

ECONOMIC RELATIONS BETWEEN THE EUROPEAN UNION AND THE HELVETIC CONFEDERATION

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Abstract in original language:

Celem niniejszego opracowania jest wskazanie na możliwości i granice wynikające ze zróżnicowanej integracji gospodarczej między Unią Europejską a Szwajcarią. Ma ona podłoże czysto pragmatyczne i została wypracowana na podstawie wielu umów bilateralnych mających na celu zabezpieczenie wysokiego stopnia integracji Szwajcarii bez jej jednoczesnego członkostwa w strukturach UE. Artykuł skupia się na podstawach prawnych, rozwoju i formach stosunków gospodarczych Szwajcarii i UE

Key words in original language:

Umowy dwustronne, stosunki gospodarcze, Unia Europejska, Szwajcaria.

Abstract:

The purpose of this paper is to identify opportunities and limitations arising from the differential economic integration. The differential integration between the EU and Switzerland has a purely pragmatic base and has been developed by a number of bilateral agreements aimed at securing a high degree of integration of Switzerland, without simultaneous membership of the EU structures. The article focuses on legal grounds, development and forms of economic relations between Switzerland and the EU.

Key words:

Bilateral agreement, economic relations, European Union, Switzerland.

This article is an attempt to capture the development of economic relations between the EU and Switzerland, with the indication of the dynamics of methods of their regulation. The European Union's economic relations with Switzerland are interesting for this reason that the selective extension and acquisition of Community law by way of various agreements contrasts with *unité de doctrine*, which is applied in the Community. In contrast to other European countries, whose economies were hit by the war and focused mainly on reconstruction, the economy of Switzerland was in bloom¹. Swiss franc has been stable, and due to the fact that the infrastructure has remained intact and basic social needs were met, the industry could be oriented towards exports of goods and services. The first export destination, due to the geographical proximity and war destruction, were markets of western countries. Switzerland in 1948 joined the OEEC², and wanted to emphasize that its

¹ More about Swiss european politics until 60ties see R. Mauhofer, *Die schweizerische Europapolitik vom Marschallplan zur EFTA 1947 bis 1960; Zwischen Kooperation und Integration*, Bern Stuttgart, Wien, 2001, p. 483.

² Organization for European Economic Cooperation, purely governmental organization that exists to include European countries into decision-making process on the issue of the Marshall Plan. In September 1961 transformed into OECD.

neutrality does not exclude economic solidarity with war-affected Europe³. Switzerland had sceptical view on the establishment of the Council of Europe, which together with economically targeted OEEC was, according to W. Churchill, to provide a basis to build the United States of Europe. Only after the creation in 1951 the European Coal and Steel Community and European Economic Community and the European Atomic Energy Community, with supranational powers, Switzerland overcome their skeptical attitude towards the Council of Europe, which in no way limited the sovereignty of its Member States. In 1963 Switzerland joined the Council of Europe⁴.

An economic response to the creation of EEC by the “European 6”⁵ was establishment of EFTA in 1960 by the “European 7”⁶, which on the one hand was to support the development and prosperity of Member States and economic cooperation between them, on the other hand, however, was meant as a balance to the EEC and its political objectives. Since 1955 Switzerland applied GATT provisions on provisional basis, and since 1966 had regulated relationship with the Communities, subject to the most-favored-nation clause and national treatment. The process of bringing closer to the EEC for good started only in the 70’s. The basis for regular economic relations between Switzerland and the European Communities were Free Trade Agreements, which were adopted in Switzerland on 3 December 1972 by a majority of 72.5% of the vote⁷. Due to the enlargement of the EEC and the withdrawal of Great Britain from the EFTA it was necessary to support harmonious development of economic relations between Switzerland and the European Communities and support trade development throughout Europe⁸.

The agreement prohibits the parties from application of customs duties, quantitative restrictions and measures having a similar effect in relation to industrial products it covers. Both the agreement and next 130 sectoral agreements were implemented on the basis of the GATT space.

This way, which is emphasized by the doctrine, Switzerland remained free in taking action and the balance between internal and external policies was maintained⁹. Over the next years Switzerland became, after the U.S., second largest trading partner of the Communities, with

³ R. Mauhofer, Die schweizerische Europapolitik vom Marschallplan zur EFTA 1947 bis 1960; Zwischen Kooperation und Integration, Bern Stuttgart, Wien: Haupt, 2001, p. 445

⁴ Although the ratification of the European Convention on Human Rights and Fundamental Freedoms was 11 years later.

