

SWISS MODEL OF PARTIAL INTEGRATION WITH THE EUROPEAN UNION:

WHAT'S APPLICABLE
FOR UKRAINE?





INTERNATIONAL
RENAISSANCE
FOUNDATION



New Europe Center
Kyiv, Ukraine

The material "Swiss Model of Partial Integration with the EU: What's Applicable for Ukraine?" was prepared with the support of the International Renaissance Foundation within the framework of the project "Between association and membership: what could be the next target in Ukraine's relations with the EU". The material reflects the position of the authors and does not necessarily coincide with the position of the International Renaissance Foundation.

The publication has been prepared as part of a project coordinated by Leonid Litra and Kateryna Zarembo.

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SECTION 1.

OVERVIEW AND KEY FINDINGS

1. INTRODUCTION

The purpose of this report is to provide policy recommendations on the potential next steps in Ukraine – EU deeper integration that would go beyond the Association Agreement (AA), including Deep and Comprehensive Free Trade Area (DCFTA) and advance Ukraine towards full membership application in the longer perspective.

The current state of Ukraine – EU relations demands for a new and more ambitious horizon that would re-energize the current bilateral dialogue with the EU on the one hand and Ukraine's domestic Europeanization agenda on the other hand. Politically, there is also a clear need for stronger external incentives for Ukraine, and respectively stronger EU's leverage on Ukraine's reform agenda. Geopolitically and security-wise, Ukraine's belonging in Europe needs be reflected in a more ambitious way. Economically, deeper bilateral integration would also benefit from further thinking through by EU policymakers.

This report looks into the questions of what these next steps could be and how EU relations of partial integration with Switzerland, known as *Swiss Bilateral Way*, could provide examples and source of inspiration for both Ukraine and EU in determining the next horizon for deeper integration, including stronger incentives, additional benchmarks and EU conditionality.

Section 2 reviews the development of the Swiss Bilateral Way towards EU, its main driving forces, timeline, and key elements. Analyzing the future of the bilateral approach, the section looks into the Swiss – EU talks on the Institutional Framework Agreement, the end-

ing of which in May 2021 leaves both sides with more questions than answers.

Section 3 discusses unique features, advantages, and shortcomings of the Swiss model, as well as its limitations in application to other non-member states. The major restriction being the post-Brexit EU's growing dissatisfaction with the status quo and demand for the modernization of the current model. The section provides comparative analysis of the Swiss model with other non-member states' EU integration formats, including Ukraine's DCFTA.

Despite these limitations, theoretical applicability of the Swiss bilateral way in the case of Ukraine is discussed in **Section 4**. The main 'value added' elements of the Swiss model are being weighed in against the recent developments in EU relations with Kyiv and Bern. Finally, **Section 5** provides some policy recommendations, based on the current context of Ukraine – EU relations.

2. LITERATURE OVERVIEW

Up to mid-2000s, there has been a limited interest in the Swiss – EU relations within the field of European studies, as evidenced by a review of major academic journals covering the issues of European integration.¹ In that period, most of the research on the subject had been undertaken by Swiss scholars writing mainly in German or French. However, the interest of academics and policymakers to the Swiss model intensified since 2002, with the development of the European Neighborhood Policy towards other European non-members. In this context, the academic and expert discussions on Swiss – EU relations focused mostly on Switzerland's Bilateral Approach², its Europeanization effects³ without the actual integration⁴ and its key features⁵.

Of particular note are comprehensive academic studies of the bilateral relations during that period presented in books "Switzerland

and the European Union. A close, contradictory and misunderstood relationship" edited by Clive H. Church (2007)⁶ and "Switzerland in Europe. Continuity and change in the Swiss political economy" edited by Christine Trampusch and André Mach (2011)⁷, as well as the Centre's for European Policy Studies report "Integration without Membership. Switzerland's Bilateral Agreements with the European Union" by Marius Vahl and Nina Grolimund (2006)⁸.

