Switzerland. The following section discusses how direct democracy has shaped Swiss-EU relations since the early 1990s.

3) The Shock of the EEA Rejection and the Bilateral Agreements

In 1960, Switzerland, Austria, Denmark, Norway, Portugal, Sweden, and the United Kingdom founded the European Free Trade Association (EFTA). All EFTA founding members later became members of the EU, except for Norway and Switzerland. A few decades after EFTA was formed, only Switzerland, Norway, Iceland, and Liechtenstein remained as members of this association. Unlike Switzerland, the other three remaining EFTA countries, which did not become members of the EU, joined the EEA. They are thus institutionally integrated into the EU single market.

Joining the EEA was also supposed to be the next integration step for Switzerland. On 6 December 1992, however, 50.3 per cent of the electorate (and 18 of the twenty-six cantons) rejected the Swiss accession to the EEA. The vote followed a heated political debate with an exceptionally high turnout of 79 per cent. The result came as a shock to the Federal Council and most of the political and economic elite. The vote was also the starting point of a fundamental transformation of the national conservative Swiss People’s Party (SVP). Christoph Blocher established himself as the uncontested party leader of the SVP. He vehemently opposed the EEA accession, arguing that Switzerland would lose national autonomy. The narrative of Switzerland as a ‘Sonderfall’, a country that is not compatible with EEA or EU membership, established itself as a dominant part of the Swiss discourse. Building on the success of the EEA vote, the SVP’s resistance against any further integration became a key mission of the party (Kriesi et al. 2005). With this programmatic orientation, the SVP increased its vote share from 11.9 per cent in the 1991 elections to 29.4 per cent in 2015, which is the highest vote share of a Swiss party since the introduction of proportional representation in 1918 (Vatter 2020).

After the rejection of the EEA membership in 1992, the Federal Council had to find a new Swiss-EU relationship under the context of a politicized discourse. The SVP's fundamental opposition has shaped Swiss politics ever since. Closer ties to the EU, even in the form of predominantly economic integration, have been framed as problematic because they entail the adoption of foreign rules ('fremde Gesetze') and judicial review by foreign judges ('fremde Richter'). The political debate therefore strongly focuses on the costs of sovereignty losses and Switzerland as a 'Sonderfall'. The contrasting view to this national conservative narrative is that joint European decision-making does not undermine European countries' sovereignty in an interdependent, globalized, and increasingly multi-polar and hostile world. Along these lines, several academics have argued that for Switzerland, deeper integration into the EU with pooled sovereignty would eventually increase its de facto political capacity to act (Gentinetta and Kohler 2010; Cottier and Holestein 2021).

Beyond such discussion on sovereignty's role in our times, the main problem in respect to the public discourse in Switzerland is that it largely ignores that deeper integration in the economy and other policy fields can only be achieved by pooling decision-making power. The misperception that this discourse creates is the belief that completely autonomous self-determination would be compatible with more elaborated forms of cooperation and integration. In other words, a substantial part of the Swiss discourse essentially builds on the assumption that the adoption of EU market rules would be voluntary and can be done selectively, which the EU criticizes as 'cherry picking'. As far as the economic side is concerned, the distinction between single-market integration and free trade agreements matters. Any deeper economic integration beyond free trade agreements comes with an inevitable loss of national political autonomy.

Against this political backdrop, the Swiss approach, after the EEA vote, was to maximise economic integration into the EU's single market while minimizing political integration. The Federal Council also officialised its intention of EU accession with the deposition of an EU application request on 26 May 1992. After the EEA vote, the Federal Council started negotiations with the EU for market access in some sectors and gradually developed over two decades a bilateral relationship with the EU. The EU, on its part, was willing to negotiate the sectoral integration of Switzerland because it believed that this

would be a transitory stage. The EU assumed that Switzerland was on a path towards EU membership. From the EU's perspective, the bilateral agreements were negotiated on the premise that Swiss accession to the EU was the long-term goal (Müller 2020).

