



**Universität
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The Swiss Model

Brexit Seminar Series 2016/2017

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October 18, 2016



- I. To begin with: Switzerland
- II. European Integration / Bilateral Treaties
- III. Autonomous Adoption of EU Law
- IV. Popular referendum “Stop Mass Immigration”



1) Geography



2) Interdependence

- 8.3 million inhabitants (2 million foreigners, 1.3 million from the EU/EFTA)
- 4th most important trading partner of the EU; 53% of Swiss exports go to the EU; 72% of Swiss imports come from the EU
- 300'000 frontier workers (cross-border commuters)

(figures from 2015)

3) Traditions of sovereignty, neutrality, direct democracy, federalism, autonomy in external trade relations



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- OEEC/OECD (1948)
- European Free Trade Association (1960)
- Council of Europe (1963)
- GATT (1966)
- **Free Trade Agreement (1972)**
 - OSCE (1975)
- **Insurance Agreement (1989)**
 - Bretton Woods (1992), WTO (1995)
- **“No” to the European Economic Area (1992; 50.3%, 16 Cantons)**



– **Bilateral Agreements I (1999)**

(freedom of movement of persons, agriculture, public procurement, conformity assessment, civil aviation, overland transport, scientific and technical cooperation)

– United Nations (2002)

– **Bilateral Agreements II (2004)**

(taxation of savings income, anti-fraud, Schengen/Dublin, processed agricultural products, pensions, statistics, environment, media, vocational training, youth)

– **“cohesion billion” (2006, Act on the Cooperation with Eastern Europe)**

– **cooperation with Europol (2004), with Eurojust (2008), with the European Defence Agency (2012) and between competition authorities (2013)**



In particular: Free Trade

- establishes a free trade area between Switzerland and the EU for industrial products and some processed agricultural products
- prohibits customs duties and similar measures for covered goods as well as quantitative restrictions (incl. quotas)
- contains provisions on flanking policies (competition law, prohibition of state aid)
- supplemented by some 130 additional protocols/decisions/exchanges of letters/etc.
- note beside: Switzerland introduced, unilaterally, the Cassis de Dijon-principle in 2010





In particular: Free Movement of Persons

- entitles Swiss and EU citizens, under certain conditions, to choose workplace and residence freely within the territories of the Contracting Parties
 - valid employment contract
 - being self-employed (natural persons)
 - to provide services (up to 90 days per year)
 - economically inactive persons: proof of financial independence and health insurance coverage.
- prohibits discrimination
- flanking policies protect employees (compliance with pay and working conditions in Switzerland)
- refers to EU secondary law (e.g., social security matters, recognition of professional qualifications)





In particular: Civil Aviation

- grants commercial flying rights
- prohibits discrimination
- enables Switzerland to participate in the European Aviation Safety Agency (EASA)
- refers to EU secondary law (e.g., compensation/assistance to passengers in the event of cancellation/delays of flights)





In particular: Schengen

- abolishes identity checks at the Schengen internal borders
- guarantees security due to cross-border cooperation (Schengen Information System, SIS II)
- enables Switzerland to take part in the common visa policy for stays up to 3 months (Schengen visa)
- enables Switzerland to participate in the European Border and Coast Guard Agency (Frontex)
- refers extensively to EU secondary law (e.g., Schengener Borders code)





In particular: Dublin

- coordinates national responsibilities for asylum procedures, incl. access to the EURODAC fingerprint data bank
- refers extensively to EU secondary law (e.g., Dublin III-regulation)





Institutional Setting

- implementation, surveillance, interpretation, dispute settlement
 - «*two pillar-principle*» (exception: Agreement on Civil Aviation)
 - mixed committees
 - ➔ lack of an ultimate (judicial) arbiter in the case of disagreement
- up-dating
 - periodic adoption of new EU secondary law
 - ➔ no explicit provisions (exception: Dublin- and Schengen-Agreement)



Negotiations on a Framework Agreement

- since 2008, the EU has predicated negotiations in areas like energy or services (market access) on the conclusion of an institutional framework agreement
- major points
 - ongoing (dynamic) adaption of the agreements to the EU *acquis*
 - consistent interpretation of the treaties in Switzerland and the EU
 - (independent) mechanisms for the surveillance and the legal implementation of the treaties
 - (independent/international) mechanism for the settlement of disputes
- negotiation mandates (CH: December 2013; EU: May 2014)



- Adoption of new EU law (mandate of the Swiss Federal Council)
 - «The chosen solution contains **no automatic adoption** of EU law. Switzerland must have the option of deciding, subject to all national processes (such as a referendum), whether to adopt any new EU legislation by means of a bilateral agreement.»

- Dispute Settlement (mandate of the Swiss Federal Council)
 - «Questions regarding the interpretation of EU legislation forming part of a bilateral agreement may be brought before the **Court of Justice of the EU (ECJ)** by Switzerland or the EU as and when required. The ECJ's interpretation of EU law is binding. Differences will be settled amicably on this basis by the two parties. If agreement cannot be reached, appropriate compensatory measures, up to and including the partial or full suspension of the bilateral agreement concerned, may be taken.»

(own translations from the press release)



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- Policy of autonomous adoption of EU law / euro-compatibility of Swiss law
 - “Our goal has to be to secure greatest compatibility of our legislation with the legislation of our European partners in the areas of cross-border significance (and only there). (...) This pursuit of parallelism is not motivated by the introduction of an automatism to adopt European law, but by the prevention of unwanted and unnecessary legal differences, which hamper the aspired mutual recognition of legislation on a European level.”