The policy issues of Swiss – EU cooperation have been substantially covered in the official sources of the Europe Division of the Swiss Ministry of Foreign Affairs⁹ and the European Commission¹⁰.

Academic interest to the Swiss model was further reinforced in 2010s, primarily in connection

¹ Vahl M., Grolimund N. Integration without Membership. Switzerland's Bilateral Agreements with the European Union, Brussels, CEPS, 2006, p. 6.

² Goetchel L. "The Swiss-EU Bilateral Agreements: A model for integration?", in EFTA Parliamentary Committee and Consultative Committee, The EEA and EFTA in a New Europe, conference report, 21 October, 2004. Lavenex S. "Switzerland's Flexible Integration in the EU: A Conceptual Framework." Swiss Political Science Review, 15 (4), 2009, pp. 547-75.

³ Church C. Switzerland: An Overlooked Case of Europeanization? Queen's Papers on Europeanization No. 3, Queen's University, Belfast, 2002.

⁴ Dupont C., Sciarini P. "Switzerland and the European integration process: Engagement without marriage." West European Politics, 24(2), 2001, pp. 211-32. Mach A., Silja H., Yannis P. "Economic regulatory reforms in Switzerland: Adjustment without European integration, or how rigidities became flexible", Journal of European Public Policy, 10:2, April, 2003, pp. 301-318.

⁵ Vahl M., Grolimund N. Integration without Membership. Switzerland's Bilateral Agreements with the European Union, Brussels, CEPS, 2006. Łazowski A. "European Union and Switzerland: Inevitable partners?", paper presented at the NO-SPA conference, 11-13 August, Reykjavik, 2005.

⁶ Switzerland and the European Union. A close, contradictory and misunderstood relationship, ed. C. H. Church. London and New York: Routledge, 2007.

⁷ Switzerland in Europe. Continuity and change in the Swiss political economy, ed. Trampusch C., Mach A. London and New York: Routledge, 2011.

⁸ Vahl M., Grolimund N. Integration without Membership. Switzerland's Bilateral Agreements with the European Union, Brussels, CEPS, 2006.

⁹ The Federal Department of Foreign Affairs, Europe Division (<https://www.eda.admin.ch/missions/mission-eu-brussels/en/home/switzerlands-policy/dea.html>)

¹⁰ European Commission, Foreign Trade Policy, Switzerland (<https://ec.europa.eu/trade/policy/countries-and-regions/countries/switzerland/>)

with UK's search¹¹ for viable modalities of relations with the EU resulting from Brexit¹². Studies on Switzerland's Europeanization gained further traction¹³. The applicability of Swiss experience in the case of Brexit has been broadly discussed by Swiss policymakers¹⁴, policy analysts¹⁵ and scholars¹⁶. Major academic views and discussions on the subject are presented in the comprehensive work "Switzerland-EU Relations: Lessons for the UK after Brexit?" edited by Paolo Dardanelli and Oscar Mazzoleni (2021)¹⁷.

In this context, some parallels between Swiss approach and other non-members' integration models have emerged¹⁸, including the example of Ukraine's Association Agreement and Deep and Comprehensive Free Trade Area with EU¹⁹. Specifically, in application to the case of Ukraine, there are only a few studies²⁰ providing comparative analysis between Swiss model

and other EU integration approaches toward non-members.

This report builds on the current policy debate in Switzerland and the EU and aims to analyze the relevance of the Swiss model for today's Ukraine. The applicability of Swiss experience in Ukraine – EU relationship is weighed in against the background of the most recent developments within the EU and the currently unclear future of the Swiss – EU bilateral way forward.