⁵ France Netherlands, Belgium, Luxemburg, Italy and the Federal Republic of Germany.

⁶ Denmark, Norway, Austria, Portugal, Sweden, Switzerland and United Kingdom.

⁷ BBl. 1973 I 82., more in T. Cottier, M. Oesch, International Trade Regulation, Bern and London, 2005, p. 313-343.

⁸ see. preamble and art. 1 free trade agreement.

⁹ T. Cottier Zwischen Integration und Weltwirtschaft: rechtliche Spielräume der Schweiz nach der Uruguay-Runde des GATT, [in] Schweizer Eigenart – eigenartige Schweiz. Der Kleinstaat im Kräftefeld der europäischen Integration, (ed.) W. Linder, P. Lanfranchi, E. R. Weibel. , Bern, Stuttgart, Wien, 1996, p. 231-244.

the economic market share of 4%, with a population equivalent to 1.8% of the then "Fifteen". The EU became the largest recipient of Swiss products which lasts to this day. In 2005 62.9% of total Swiss export went to EU countries, while in the same year, 82.3% of goods imported to Switzerland came from the EU¹⁰.

Only when all the cantons and 75.7% of voters in 1986 rejected the possibility of accession of Switzerland to the United Nations¹¹, there began a slow process of orientation towards the Communities. Switzerland recognized the need to support actively the convergence of countries within the European economic space.

In Switzerland itself the process led to a consistent policy of "euro compatibility", which resulted in the fact that despite the absence of express contractual obligations Switzerland tried to adopt the Community solutions for limiting barriers in foreign trade. From 1988 there began the process of screening of the new Swiss legislation with the *acquis communautaire*¹². In the same year the Council of the Confederation published its first report on the possibility of Switzerland's accession to the Communities, where stressed the importance of the traditional neutrality of Switzerland as a stability component for the whole Europe and announced that integration with the Communities is not currently the aim of integration policy of the Confederation¹³. In the same report, however, the Council mentioned the need for continuous monitoring of Swiss position in Europe because of an enormous pace of integration processes¹⁴. Therefore, Switzerland got involved in negotiations accompanying the formation of the EEA (European Economic Area), but when the other countries managed to introduce deprive EFTA/EEA of real powers and acquisition of a large part of *acquis communautaire*, the shape of the EEA agreement only to a little extent met Switzerland's expectations. Council of the Confederation published its next report, which described the accession of Switzerland to the EEA as a stage in the process, which was to be completed with full integration with the Communities. This connection with future membership in the Community contributed to the fact that on 6 December 1992, by 50.3% of the vote in 14 cantons and 4 half-cantons the Swiss refused to join the EEA¹⁵. This result could not surprise because of no proper public debate on the future of Switzerland in the Communities. No for the EEA meant a commitment to the Council to regulate intense economic relations with the EU on the basis of other legal instruments, which had to meet two requirements. Firstly, Community law could not be just adopted in Switzerland, and secondly there could not come to the creation of supranational authorities with decision-making powers, as it

¹⁰ Raport Die Volkswirtschaft, 9 – 2006.

¹¹ BBl. 1986 II 98

¹² T. Cottier, D. Dzamko, E. Evtimov, Die europakompatible Auslegung des schweizerischen Rechts, [in:] A. Epiney, S. Theuerkauf, F. Riviere (ed.) Schweizerisches Jahrbuch für Europarecht, *Annuaire suisse de Droit européen* 2003, Bern, 2004, p. 360-369.

¹³ Integrationsbericht 1988, BBl. 1988 III, p. 379.

¹⁴ *Ibidem*, p. 381.

¹⁵ BBl. 1993 I, 168.

would be incompatible with traditional Swiss neutrality and direct democracy¹⁶. A prototype for new regulations became a free trade agreement of 1972. As early as in January 1993, the Government of Switzerland submitted a proposal to the EU Council to conclude bilateral sectoral agreements.

