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Policy on Europe in a cul-de-sac

Switzerland's bilateral approach to Europe has proven successful so far. Yet this tack on Europe is becoming increasingly difficult to maintain. Our dependence on the European Union is growing, while our sovereignty is in decline. Critics of the Federal Council's policy on Europe are now calling for an open public debate on accession to the European Union. By Rolf Ribli

The following events unfolded last November at the Federal Palace in Berne. Guido Westerwelle, the new German Foreign Minister, was asked by the media what he thought of the reignited debate on Swiss accession to the European Union. Before the official state visitor could reply, his Swiss counterpart, Micheline Calmy-Rey, said that no such debate was taking place in Switzerland, even though Federal Councillor Moritz Leuenberger had recently declared: "I'll tell you what I think. We must join the European Union. Accession will happen, maybe not tomorrow, but soon." And just last spring, former Federal Councillor Pascal Couchepin said: "Perhaps the time has come to hold an open public debate in Switzerland about the benefits and drawbacks of EU membership."

A proposal put forward by Free Democrat Christa Markwalder, National Councillor for Berne, last autumn created new momentum in the debate on Europe. The president of the "Neue Europäische Bewegung Schweiz" (New European Movement in Switzerland) called on the Federal Council to present to Parliament "without delay the advantages and disadvantages of the policy options with regard to Europe as well as specific measures for future policy on Europe". No fewer than 101 members of the National Council – i.e. more than half of the People's Chamber – signed the parliamentary proposal. The Federal Council acknowledged receipt of the proposal and once again endorsed the bilateral approach to the European Union.

Bilateral approach to Europe

Ever since the Swiss people narrowly rejected membership of the European Economic Area (EEA) – and the cantons resoundingly dismissed it – on 6 December 1992, Switzerland has pursued a bilateral ap-

proach to Europe (see "Swiss Review" No. 1/2007). In its 2006 Europe Report, the Federal Council concluded that the continuation of bilateral cooperation was currently the instrument best suited to protecting Swiss interests. In the Foreign Policy Report of 2009, the government confirmed this position, "which enjoys the broad support of the population". To this day, the bilateral approach has been lauded and reaffirmed again and again like a litany by representatives of the government, Parliament, centre-right parties and the business world.

What impact have the bilateral agreements with the European Union actually had? Can we continue down the bilateral road with Europe and at what cost? According to the Foreign Policy Report, Switzerland is trying to establish "excellent relations" with the Union. As a result of clever Swiss diplomacy, a vast array of bilateral agreements has emerged over the years, around 20 of which are "very significant".

The first and second bilateral agreements (approved by the Swiss people in 2000 and 2005) constitute the cornerstone. This approach has provided the Swiss business world with privileged access to Europe's vast single market, which contains almost 500 million people. The Federal Council report states: "It is unarguably in the interests of Switzerland to continue the development of its relations with the EU by concluding additional agreements in other areas of mutual interest."

The bilateral tack has clearly delivered economic success. Switzerland earns one in three francs from trade with EU countries, and the European Economic Area accounts for 62% of our exports and even 81% of our imports. The free movement of persons has proven a key growth driver – the professional expertise of tens of thousands of managers, engineers, doctors and skilled workers ensures annual increases in productivity. "Switzerland is today better integrated into the EU area economically than almost any other European country", wrote the *Neue Zürcher Zeitung*. We have "conditions similar to those of the single market safeguarded in international law by a cluster of bilateral agreements".

The European Union, of course, also has strong interests in the relationship. Switzerland is its second most important economic partner – notably ahead of China, Japan and India – and surpluses are achieved. Switzerland, with its leading financial centre, is a major investor and provides employment for tens of thousands of EU citizens on both

sides of the border. As a transit country with a modern transport infrastructure, Switzerland plays a vital role in the transportation of goods in Europe. And yet the scales are not balanced. Switzerland (with seven million inhabitants) clearly has a much greater interest in access to Europe than the Union (with almost half a billion people) has in access to Switzerland.