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- ¹¹ Church C., Dardanelli P., Mueller S. The 'Swiss Model' of Relations with the EU and its Relevance for the UK. Written evidence submitted to the inquiry of the House of Commons Foreign Affairs Committee 'The Future of the European Union: UK Government Policy', May 2012.
 - ¹² Brexit: The Legal Implications. Edited by: Biondi A., Birkinshaw P. J., Kendrick M., Walters Kluwer, Netherlands, 2018.
 - ¹³ Afonso A., Fontana M. C., Papadopoulos Y. "The Europeanisation of Swiss Decision-Making in Comparative Perspective: From Outlier to Normal Case?" *Swiss Political Science Review*, 20 (2), 2014, pp. 246–51.
Jenni S. "Switzerland's Regulatory European Integration: Between Tacit Consensus and Noisy Dissensus." *Swiss Political Science Review*, 21 (4), 2015, pp. 508–537.
 - ¹⁴ Switzerland and the EU: Lessons for a Post-Brexit UK. Transcript of the expert discussion. Chatham House, London, April 2018. (<https://chathamhouse.soutron.net/Portal/DownloadImageFile.ashx?fieldValueld=1341>)
 - ¹⁵ Emerson M. Which model for Brexit? Special Report No. 147, CEPS, Brussels, October 2016. (<https://www.ceps.eu/wp-content/uploads/2016/10/SR147%20ME%20Which%20model%20for%20Brexit.pdf>)
 - ¹⁶ Oesch M. The Swiss Model of European Integration. In: *Brexit: The Legal Implications*. Edited by: A. Biondi, P. J. Birkinshaw, M. Kendrick., Walters Kluwer, Netherlands, 2018, pp. 35–47.
 - ¹⁷ *Switzerland-EU Relations: Lessons for the UK after Brexit?* Edited by: Dardanelli P., Mazzoleni O., Abingdon, Oxon : Routledge, 2021.
 - ¹⁸ Altay S. "Remolding Turkey-EU Relations: The 'Swiss Model' of Differentiated Integration as an Alternative to the Customs Union?", *Ankara Üniversitesi SBF Dergisi*, vol. 76, no. 2, pp. 493–521.
 - ¹⁹ Schwok R., Najy C. M. Switzerland's Bilateral Approach to European Integration. A Model for Ukraine?. In: *The European neighbourhood policy in a comparative perspective : models, challenges, lessons*. London: Routledge, Taylor & Francis Group, 2016, pp. 125–146.
 - ²⁰ Schwok R., Najy C. M. Brexit, Swiss "model", pros and cons in comparative perspective. In: *Exiting the EU committee, house of commons*. London. London : Exiting the EU Committee, House of Commons, 2018.
Schwok R. "Switzerland-EU Relations: The Bilateral Way in a Fragilized Position." *European Foreign Affairs Review*, 25, no. 2, 2020, pp. 159–176.
Schwok R. The bilateral approach achievements and limitations. In: *Switzerland-EU Relations. Lessons for the UK after Brexit?* Edited by: Dardanelli P., Mazzoleni O., Abingdon, Oxon : Routledge, 2021. p. 38–55.

3. KEY FINDINGS

- Swiss model demonstrates a somewhat 'privileged' approach of a small and the third richest country²¹ located right in the heart of Europe. Unsurprisingly, Swiss approach has been labeled as 'Swiss King's Way'. It is characterized by a strong emphasis on Swiss identity, national sovereignty, and readiness to even give up some economic gains to avoid becoming an EU's 'vassal'.
- The Swiss 'Bilateral Way' is a combination of sectoral agreements providing access to EU Single Market and legal approximation in these sectors. Its main advantages are in Swiss legal autonomy and ability to independently conclude foreign trade agreements.
- With May 2021 collapse of negotiations on modernization of the current Swiss – EU bilateral approach, neither of the sides seems to have a prepared plan B and the future of a 'new' model, if any, seems unclear. This stalemate only reinforces EU previous reluctance to refer to Swiss model in relations with other non-members.
- In contrast with Ukraine, Switzerland doesn't seek any kind of political association with EU, being satisfied with economic integration without membership. Interestingly, the economic component of Swiss partial integration with EU has many similarities with DCFTA, combining FTA+ with policymaking and legal sovereignty.
- Some elements of Swiss model present 'value added' compared to Ukraine's DCFTA. However, despite some relevance, the overall applicability of Swiss model in the Ukrainian context appears highly unlikely.
- Ukraine is not Switzerland: the two countries come from very different starting points and negotiating positions with Brussels. And even if it was, the EU is no longer satisfied with the current bilateral model that needs be modernized.
- When advocating for an advanced framework of further integration with the EU beyond the AA and DCFTA, Ukraine should exercise realistic, yet ambitious approach. In this regard, Swiss model provides an inspirational example of a bilateral agreement on the free movement of persons and gradual access to labor market. Swiss smooth and 'invisible' customs border control procedures with EU and access to EU Comitology within the AA institutional framework could also be of interest to Ukraine.