At the end of 1993, after nine months of negotiations, the EU Council decided to start negotiations in 7 areas, namely in the field of: research, employment in the public sector, technical barriers in trade, agriculture, air traffic, ground traffic, free movement of persons. The last area was included at the express request of the EU. Negotiation didn't make it easier to adopt so called Alpine Initiative on 20 February 1994 by Switzerland, the EU was under the impression that Switzerland cast doubt on the principle of non-discrimination and freedom of choice of means of communication with regard to ground traffic.

Both sides have decided on so-called reflexing period, which lasted until the end of 1994. Finally, on 21 June 1999 contracts were signed and adopted by the Swiss Society on 21 May 2000 in a referendum¹⁷.

These agreements have different structure, however, are characterized by a significant degree of reception of communal law or making Swiss law more similar to it, basing even on the principle of equivalence¹⁸. The agreement on scientific research is a typical cooperative agreement allowing for payable participation of Swiss scientific units in the EU projects and research programs. Next five new contracts in the areas of: employment in the public sector, technical barriers in trade, agriculture, ground traffic, free movement of persons are liberalization agreements, similar in their nature to the Agreement of 1972 and basing primarily on the reciprocity of the Swiss and European Union laws. Agreement on air movement is a partly integrative agreement, which provides for establishment of uniform institution controlling the observance of law. Basing on this agreement the validity of the Communal regulations was adopted in Switzerland, with recognition of the ECJ in this respect. All seven contracts assumed the inter-relationship in application, known as "guillotine clause".

On 4 March 2001 the Swiss nation started a folk initiative "Yes for Europe!", which, by amending the constitution would oblige the Council to start immediate negotiations with the EU. Both the Parliament¹⁹ and the Council of the Confederation²⁰ recommended the rejection of this initiative due to non fulfillment of political conditions of accession. 76.8% of votes in the referendum, as well as all the cantons followed the recommendations of

¹⁶ B. Spinner, *Rechtliche Grundlagen und Grenzen für bilaterale Abkommen*, [in:] *Accords bilatéraux Suisse – UE, Bilaterale Abkommen Schweiz – EU, Dossiers de droit européen no 8D*. (ed.) Felder, Ch, Kaddous, Basel, Genf, München, Brüssel, 2001, p. 13.

¹⁷ BBl. 2000, 3773.

¹⁸ More about bilateral agreements of 1999 see T. Cottier, M. Oesch, *International Trade Regulation*, Bern and London: 2005, p. 330-338.

¹⁹ Beschluss des Parlaments, BBl. 2000, 3540.

²⁰ Statement of the Council of the Confederation on folk initiative "Yes for Europe!", from 27. Januar 1999, <http://www.admin.ch/ch/d/pore/va/20010304/explic/d-pp0809.pdf> (1 June 2009).

the Parliament and the Council and the initiative was rejected²¹. The subject of Switzerland's accession to the EU was not discussed in the following years.

In a report published in 2000 about foreign policy²² the Council of the Confederation, in connection with the rejected initiative, stated that the accession of Switzerland to the EU is continuing the long-term goal of European policy of Switzerland. However, to start negotiations for accession to the EU it is necessary to meet three conditions: firstly, there must be assessed the operation of bilateral agreements, and secondly it is necessary to assess the impact of accession on critical areas of the Swiss state, and thirdly Council Integration Policy must be internally reinforced²³.

Bilateral agreements between Switzerland and the EU negotiated at a later stage, continued agreements of 1999. In final annexes to earlier agreements, both sides expressed readiness to further intensification of cooperation in the field of migration and asylum policy, began with so called "leftovers" negotiations²⁴.

Before concluding subsequent agreements the EU hoped for Switzerland's cooperation in the field of pan-European system of security tax. On the other hand, the Commission sought to enhance cooperation in the fight against fraud in the field of indirect taxes. Switzerland set three conditions of starting to negotiate agreements. First, negotiations should be conducted in areas of Switzerland's interest (Schengen issues, outstanding issues from agreements of 1999), then negotiations should be conducted parallel in all matters in order to reach a balanced final result (which didn't mean that the contracts were linked with each other on the basis of guillotine clause as it was in 1999). Third, it was necessary to ensure the maintenance of traditional banking secrecy in Switzerland. The main objectives of Switzerland starting negotiations was to ensure its participation in co-operation in Schengen and Dublin systems in the scope of strengthening internal security, as well as reduction in asylum policy costs, while reserving the possibility of autonomous and sovereign decisions about adoption of future EU legal acts. It should be noted that Switzerland did not, therefore, seek full integration in this area. Another Swiss demand was to revise Protocol number 2 of the Free Trade Agreement of 1972 on agricultural products, which would allow the Swiss duty-free export of food products to EU countries. In addition, Switzerland wanted to ensure the right to participate in programs in the fields of education, youth, media, statistics and the environment. The final negotiation field for Switzerland was an agreement on pensions, under which Switzerland resigns from additional taxation of pensions of former officials of the EU who live in Switzerland and are subject to taxation in the EU²⁵.