High road or cul-de-sac?

Many people see the bilateral relationship with the European Union as the high road. But this viewpoint has been brought into question recently by leading politicians and professors of international law. Kaspar Villiger, former Federal Councillor and Finance Minister and an opponent of accession to the EU, warns of the "major risks involved in this approach". He states that access to the European single market is absolutely vital to Switzerland, which puts it in a very vulnerable position. Each new bilateral agreement actually makes Switzerland more dependent on the European Union and reduces the political distance from Brussels.

Anyone who wants to trade with the European Union must adopt the respective Community law (*acquis communautaire*). Bilateral treaties are invariably static in nature. However, the content of the agreements develops and requires constant amendment. The European Union has recently even called for the automatic adoption of developments in EU law. "This underlines the fact that the cost of

bilateralism is increasing from agreement to agreement", wrote the *Neue Zürcher Zeitung*.

Yet Switzerland is constantly amending its own laws even without direct pressure from Brussels. Thomas Cottier, professor of European law from Berne, believes around fifty percent of Swiss law is now influenced by EU law. Sometimes European law is adopted directly, and sometimes it has an indirect impact on our legislation. The Federal Council refuses to recognise adapted legal provisions as being such. According to Thomas Cottier, "if our population knew how much EU law we have already adopted, this would unquestionably have an impact on the debate on EU accession". When Switzerland brings its own laws into line with European law, this is referred to as "autonomous adaptation". Peter von Matt, a former professor of literature in Zurich, sees this officialese as a "grotesque phrase".

Kaspar Villiger believes the magnificent construction of bilateral relations is "in grave danger of collapse". This is because if Switzerland fails to implement any one of the agreements required by the European Union, the future of the entire series of bilateral relations is left hanging in the balance. This is what happened with the continuation of the agreement on the freedom of movement of persons last year. The continuation of this agreement was linked to the rest of the first set of bilateral agreements, jeopardising the future of the entire bilateral approach.

The comments of Foreign Minister Micheline Calmy-Rey in 2006 on the government's Europe Report are still valid: "The bilateral approach remains the best solution provided that economic developments are not detrimental to us, the EU is willing to support us in the bilateral route and Switzerland receives sufficient scope for participation in decision-making." However, limitations are set out in the latest Foreign Policy Report: "The bilateral approach must not lead to de facto membership without voting rights", which is followed by this statement: "If political or economic factors were in future to create the need for integration of a higher order, then consideration would have to be given to the best ways of achieving it – one of which would be accession to the European Union."

Criticism of policy on Europe

One of the most severe critics of the policy on Europe is Franz von Däniken, former State Secretary at the Federal Department of Foreign Affairs. He argues that "one of the great illusions in Swiss politics is the belief that the bilateral approach in relations with the European Union enhances the sovereignty of Switzerland. In actual fact, the opposite is true". He argues that (material) sovereignty is undergoing "constant erosion". EU law shapes the content of our bilateral agreements with Brussels "to the greatest possible extent". Switzerland has to adopt Community law "as a general rule". It is no longer even free to choose the subject area. Franz von Däniken says: "There are issues that are imposed, even forced, upon us." Federal Berne is under the "illusion that it enjoys freedom in negotiations and agreements".

The criticism voiced by Franz Blankart – former State Secretary for Foreign Economic Affairs and chief negotiator on the agreement on the European Economic Area (EEA) – concerning the Federal Council's policy on Europe is no less damning. He states: "Not only does Switzerland extensively adopt relevant EU law through supposed 'autonomous adaptation', the European Union is now also demanding that future EU law is adopted into our law unseen." He believes the numerous cases of autonomous adaptation are "extremely alarming in respect of sovereignty". "When will we reach the level of autonomous adaptation where, in terms of economic and com-



Swiss banking confidentiality is under threat

mercial law, Switzerland becomes an EU colony with local self-government?", says Blankart sarcastically.