After several years of negotiations, Switzerland and the EU signed seven bilateral agreements on 21 June 1999 (on the free movement of persons, technical barriers to trade, public procurement, agriculture, land transport, air transport, and research). These seven agreements, the so-called Bilateral Agreements I, are legally linked to one another, which means that none of them can be individually suspended (which is known as 'guillotine clause'). As far as Swiss politics are concerned, the SVP's support was unusual in the vote on the Bilateral Agreements I. Although Christoph Blocher, the SVP's leader, argued for a rejection of the Bilateral Agreements I at the party meeting, in which the SVP decided on its position on this question, the party delegates narrowly voted in support of them. On 21 May 2000, the Swiss electorate approved the Bilateral Agreements I with 67 per cent of the vote, which is an exceptionally large 'yes' vote for an EU referendum.

The treaty on the free movement of people mutually opened the labour markets. On this question, the support of the trade unions was—and still is—central. With so-called accompanying measures ('flankierende Massnahmen'), the trade unions were able to negotiate regulations and a control system, which protect Swiss wage levels. The Swiss trade unions negotiated wage protection measures in return for their support of the free movement of people, for which they could hardly get a political majority in domestic politics (without the EU context). The legacy of this bargain is that the trade unions still expect some compensation in the form of worker and employee protection for their continued support for economic integration. In Switzerland, the trade unions are strengthened in EU politics compared to standard domestic politics because their support is necessary for securing a public majority.

The bilateral path was expanded on 16 October 2004 with the Bilateral Agreements II. In addition to various other treaties, the Bilateral Agreements II include cooperation in the areas of internal security and asylum with the accession to Schengen and Dublin. The Schengen agreement strengthens police cooperation through the exchange of information and simplifies cross-border mobility. The Dublin agreement coordinates asylum procedures. On 5 June 2005, 55 per cent of the electorate voted in favour

of the Bilateral Agreements II. In terms of political cleavages, this vote divided Switzerland along the typical lines of conflict in EU politics, which are in some respects quite similar to EU scepticism in EU member states with divisions between national conservatives and progressive and the rural and urban population. The SVP opposed the Bilateral Agreements II against all other major parties, the rural regions rejected it against the population in the cities, and there was a clear difference between the German- and French-speaking parts of Switzerland, whereby the French-speaking cantons were in favour of the agreement (Engeli and Tresch 2005). Relevant to Swiss-EU relations are, besides Swiss politics, also the developments in the EU, which the following section discusses.

4) The Transformation of the EU and Its Consequences for Switzerland

Since the bilateral agreements were signed two decades ago, the EU has undergone fundamental changes, including its expansion into Central and Eastern Europe. On 1 May 2004, ten new member states joined the EU. Romania and Bulgaria followed on 1 January 2007 and Croatia on 1 July 2013. The bilateral framework between Switzerland and the EU was successfully adapted to the enlarged EU in various votes: on 25 September 2005, 56 per cent of the Swiss electorate supported the extension of the free movement of people to the ten new member states; on 26 November 2006, 53 per cent voted in favour of the payment of CHF 1 billion for economic development in Eastern Europe; and on 8 February 2009, 60 per cent said yes to the extension of the free movement of people to Bulgaria and Romania.

With its expansion to Central and Eastern Europe, the EU became more heterogeneous. Along with the EU's transformation through enlargement, the introduction of the Euro has also changed the EU. When the EU leaders created the Economic and Monetary Union at the Maastricht summit in 1991, they discussed how creating a common currency had to be complemented by further political integration in the form of fiscal, labour market, and economic integration. The debate is still ongoing, with a strong divide between advocates of strict budget and debt rules, who conflict with supporters of more fiscal transfers and burden sharing (Brunnermeier et al. 2016; Lehner and Wasserfallen 2019). Similar conflicts shape the negotiations regarding the EU budget and the economic recovery package NGEU (Next Generation EU), which is a new fiscal instrument designed to counter the economic downturn

the COVID-19 pandemic caused. In the NGEU negotiations, the EU member states agreed, for the first time, to finance a vast spending programme by raising joint credits on the financial markets. In essence, this means that they are taking up common debts, which was, as a fiscal integration approach, not a politically feasible option in the Eurozone's reforms, not least because of the opposition of Germany (Wasserfallen 2022). Taking a broader perspective, the basic pattern of the Eurozone's development follows the standard process of integration discussed earlier: deeper economic integration (here in the form of a common currency) leads to further competence shifts to the EU level (despite national resistance).