²¹ BBl. 2001, 2025.

²² Aussenpolitischer Bericht 2000, BBl. 2001, 216.

²³ Aussenpolitischer Bericht 2000, p. 318.

²⁴ See: Botschaft zur Genehmigung der bilateralen Abkommen zwischen der Schweiz und der Europäischen Union, einschliesslich der Erlasse zur Umsetzung der Abkommen („Bilaterale II“) vom 1. Oktober 2004, BBl. 2004, S. 5965-6564 (Botschaft 2004).

²⁵ Botschaft 2004, p. 5989.

The EU interests focused primarily on two areas, which encouraged the EU to start negotiations, that is the agreement on taxation of interest and the agreement on combating of fraud by increasing the exchange of information between offices and common determination of the scope of delicts in the case of indirect taxes. At the end of June 2004, nine new agreements were initialed, and on 26 October 2004 they were signed in Luxembourg²⁶.

In contrast to 1999 agreements, the agreements of 2004 were motivated not only economically, as they were significantly extended to internal, often sensitive issues such as security policy, the problem of influx of migrants, the environment, culture, education. This phenomenon shows a new dynamism in bilateral cooperation of the agreements parties. Along with the enlargement of the EU on 1 May 2004, both the free trade agreement of 1972 and six agreements of 1999 started to be automatically applied in ten new Member States. Only in the case of an agreement on free movement of persons additional negotiations between Switzerland and the EU were required. In this field the Confederation negotiated the possibility of placing restrictions on the market in order to protect its labor market until April 2011. On 19 May 2004 at Switzerland - European Union summit, Swiss declared its readiness to establish an aid program aimed at reducing socio-economic disparities in the enlarged European Union. From November 2004 to May 2005, there were held negotiations on operation framework of the above aid program. Finally, on 27 February 2006, the Council of the EU and Switzerland signed so-called Memorandum of Understanding between the European Community and the Council of the Swiss Confederation on the Swiss Confederation's contribution to the reduction of economic and social disparities in an enlarged European Union²⁷. The document contained Switzerland's commitment to sign separate bilateral agreements with individual members-beneficiaries. Accordingly, on 16 March 2006 in the Swiss Parliament there was held a vote on so-called Law on Cooperation with Eastern Europe Countries, which provides financial assistance for 10 European Union countries within the program. Due to the lack of decisions at this level, on 26 November 2006, a referendum in Switzerland on the above case was held, which ended successfully for new Member States. Switzerland allocated CHF 489 million to Poland. As part of the Swiss-Polish Cooperation Program there is 5-year period of undertaking obligations, and 10-year expenditure period, which began on 14 June 2007, the date of the financial assistance granted by the Swiss Parliament.

The method of regulating economic relations between the EU and Switzerland developed by way of bilateral agreements allowed Switzerland to secure its interests in various aspects. Switzerland gained access to all the economic benefits without formal resignation from its direct democracy, independence, sovereignty, neutrality and federal structures. According to the Swiss government "by means of bilateral agreements between the EC and Switzerland, it seems that political and economic isolation of Switzerland was reduced to a stable level, which increased its negotiation position"²⁸. Although Switzerland does not have equal access to the common market, but economic relations with the Community are very narrow. And it is

²⁶ Botschaft 2004, p. 5966.

²⁷<http://www.bundesgesetzost.admin.ch/dokumentation/00438/00466/index.html?lang=de&download=M3wBPgDB/8ull6Du36WenojQ1NTTjaXZnqWfVpzLhmfhnppmmc7Zi6rZnqCkkIN0fnt8bKbXrZ6lhuDZz8mMps2gpKfo> (1 June 2009).