²¹ International Monetary Fund. World Economic Outlook Database, April 2021. (<https://www.imf.org/en/Publications/WEO/weo-database/2021/April>)

Policy recommendations to the EU

- Translate Ukraine's ambition for closer co-operation into practical integration components.
- Consider additional incentives strengthening EU leverage beyond the visa-free regime and macro-financial assistance's conditionality.
- Consider expanding the Association Agreement's institutional framework with Ukraine's access to EU Comitology and the right to 'decision shaping'.
- Visa Free regime was among the strongest EU incentives for Ukraine's adoption of anti-corruption reform; it needs be fully resumed and expanded to the free movement of persons and gradual access to labor market – with clear criteria and benchmarks to measure reform progress.

Policy recommendations to Ukraine:

- Demonstrate ability to fully implement and benefit from the current AA and DCFTA framework and related domestic reform agenda.
- Advocate with the EU for a new horizon for deeper integration beyond the AA and DCFTA that would advance Ukraine to membership perspective and provide Ukraine with additional Europeanization incentives.
- Raise with the EU Ukraine's potential access to EU Comitology and the right to 'decision shaping'.
- Explore and implement available mechanisms of strengthening border and customs security in a smooth, digitalized and 'invisible' way, based on the Swiss example
- Conduct analysis of possible modalities to conclude and gradually implement free movement of people agreement with the EU aimed to grant the parties access to each other's labor markets. Based on the Swiss case, discuss applicability of the 'posted workers' concept.

SECTION 2.

SWITZERLAND AND THE EU: INTEGRATION IN 'THE SWISS KING'S WAY'

2.1. Switzerland's post-WW2 approach to regional integration

Switzerland has been originally in the heart of the European Union: culturally, historically, economically, and politically it is much closer to the EU founding states than many 'old' members, and certainly the 'new' ones that joined after the 2004 enlargement wave. However, the unique elements of Swiss domestic and foreign policy – direct democracy and neutrality – have been its hallmark and created an identity that Swiss people opted to preserve, even at the price of potential benefits from full EU membership.

The rejection of membership in the EU can be seen as the continuation of the country's long tradition of neutrality. Under that principle, Switzerland refrained from participating in World War II and in the Cold War. Swiss citizens are also concerned that joining the EU would not be compatible with their cherished direct democracy system. It should be noted though, that unlike NATO membership, EU accession is compatible with Swiss commitments under the law of neutrality, as long as the EU would have no binding mutual military assistance obligation for all its members. This aspect became particularly relevant following the ending of the Cold War and the fall of the Iron Curtain in Europe.

"Independence, sovereignty, neutrality and autonomy in external trade"²² were the principles that Switzerland wasn't ready to sacrifice for any supranational integration projects. After the Second World War, it wasn't destroyed, quite wealthy and didn't entirely share the perspective on the EU as a peace project, preferring to preserve the key features of its identity, such as neutrality, sovereignty, and direct democracy.

In 1960, however, Switzerland became co-founder of the European Free Trade Association (EFTA), along with Austria, Denmark, Norway, Portugal, Sweden, and the United Kingdom. It established an alternative to the evolving European Economic Community (EEC) for those states, which were either unable or did not wish to join. The EFTA states were also called the 'outer seven' as compared to the 'inner six' members of the EEC. Between 1970–1994, Iceland, Finland, and Liechtenstein also joined EFTA. Nevertheless, it failed the competition with the 'outer seven', as the UK and Denmark left for EEC in 1973, Portugal followed in 1986, and Austria, Finland, and Sweden in 1995.