Finally, Brexit has also transformed the EU. The UK officially left the EU on 31 January 2020. Like the Swiss approach, the UK tried in the Brexit negotiations to obtain access to the single market with substantial exceptions to basic rules, such as the free movement of people. The member states of the EU-27, however, were very united and rejected any such model of flexible integration in the single market even though this may have been economically beneficial for the EU and the UK. As a result, the UK eventually negotiated a free trade agreement with the EU. British goods are subject to customs procedures (such as inspections, controls, and registration). The main consequence of Brexit for Switzerland is that the EU-27 formulated a consolidated and tough stance concerning the single market's integrity: participation in the single market requires the constant adoption of the EU market rules. This basic principle of the EU-27 seriously limits the room for manoeuvre in Swiss-EU relations.

Taken together, the EU has undergone fundamental changes in the last decades. Today, the EU-27 is an entirely different union than the EU, which negotiated bilateral agreements with Switzerland in the late 1990s and early 2000s. The EU is more deeply integrated, has expanded to Eastern and Central Europe, and lost the UK as a member state. The most direct consequences for Switzerland are that the new member states from Central and Eastern Europe are politically and economically more distant from Switzerland, internal and external challenges dominate the agenda in Brussels, and the single market's integrity has become a consolidated core principle of the EU-27. Policy-wise, Switzerland's main problem is that the EU is not willing to take an accommodative stance on the question of selective economic integration. For the EU-27, the regular updating of market rules and the institutionalized

enforcement of these rules are necessary conditions for participation in the single market. This is also expected from the Swiss—and goes well beyond the current bilateral framework. From the EU's perspective, the bilateral approach is therefore outdated. Switzerland does not share this institutional perspective. In the Swiss debate, the more recent controversies centred on the question of the free movement of people.

5) Direct Democracy and the Free Movement of People

In 2014, a referendum troubled the relationship between Switzerland and the EU. The initiative 'against mass immigration', launched by the SVP, was approved by 50.3 per cent of the electorate. After several public votes established the bilateral framework as the Swiss model of integration, the successful initiative 'against mass immigration' called the existing relationship with the EU into question. Central to the initiative's success were the rising numbers of EU citizens coming to Switzerland and the high proportion of cross-border commuters.

Since the introduction of the free movement of people in 2002, the number of incoming EU citizens from the EU, particularly from Germany, had risen steadily until 2008, when 113,000 people moved from the EU to Switzerland (which corresponds to a net migration of 84,000). After this peak, net migration sunk to 36,000 in 2018. As a further consequence of the free movement of people, the number of cross-border commuters, especially from France and Italy, steadily increased. The large share of cross-border commuters is also driven by the substantial wage disparities between Switzerland and its neighbouring countries, Italy, France, Germany, and Austria. The already large wage differences have increased further in real terms due to the Euro weakening in relation to the Swiss Franc (1 Euro was worth 1.60 Swiss francs in 2008; in March 2022, the exchange rate arrived at parity).

The consequences of the free movement of people agreement have become a dominant issue in Swiss political debates. The success of the initiative 'against mass immigration' also set a difficult task for the Swiss parliament, as it had to implement the initiative without threatening the agreement on the free movement of people (and the entire Bilateral Agreements I because of the guillotine clause). The

parliament opted for a minimalist implementation. The SVP reacted to this by launching the ‘limitation initiative’, which explicitly requested to suspend the free movement of people. Swiss voters, however, rejected this more extreme initiative with a vote share of 61.7 per cent on 27 September 2020. Eventually, these public votes on migration did not endanger the free movement of people and the entire Bilateral Agreements. Still, the success of the initiative ‘against mass immigration’ amplified the SVP’s strong mobilization potential. Moreover, the trade unions’ critical role in EU politics was again highlighted because of the demonstrated salience of Swiss wage protection in relation to the free movement of people.