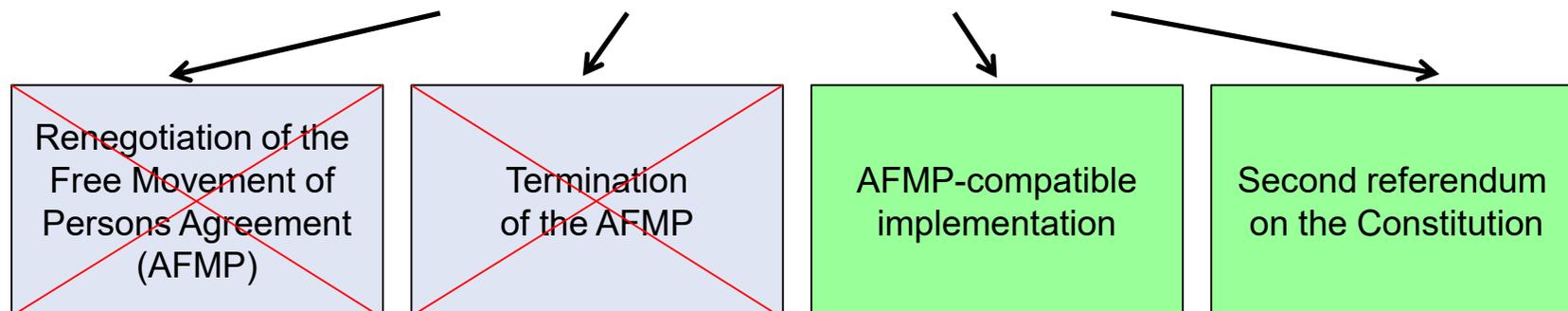
(own translation from the «Integrationsbericht», 1988)
- deviations in case of cogent (political, economic) reasons
- ➔ leads to a systematic adoption of EU law: “Europe reflex” of the legislator



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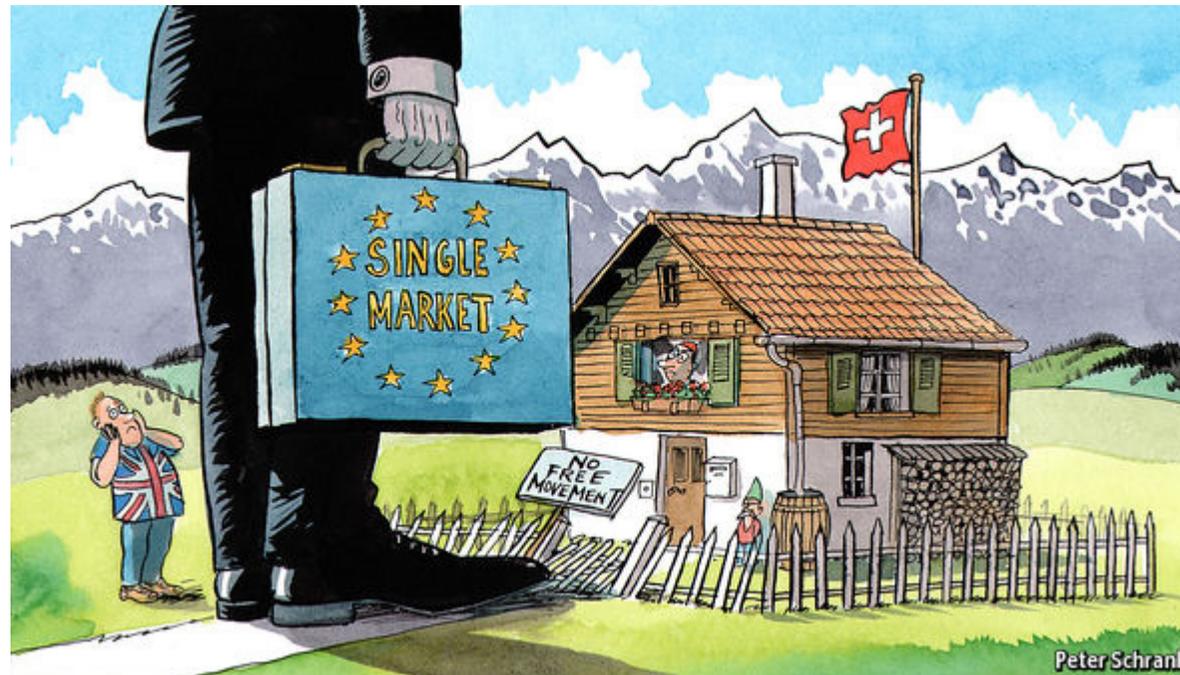


- February 2014: adoption of Articles 121a/197(11) of the Federal Constitution (50.3%, 14 ½ Cantons)
 - autonomous control of immigration
 - instruments: annual quantitative limits, quotas, giving priority to Swiss citizens; taking into account Switzerland's general economic interests
 - renegotiation of treaties incompatible therewith within three years
- Options





To conclude ...



The Economist, September 24, 2016



Thank you for your attention!

Selected reading

- MATTHIAS OESCH, Europarecht, Band I: Grundlagen, Institutionen, Verhältnis Schweiz-EU, 2015
- THOMAS COTTIER et al., Die Rechtsbeziehungen der Schweiz und der EU, 2014
- CHRISTA TOBLER, Grundzüge des bilateralen (Wirtschafts-) Rechts Schweiz-EU, 2013
- STEPHAN BREITENMOSER, Sectoral Agreements between the EC and Switzerland: Contents and Contexts, CMLR 2003, 1137
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- Directorate for European Affairs, www.eda.admin.ch/europa (government)

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