Thomas Cottier, professor of European law in Berne, believes Switzerland has already become a "passive member of the EU" because around half of federal law is influenced by European legislation. His studies show that Switzerland "adopts European regulations as a general rule". Sovereignty is formally maintained, but substantively there is a growing area in which EU law is adopted without democratic debate. Thomas Cottier says: "This represents a loss of sovereignty and also democracy in a country that is so proud of its democratic participation." Dieter Freiburghaus, a former professor in Lausanne and author of a comprehensive book on sixty years of Swiss policy on Europe, highlights a "gradual loss of sovereignty". He believes the set of agreements with the European Union have become "so substantial and have encroached so far" that their rescission would have "incalculable economic consequences" and is no longer an option for Switzerland. He states: "This effectively constitutes a restriction on sovereignty." Freiburghaus asks himself "how long Switzerland is prepared to accept a semi-colonial relationship with the EU for the sake of material wealth."

What will happen if the "pain threshold" of the bilateral relationship with the European Union is reached? There are only three options: going it alone, joining the European Economic Area or EU accession. According to Micheline Calmy-Rey, "the one thing we cannot afford to do is to isolate ourselves". Such a step would result in such a significant loss of prosperity, in view of the international focus of the Swiss business world, that it would be virtually unacceptable to the people.

EEA as an alternative?

Switzerland could join the European Economic Area (EEA), which Norway, Iceland and Liechtenstein still belong to, at any time. The EEA agreement aims to ensure extensive participation of third countries in the European single market. The four freedoms of movement of goods (excluding agricultural products), persons, capital and services form a common basis, supplemented by common rules in individual areas. The EEA covers important areas which are not covered by the bilateral agreements

(such as competition law and the movement of services and capital).

On 6 December 1992, the Swiss people narrowly rejected joining the EEA with 50.3% voting against the proposal. Shortly before Referendum Sunday, the Federal Council declared accession to the EU a goal and submitted an accession application to Brussels, which proved to be an historic mistake. This had a distortive effect on the result of the referendum, a European policy odyssey began, the economy entered a ten-year period of stagnation and the upsurge of the Swiss People's Party (SVP) started.

Some experts believe the European Economic Area is still a relevant issue. According to the prominent commercial lawyer Peter Nobel, Switzerland has "moved into an offside position in terms of policy on Europe". This expert on European law believes the bilateral route is a cul-de-sac which can no longer be extended. He says: "In the current situation, a new EEA agreement would be the realistic solution. It would institutionalise our relations with the EU and afford us a degree of input." Rudolf Strahm, former National Councillor and price inspector, also sees the benefits of EEA membership: complete integration into the European single market, consultation on the development of EU law, possible exemption provisions and more influence in negotiations with Brussels. He asks: "Who in Switzerland has the political power and courage to re-launch the debate on an agreement with the successful EEA?"

Franz Blankart, former senior diplomat and EEA chief negotiator, says: "The accession to the EU of Iceland, and possibly Nor-

way, would give Switzerland a unique opportunity to join the EEA and benefit from the institutional superstructure and from co-determination." This would restore "peace and dignity to our dealings with our most important business partner". A certain sense of reluctance would have to be overcome in light of the negative outcome of the 1992 referendum. He adds: "Otherwise, politicians will have to argue the case for accession to the European Union."

EU accession becomes an issue

The Federal Council confirmed EU membership as a "strategic objective" in the 1993 Foreign Policy Report. In 2000, the government made reference to an accession objective, but it was no longer "strategic". By 2005, integration into the European Union had been downgraded to a mere "long-term option". According to the *Neue Zürcher Zeitung*, "Switzerland's gradual distancing of itself from EU membership reveals the tension in its relations with the EU".

