

# Switzerland's agreements with the European Union

## How to manage complex international negotiations

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### INTRODUCTION

IT HAS BEEN SAID THAT SWITZERLAND'S FOREIGN POLICY, SINCE THE EARLIEST period, has been dominated by two concerns, status and trade. By status, we mean the vital interest for a small neutral country to be recognized as such and to safeguard its independence in the context of equilibrium and conflict between major European powers. In referring to trade, we point to the necessity for a naturally poor and landlocked country to achieve access to both markets and supplies. In dealing with the emerging European Community, later the European Union, Switzerland has seen these two key concerns merge. A look at the map or at trade statistics immediately makes clear why 'Europe', i.e. Switzerland's immediate neighborhood, has been in the center of its foreign policy. Today, to mention only this single set of figures, the EU provides Switzerland with 83% of its imports of goods and takes 63% of its exports.

One has to be aware that for Switzerland, the end of the Second World War brought an end to seeing its neighbors almost constantly at war with each other, or engaging in prolonged political struggles. For centuries, within this power game, keeping the strategic North–South passageway over the Gotthard Pass free from external control has been a key concern not only for the Swiss themselves, but also for competing European powers. Thus, Swiss neutrality was declared as being in the best interest of Europe as a whole. While peace in Europe was and is good news under any

political logic or circumstances, it must be understood that, historically, Switzerland is not a 'nation' in the classical sense, but a political construction or 'work of art' strongly influenced by the logic of neutrality. External restraint reflected Switzerland's complex internal structure as an alliance of cantons, with a rich diversity in terms of language, wealth, religion, or political tradition, but possibly also in external relations. This is what we refer to when we talk about Swiss federalism and this is also the main reason why European integration has been considered by the Swiss not only as a chance for peace and prosperity within their natural European environment, but also as a challenge to the country's sovereignty, and therefore its political survival.

Taking the latest round of negotiations with Brussels as an example, I shall try to show how Switzerland has succeeded in developing useful relations with the European Union without actually aiming at full membership. This latter difficult issue remains reserved for consideration at a later stage.

#### BILATERALISM

Space does not permit me to give a full account of Switzerland's relations with the European Union since the end of World War II. Let me simply recall that in the late eighties, Switzerland, together with other EFTA countries—Austria, Sweden, Finland, Norway, Iceland etc.—negotiated a comprehensive treaty with the European Union called the European Economic Area (EEA). It provided for a full participation of these countries—which had already concluded a free-trade agreement for industrial goods in the early seventies,—in the EU's emerging internal market, the 'four freedoms', due to be fully operational by 1992.

Technically speaking, the EEA Treaty was a multilateral agreement. Negotiations were conducted, on the EFTA side, by the country in the chair after a full consultation with the other participants. Those involved in its negotiation still consider, today, that the result was a rather good agreement providing EFTA countries, of course, not with a real say in the management and further development of the EU's internal market, but at least with ample consultation, non-discrimination, and dispute settlement.

In 1992, however, the formula of a multilateral association between the inner Twelve and the outer Seven fell apart. Indeed, after the demise

of the Berlin Wall, when the question of Eastern Europe's relations with the EU emerged, some of the EFTA countries—Austria, Sweden and Finland—decided to go for full membership without further delay. Iceland, Norway and Liechtenstein chose to stick to the EEA. In Switzerland, the Treaty was defeated in a popular vote on 6 December. One of the issues in the debate preceding the vote was the comprehensive character of the agreement making it appear as a first step towards full membership. This was, indeed, the Government's strategic aim; but at the same time, it also allowed Eurosceptics to forcefully denounce a suspected automaticity with respect to a further deepening of our EU links.

After the referendum, the negotiation of a series of bilateral arrangements on specific topics was put forward as an alternative formula. In this way, every specific issue could be dealt with on its own merit. The EU eventually agreed with this approach, but insisted that a few of these arrangements should be considered as a package, thus preventing Switzerland from picking and choosing only certain specific obligations.