²⁸ Botschaft 2004, p. 6161.

not only a geographical link between the markets. The most important elements of four freedoms of the internal market were included in the bilateral economic agreements²⁹. Labor markets are gradually opened and opportunities for continued education improve. In terms of air companies the situation of competition improved radically and barriers in trade of agricultural products were eliminated³⁰. Bilateralism also initiated the liberalization and necessary adjustment of structures in so called sensitive areas. With the opening of markets for road and rail transport, there could be developed jointly coordinated base for European pro-ecologic transport policy³¹. At the same time the method of regulation of economic relations enables the protection of Swiss legal regulations and adoption of Community regulations on the basis of autonomously expressed wishes.

Not without significance is the fact that bilateral economic agreements allows Switzerland for free practice of monetary policy. Of course, it should be noted that Switzerland also bears lower fiscal costs than in the case of full membership, doesn't pay the contributions to the EU budget, but committed itself under the Memorandum of Understanding of 2006 to transfer to new Member States one billion francs. Bilateral method of regulation of economic relations does not mean, however, only benefits for Switzerland. In addition to the aviation sector, Switzerland is not included in competition protection policy on the Communal market. That state is considered one of the most expensive, so in terms of the competitiveness of Swiss products to the Community there may be a concern about the market for the former. Actual obstacles and additional costs related to border between Switzerland and the EU also pose some problems. The effect of such a situation may be the fact that more and more Swiss entrepreneurs will decide to conduct business outside their country. A phenomenon can be observed that Swiss industry employs more workers outside Switzerland than in the country³². A formula for weaker points of bilateral way of regulation of economic relations would be an establishment of a customs union between the EU and Switzerland. It would lead to the abolition of border controls, customs, and to integrate Switzerland into the EU preferential agreements. There would also be possible full integration in the scope of agriculture on the EU market, which represents the biggest challenge for Switzerland. On the other hand there are Switzerland's concerns that the creation of a customs union with the EU could lead to erosion of substantive legal sovereignty, due to the fact that the transfer of decision-making powers to the EU is not balanced by sufficient participation in decision-making process. The European report of 2006, the Council of the Confederation argued that joining the customs union Switzerland would lose the possibility of concluding in autonomous way agreements within the WTO and preferential agreements within the EFTA.³³ The conclusions from existing economic relations are important to both the EU and Switzerland. From Swiss point of view, a weaker part of diversified integration, state-law issues and economic and practical deficiencies may lead to the conclusion that only full membership of Switzerland in the EU could guarantee future and give hope for traditional Swiss identity in the new position, and

²⁹ Botschaft 2004, p. 6162.

³⁰ Botschaft 2004, p. 6162.

³¹ Botschaft 2004, p. 6160

³² M. Engler, Direktinvestitionen: Auf Kosten der Arbeitnehmenden?, Die Volkswirtschaft, 78/9, 2005, p. 9-12.

³³ Europabericht 2006, p. 6941.

long-term continuation of bilateral regulation of economic issues will encounter fundamental and practical problems.

The current task of the Swiss Confederation is to separate European integration of Switzerland from its present context of pure interest policy and informing still skeptical society about the need for integration in the long term, as well as holding an open, public debate on the future of Switzerland in Europe and the world. From the EU's point of view a question arises how far could and should be implemented sensible diverse integration with third countries. Export and expansion of the Community law in an effort to create economic zones and influence spheres leads, together with a progressive integration, to problems of dependence and deficits of democracy, as shown in the case of Switzerland. Substantive rights and obligations must be proportionate to the opportunity of participation in their creation. Also in this case, there must be an appropriate structure-substance pairings. Otherwise the regulation of relations should be performed only on the basis of WTO law, and preferential regulations shaped on the basis of ranges indicated in the art. XXIV GATT and Art. V of GATS, and thus reduce them to the provisions relating to free trade and economic integration. The regulations going beyond the indicated range should be based on membership, which brings reasonable participation and democratic legitimacy of the decisions taken. The diversified integration with non-participating countries should therefore be limited, also in the interest of the EU's legitimacy for actions taken.

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*Dávid R., Neckář J., Sehnálek D., (Editors). COFOLA 2009: the Conference Proceedings, 1. edition.
Brno : Masaryk University, 2009, ISBN 978-80-210-4821-8*

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