Calls from prominent figures for accession to the European Union are getting louder. One such figure is former senior diplomat Franz von Däniken, who says: "The bilateral approach makes us more dependent on the EU and not more independent. If we joined the EU, we would gain in sovereignty thanks to greater room for manoeuvre and the right of participation." Another advocate is Thomas Cottier, a professor in Berne. He argues: "We have to find the strength to come to terms with the nation's future in Europe. Political efforts must be made to overcome the taboo surrounding the issue of accession." The *Neue*

Zürcher Zeitung has also added its voice to the calls: "A healthy democracy like Switzerland would do well to objectively examine the accession issue from time to time – and all the more intensively, the nearer Switzerland moves towards the gates of Brussels."

The government's 2006 Europe Report sets out the consequences of full EU membership for Switzerland. They can be summarised as follows:

■ *Direct democracy: The political rights of the people would continue to apply; the material scope of application would be restricted as powers would be transferred to the EU. Accession would be subject to a mandatory referendum. Referenda would be possible for amendments to legislation as a result of EU directives (not for directly applicable EU law). Popular initiatives would still be possible in the area of EU law. If referendum decisions were to conflict with EU law, negotiations would have to be conducted with Brussels. In return, Switzerland would obtain full participation rights at European level in the Council of Ministers, the European Parliament and European Court of Justice. Swiss citizens could vote and be elected anywhere in Europe at community level, take part in EU referenda and be involved with European popular initiatives.*

■ *Federalism: There would be no fundamental changes. Each country determines for itself how its system of government is organised. Several EU states are organised federally.*

■ *Neutrality: Our neutrality would remain untouched provided the EU does not become a military alliance and force us to take part in military operations. Other neutral states, such as Austria and Sweden, are already full members.*

■ *Economy, finance: National economic policy as well as financial and monetary policy would undergo restrictions. Interest rates would rise if Switzerland were to join the euro. VAT would have to be increased to at least 15%. Switzerland would contribute CHF 3.4 billion net each year to the EU budget (around 0.7% of gross national income). CHF 700 million or more currently goes to Brussels each year.*

If the Swiss people were asked to make a decision on accession to the EU today, they would probably reject it. Since the unsuccessful EEA debate, Europe has been widely portrayed as the enemy in public opinion, a perception that is constantly reinforced by the Swiss People's Party ("small countries have little say, Brussels bureaucracy, foreign courts"). However, it is the stance of the business world and, above all, banks that is key. Business leaders and banking chiefs are strongly opposed to membership of the European Union. They particularly fear encroachment into social policy, employment law and banking confidentiality.

Economiesuisse, the Swiss Business Federation, never tires of extolling the virtues of the bilateral approach and calling for new agreements with the EU. It argues: "Adoption of European financial and fiscal policy,

financial and monetary policy as well as employment and social policy would have a negative impact on the competitiveness of Swiss companies. Accession to the EU is not an option for the Swiss business world." Opposition is equally strong from the banking sector. The banking lobby is always present in Berne's corridors of power whenever banking confidentiality, tax evasion by foreigners, the taxation of savings income agreement with the EU or the cantons' holding taxes (criticised by Brussels) are on the agenda.

Fainthearted "political class"

The economic success of the bilateral agreements has to date prevented politicians and the Swiss people from facing up to the prospect of joining the European Union. However, open debate on Europe is urgently needed now that the bilateral approach is becoming increasingly difficult and in view of the clear loss of national sovereignty. Only, the "political class" has so far lacked the courage to strike while the iron is hot. Worse still, according to Franz von Däniken, "the diplomatic protection of interests in Europe is no longer a priority for the Federal Council".

And what about the Swiss people? They can go on dreaming about the myth of the independent small state epitomised by the words of folk hero William Tell: "The strong man is strongest alone. A man counts only certainly on himself." Or they could listen to Jakob Kellenberger, former State Secretary in the Federal Council and current president of the International Committee of the Red Cross: "I can't understand why a country like Switzerland does not work resolutely towards accession to the EU. This is the only option if we are to ensure our interests are represented in the right place in Europe."



Opening of Switzerland to the EU



Switzerland's relationship with the EU

DOCUMENTATION

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