To put it very briefly, the first series of agreements comprised, *inter alia*, the issues of free movement of labor, technical obstacles to trade, public tenders, air and land transport, agricultural trade, and research. It entered into force in 2002. The second set included Switzerland's association with the Schengen and Dublin schemes, a withholding of tax on capital gains earned by foreigners, the fight against tax fraud and a number of minor matters. They have not all entered into force yet. In 2005, two issues, *i.e.* Schengen and the extension of the free movement of labor with the ten new EU States, had to be voted upon. They were both approved by the people.

My subject, however, is not to go into the details of these arrangements but to dwell on some aspects of the negotiation and the work of diplomats, both within the EU and in Switzerland.

#### COORDINATION: THE EU SIDE

You probably all know how the EU negotiates. In most cases, it is the European Commission which proposes entering into negotiations. It elaborates a report setting out the key issues and a draft mandate which it submits to the Council of Ministers. This mandate forms the basis of all further work. Member countries will follow the negotiations as silent observers in the back row of the meeting room and regularly discuss

progress or arising problems among themselves and with the Commission's negotiators. This method, as a rule, provides for a close link with already existing EU legislation. Thus, in order to avoid difficulties in the management of these arrangements, the EU tends to insist on following the rules of the internal market already in force. The final agreement is then approved by the Ministers.

Things get a bit more complicated when we deal with so-called mixed agreements which cover both matters falling within the EU's own competences as provided by the Treaty as well as other matters on which Member States have retained their own treaty-making power. They may, even in these cases, want to ask the Commission to negotiate on their behalf; but each of them will have to ratify these mixed agreements individually, according to its own internal rules.

This has been the case with the arrangement concerning the free movement of labor since it also covered matters relating to social security or the recognition of diplomas, among others. It was interesting to see how little, in some EU countries, these residual matters were able to kindle interest in national parliaments. Negotiations with Switzerland were considered to be mostly a matter for the Commission to cope with. In addition, abolishing obstacles theoretically still in existence with Switzerland did not appear as economically very relevant. As a rule, MPs became aware of some of the issues only when the final agreement was presented to them. This was the case, for instance, for some issues of concern to so-called 'frontaliers', EU workers crossing the border of Switzerland daily to work in Switzerland (Geneva, Basel, the Ticino). Their misgivings or uncertainties about their future status were often further kindled by information about how carefully the Swiss Government consulted with local and cantonal authorities since, indeed, in Switzerland, too, some issues did not fall within the competence of the federal government but were cantonal matters. Indeed, knowing that the most delicate issues may well come up again in the final referendum, the Swiss government could not afford to override these concerns simply by insisting on its formal competence in concluding international treaties.

There is another aspect which we should look at quickly: diplomatic action to accompany such negotiations. I have already mentioned that the Commission's negotiators were under constant scrutiny by EU Member States, more precisely by their permanent missions in Brussels. It soon became necessary for Switzerland to conduct a sort of parallel dialogue

with national administrations in the EU State capitals from whence instructions to the Brussels representatives originated.

This is a good example of the bilateral face of multilateral negotiations. Indeed, while bilateral embassies in Europe may occasionally feel somewhat frustrated to be bypassed by the new 'bilateralism' between Berne and Brussels, their actual contribution to the negotiations' success, quite often, has been crucial. It was the bilateral embassies' task to get at the root causes of some difficulties and do their traditional job of explaining and convincing. This, in certain cases, was easier in Paris, London, or Rome than in Brussels, since capitals had a better grasp of certain aspects of Swiss politics or of certain economic realities while the Brussels machinery is very much, and occasionally too much, geared to the EU's internal logic and workings.

#### COORDINATION: THE SWISS SIDE

How about the Swiss side?