Direct democracy shapes EU politics in Switzerland with initiatives, as discussed above, and with referendums called against new treaties signed with the EU or any other new law related to Swiss-EU relations (see chapters ‘Foreign Policy?’ and ‘Direct Democratic Votes’ in this handbook). As far as new treaties with the EU are concerned, the constitutional question of whether they are subject to a mandatory or an optional referendum is politically very sensitive. In case of an obligatory referendum, a majority of the people *and* of the cantons have to approve the proposal. With the requirement of this double majority, the rural population in small cantons is overrepresented, which increases the threshold for such proposals, given that the rural population is more sceptical about the EU and integration proposals. Approximately a minority of only 46 per cent of the Swiss electorate can achieve a majority in the cantonal vote—and thus block a treaty that a popular and a cantonal majority has to approve (Vatter 2020, 414). In other words, the de facto requirement for support in the popular vote increases from 50 to 54 per cent.

Despite the setbacks in Swiss-EU relations through the votes on the EEA and the initiative ‘against mass immigration’, the main direct democratic story is the Swiss electorate’s strong backing of Swiss-EU relations. Since the EEA’s rejection in 1992, fifteen proposals related to Swiss-EU relations have been submitted to the Swiss electorate. Table 27.1 documents for all these votes the proportion of ‘yes’ votes of the people and cantons, the turnout, and the legal form (obligatory referendum, initiative, or optional referendum). Over the long run, Swiss integration into the EU, as advocated by the Federal Council and the broad coalition of parties, which seeks to strengthen Switzerland’s relationship with

the EU, has been supported in fourteen referendums since the EEA's rejection. The adoption of the SVP initiative 'against mass immigration' in 2014 was the only exception to this pattern. However, it is also evident that the proportion of yes votes was in several votes only slightly above 50 per cent, which shows how divisive EU votes are.

Table 27.1: Votes on EU proposals with the 'yes' percentages for voters and the number of cantons supporting an initiative or referendum (in brackets) in case the constitutional requirement of a double majority holds (with totally twenty-three cantonal votes as half-cantons are counted with 0.5).

Date	Proposal	Legal Form	Yes-Share	Turnout
06.12.1992	Accession of Switzerland to the European Economic Area	Mandatory referendum	49.7% (7)	78.73%
08.06.1997	'EU membership negotiations before the people!'	Popular initiative	25.9% (0)	35.44%
21.05.2000	Bilateral Agreements I between Switzerland and the European Union	Optional referendum	67.2%	48.30%
04.03.2001	'Yes to Europe!'	Popular initiative	23.2% (0)	55.79%
05.06.2005	Acceptance of the Schengen/Dublin association agreement	Optional referendum	54.6%	56.63%
25.09.2005	Extension of the agreement on the free movement of persons	Optional referendum	56.0%	54.51%

	and the revision of the accompanying measures			
26.11.2006	Federal Act on Cooperation with Eastern Europe	Optional referendum	53.4%	44.98%
08.02.2009	Continuation/extension of the agreement on the free movement of persons	Optional referendum	59.6%	51.44%
17.05.2009	Introduction of the biometric passport (Schengen)	Optional referendum	50.1%	38.77%
09.02.2014	Initiative ‘against mass immigration’	Popular initiative	50.3% (14.5)	56.57%
30.11.2014	Stop overpopulation—to safeguard the natural basis of life	Popular initiative	25.9% (0)	49.98%
28.02.2016	Initiative ‘for the effective expulsion of foreign criminals’	Popular initiative	41.1% (4.5)	63.73%
25.11.2018	‘Self-determination Initiative’	Popular initiative	33.7% (0)	48.41%
19.05.2019	EU firearms directive	Optional referendum	63.7%	43.88%
27.09.2020	‘For moderate immigration (Limitation initiative)’	Popular initiative	38.3% (3.5)	59.49%
15.05.2022	Participation in the European border and coast guard Frontex	Optional referendum	71.5%	39.98%

Sources: Swissvotes/Année Politique Suisse (2022), Federal Chancellery (2022).

6) The Failed Institutional Agreement

The Bilateral Agreements II were signed in 2004. No further milestone in Swiss-EU relations has been achieved since then. The previous sections discussed how the EU has changed fundamentally in the last few decades and how the free movement of people became a hot topic in Swiss politics. Against this backdrop, Switzerland and the EU have tried to consolidate and improve Swiss-EU relations. Although Switzerland wants to conclude further bilateral market access agreements, for example in the electricity sector, the EU defends the single market's integrity and requests a dynamic adoption of Swiss law and an institutional procedure that ensures compliance with EU market law.

After the EU and Switzerland started to negotiate a new framework on 22 May 2014, the two sides supposedly reached a deal at the end of 2018 with the so-called institutional agreement (InstA). The InstA framework should deliver legal certainty for the existing market access agreements and lay the foundation for future market access agreements. As such, the agreement had an exclusive focus on institutional questions, as compared to the Bilateral Agreements I and II, which both included deeper integration in specific policy fields. The InstA entailed, through the institutional approach, more indirect effects instead of extending the material scope of integration to pertinent fields, such as energy, health, or security.

The InstA included a dynamic mechanism of legal adoption of EU market law and a dispute settlement procedure to ensure the uniform application of common market rules. This framework satisfied the EU's insistence on the single market's integrity. According to the InstA, Switzerland would have been able to articulate its concerns in the EU legislative process but then had to adopt new market rules. Disputes would have been settled by an arbitral tribunal, which would submit questions on the interpretation of EU law to the Court of Justice of the European Union (CJEU). If the EU or Switzerland were to implement a decision of the arbitral tribunal insufficiently, the other party could take proportionate compensatory measures. The aim of the InstA was, therefore, to provide legal certainty and to link Swiss legislation more closely to legal developments in the EU single market—with the CJEU taking a central role in disputes.

A majority in the Federal Council did not support the result of the InstA negotiations. Accordingly, the Swiss government withheld the initialling, which would confirm the wording of the agreement and initiate the domestic process of ratification. Instead, the Federal Council launched on 7 December 2018 an unusual process to explore the domestic support for the agreement. In this consultation process, the main domestic political actors presented their assessment of the InstA. The consultation was disappointing for the supporters of the agreement, as it became clear that the treaty's content was subject to broad and heavy criticism. The Federal Council (2019) stated that, based on the consultation, there was insufficient political support for the InstA. Although the SVP would reject such a framework anyway, the opposition extended well beyond the SVP.

At the core of the concerns were the anticipated effects of the free movement of people. The trade unions with the support of the Social Democrats were concerned that the InstA would weaken wage protection arrangements. The Christian Democrats, among others, wanted to exclude the EU Citizenship Directive from the framework because they feared that the adoption of the InstA would burden the welfare state. And finally, the CJEU's role was heavily contested. The SVP reiterated its established narrative against 'foreign judges'. Although this was not surprising, the more damaging outcome of the consultations was the widely shared concern that an activist CJEU would extend free movement of people rights based on the InstA. The trade unions were concerned that the CJEU would further weaken wage protection arrangements, and centre-right politicians argued that the court would stepwise introduce the EU Citizenship Directive, which would facilitate EU citizens' eligibility to welfare benefits. Surveys of the Swiss electorate showed a similar picture. The InstA attracted the most criticism in the electorate around the question of how the framework would affect wage protection and access to social benefits.¹

After some back and forth and additional rounds of talks between the EU and Switzerland, the Federal Council decided on 26 May 2021 to withdraw unilaterally from the negotiations on the institutional agreement. This was surprising because the Swiss government had no plan B for Swiss-EU relations—and the InstA resulted from several years of negotiations. Almost ironically, in hindsight, the starting initiative for an institutional agreement came from Switzerland: a conservative member of

the Swiss parliament proposed a framework agreement in 2005 attempting to stabilize and extend the bilateral relations with the EU (Müller 2020). This initiative was taken up by both sides and translated in the (eventually unsuccessful) InstA agreement.

7) Conclusion and Outlook

Politics in Switzerland and the EU have changed in the last decades, with substantial consequences for their joint relationship. On the EU side, the expansion to Eastern and Central Europe has transformed the EU to Switzerland's disadvantage. The new member states have less understanding for the tailored and selective Swiss model of integration, as they had to adopt the EU's full legal framework. Brexit was not helpful for Switzerland either. The EU-27 formulated in the Brexit negotiations a tough stance protecting the single market's integrity, which reduced the flexibility in terms of selective integration and legal compliance. On the Swiss side, the effects of the free movement of people have been politicized, strengthening national conservatives, who emphasize sovereignty concerns, and trade unions, who are concerned with the protection of Swiss wage levels.