Traditionally, Switzerland has been rather active in the field of trade negotiations. Although it joined GATT only during the sixties—the main problem being Switzerland's pronounced protection of its agriculture—the Swiss trade negotiators were well known for their skill and, occasionally, also their stubbornness. Although most negotiators in the field of European integration were diplomats or belonged to the traditional class of high officials acting from the Office of External Economic Affairs, it soon became clear that dealing with Brussels not only required taking into account aspects of foreign policy, but also that the subjects to be dealt with went far beyond the classical fields of trade or economic cooperation. Labor movements were an early concern. EU countries like Italy or Spain, where many foreign workers in Switzerland come from, insisted on including important aspects of the status of these workers into the negotiations.

Another example is transport. This is one area where Switzerland's geographical position turned the country into a natural partner of the EU. It has been said that any attempt by the EU to develop something approaching a common European transport policy required the full cooperation of Switzerland since important flows of intra-EU trade pass in transit through Switzerland's alpine railways and roads.

The multi-disciplinary character of these negotiations were taken into account chiefly by creating an inter-departmental office for European

integration matters, or Integration Office. At the beginning, in the early sixties, the Office was deemed to function as a secretariat for a series of working groups created to study the various aspects of a possible Swiss EU membership; that was in the early sixties when the United Kingdom first deposited its candidacy for adhesion. One of these groups was called upon to go beyond the mere technical aspects and take a look at the historical perspectives of Switzerland's position in Europe. It soon became a sort of philosophical and political brain-storming group.

While officials of the Integration Office were primarily recruited in the Foreign Ministry and in the Ministry of Economic Affairs, the Integration Office soon became the crossroads or coordinating body for the work of all government departments dealing with European affairs. This has been an interesting experience since some so-called technical departments explicitly or implicitly resented these efforts. They had a tradition of dealing with international aspects of their work themselves and saw little reason for letting others interfere just because 'integration' was deemed to be something new and special. Other departments, however, were somewhat lost when it came to understanding some of the subtleties of Community legislation and had little knowledge of how the Brussels institutions worked.

This aspect is primarily a challenge for the chief negotiator, be he the head of the Integration Office or a State Secretary in the Foreign or Economic Ministry. In terms of the ordinary pecking order, he may not be considered to be the superior of certain high officials in other ministries. When it comes to negotiations with Brussels, particularly when, formally or informally, we are faced with a series or with a package of future agreements, he will have to appeal to his colleagues' preparedness to perhaps, abandon certain positions for the sake of achieving a balanced overall result and getting through with the negotiation as a whole.

Finally, let me make a comment or two about the political nature of international negotiations, which are headed for a possible referendum of the Swiss kind. Although, normally, diplomats will have their minister's or the cabinet's instructions as a clear and sufficient framework for their negotiations, in the Swiss case, direct democracy exerts a sort of anticipatory effect on many things that are being said or done in diplomatic channels. Leaving open the question of whether a referendum will be called for or not, is one of the main techniques used by political adversaries of a particular law or international agreement in order to exert pressure. But

even when it has become obvious that the government will not be able to avoid being challenged in a popular vote, it is not always clear right from the beginning where the most delicate issues will lie. Questions that play some role in the parliamentary debate may fade away when the public debate starts and vice versa.

Due to the somewhat technical character of these negotiations, some of the diplomats involved will also be heavily engaged in the public debate preceding the referendum. Although, in the end, a few rather emotional issues dominate the battle, it is a habit in Switzerland to organize all kinds of public meetings, be it in obscure country inns or in the national media. Some diplomats may be a bit lost in this highly politicized world, others develop unsuspected talents.

## CONCLUSIONS

Three conclusions:

*One:* Dealing with the European Union implies a new and often complex mix of bilateralism and multilateralism, occasionally requiring new skills.

*Two:* Effective coordination within a national administration becomes an absolute necessity. *Not* speaking with one voice in Brussels is a sure recipe for failure.

*Three:* European integration does not allow for a separation between diplomatic work on the international scene and internal political work, particularly in a country practicing direct democracy. Modern diplomats have to be available for and be able to master both fields of action.