Taken together, the developments in the EU and Switzerland have politically alienated the two. The basic principles articulated on both sides are difficult to reconcile. Although Switzerland wants to consolidate the bilateral relations and sign further agreements (e.g., in the electricity sector), the EU is not willing to extend the relationship without an institutional agreement regulating the dynamic updating of rules within the EU's legal framework. Despite these complications, the unifying forces in Swiss-EU relations remain strong: Switzerland and the EU have an enormous interest in comprehensive and deep relations as far as the economic exchange is concerned but also well beyond, for example in energy, climate, education, research, health, digitalization, and security policy.

This contribution sought to stress that deeper levels of integration (in economics and other policy fields) require further political integration. This has consequences. Although deeper political integration constrains national political autonomy, it simultaneously enhances the joint problem-solving capacity, particularly in an interdependent world with global challenges. At the end of the day, integration and cooperation must help Switzerland address public policy problems that it cannot resolve on its own.

The discourse in Switzerland could build on this premise if it were to acknowledge more explicitly that further political integration is a necessity to consolidate and intensify its relationship with the EU (not something to be avoided at any costs). On this basis, a more informed political discussion would be feasible on whether the gains of deeper integration outweigh the costs for Switzerland. This should, in turn, lead to a recalibration of the Swiss integration model. Three points may be particularly conducive to this path.

First, the EU and Switzerland should focus on mutual gains and the set of shared common values. The joint relationship deteriorated to a level where the EU and Switzerland expect the other to compromise over basic principles. Schimmelfennig (2022) rightly concluded that both sides have taken hostage even solidarity measures to improve their respective bargaining positions. For example, Switzerland used its contribution to social cohesion as a bargaining chip, and the EU downgraded Switzerland to a non-associated third country in the Horizon Europe research program, which is a problematic example of tit-for-tat defection, simply attempting to hit the other side (even at the costs of own losses).

Second, the Swiss debate should move beyond an exclusive economic narrative and the focus on minimizing political integration. Rather, the gains of mutual cooperation regarding market integration and in other policy fields have to become an equally important part of the equation in the search for a new Swiss model of integration. This, however, also implies that the gains from a new joint agreement are tangible. The failed InstA only included an institutional perspective, which has amplified concerns over the political costs. The gains from this integration step were diffuse and indirect. Consequently, the agreement's potential negative effects, in respect to wage protection and welfare access, dominated the Swiss debate. Overall, the InstA's content was too narrow and technical to build the necessary broad support in Switzerland. For the debate and politics to change, tangible cooperative gains, for example, in the energy and electricity production and supply, must be part of an agreement.

Finally, the political debate in Switzerland should include the advantages, disadvantages, and consequences of all available options in Swiss-EU relations (Oesch 2021; Walter 2021). The status quo means, about 20 years after the Bilateral Treaty II, no further updated cooperation and a slow erosion of the existing framework. This is the perspective if both sides cannot renew their relationship. Besides

the failed InstA, three options exist for Swiss integration: (a) Switzerland joins the EU (Schwok 2009), a highly unpopular option that will not happen in the foreseeable future; (b) accession to the EEA (Freiburghaus und Kreis 2013), which would meet the EU's demand for institutional integration but is, in light of the Swiss criticism raised against the InstA, even worse (with stricter rules about the dynamic updating and the regulations on the free movement of people); or (c) a free trade agreement, following the model of the UK, which would decrease the current level of integration and restrict the joint relations to economic exchange. Although the Swiss debate has identified the InstA's flaws from the Swiss perspective, the problem is that the alternatives to such an agreement, such as EU or EEA membership, hardly fulfil Switzerland's interests better.

The assessment of various integration options is, of course, politically highly controversial, and eventually, a new model of Swiss-EU relations must be supported by a large domestic coalition against the SVP's resistance to secure the required electoral support. In this process towards a renewed Swiss-EU relationship, the Federal Council is the key actor connecting the negotiations with the EU and the domestic political arena (see chapters 'Foreign Policy' and 'Government' in this handbook). The Swiss government has the main responsibility for defining Switzerland's interests, negotiating a new framework, and forming a broad domestic coalition. This requires more leadership and negotiation skills on the Federal Council's part—both in domestic politics and in the negotiations with the EU.

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Notes:

¹ See a post-poll conducted by LeeWas on the federal referendums of 19 May 2019. Zurich, 20 May 2019.