The process leading up to the European Economic Area (EEA) of today was initiated following the speech of then Commission President Jacques Delors to the European Parliament in January 1989, calling for the creation of a 'common European economic space' between the EC and EFTA. Although Switzerland

²² M. Oesch. The Swiss Model of European Integration. In: Brexit: The Legal Implications. Edited by: A. Biondi, P. J. Birkinshaw, M. Kendrick. – Walters Kluwer, 2019. – P.35

was initially reluctant towards the EFTA – European Community (EC) economic space, it participated in the EEA negotiations from the beginning. The Federal Council made it clear that the successful conclusion of EEA negotiations depended upon Switzerland being guaranteed the continuation of direct democracy and federalism. The prospect of EEA participation required a considerable effort to adapt Swiss laws and regulations to those of the EU. This was undertaken under the law introduced in 1992 known as 'Eurolex', which required all new relevant Swiss laws to be compatible with EC legislation.²³

2.2. Why Switzerland did not join the European Economic Area and European Union

The vibrant development of the EEC and all of Switzerland neighbors' accession, safe for the tiny Lichtenstein, fostered its economic rapprochement with the Community. In 1972, Switzerland concluded a bilateral Free Trade Agreement (FTA) with the EEC. The Agreement entered into force on 1st January, 1973 – on the day when Denmark, Ireland and the United Kingdom joined the European Union and is considered to be the ground level of further sectoral integration – the "bilateral zero", as Swiss professor Michael Ambühl puts it.²⁴ It exempts industrial goods originating in Switzerland and the EEC from customs duties and prohibits volume-based restrictions on trade as well as measures with equivalent effect.

Customs inspections also continue to take place on either side of the border, partly to en-

sure that only goods originating in the EU or in Switzerland can benefit from the preferential conditions of the Free Trade Agreement. The Agreement on the Carriage of Goods of 1990 and the revised Agreement on Customs Facilitation and Security of 2009 simplify customs procedures between Switzerland and the EU and enhance the coordination of cooperation at border posts in respect of border security. However, unlike a customs union, FTA left the contracting parties the freedom to determine the external tariffs with the third countries.

Currently, Switzerland has a network of 32 FTAs with 42 partners, concluded within the EFTA framework together with its other members Norway, Iceland and Liechtenstein.²⁵ Thanks to the bilateral approach, the Swiss government was also able to negotiate its own FTAs with China and Japan, and benefit from growing exports to India.²⁶

In 1989, the Insurance Agreement followed. It gave the insurance companies operating in the field of direct property and casualty insurance (other than life insurance) the freedom to establish branch operations on the contracting party's territory. Swiss household contents, motor vehicle, travel and liability insurers can thus set up or acquire agencies and branches in the EU on equal terms. Similarly, EU-based insurance companies have equal rights in Switzerland.

Against the background of evolving economic interdependence and unwilling to remain an isolated island inside the expanding EU, both Swiss government and major political parties saw significant advantages in accession to the European Economic Area (EEA).

²³ Vahl M., Grolimund N. Integration without Membership. Switzerland's Bilateral Agreements with the European Union, Brussels, CEPS, 2006, p. 10.

²⁴ Switzerland and the EU: Lessons for a Post-Brexit UK. Transcript of the expert discussion. Chatham House, London, April 2018, p. 6. (<https://chathamhouse.soutron.net/Portal/DownloadImageFile.ashx?fieldValuelid=1341>)

²⁵ State Secretariat for Economic Affairs, Foreign trade & Economic Cooperation, Free Trade Areas (https://www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/Freihandelsabkommen.html)

²⁶ Switzerland and the EU: Lessons for a Post-Brexit UK. Transcript of the expert discussion. Chatham House, London, April 2018, p. 2. (<https://chathamhouse.soutron.net/Portal/DownloadImageFile.ashx?fieldValuelid=1341>)

On 2 May 1992, Switzerland signed the EEA agreement with the EU along with other EFTA States. If ratified, the agreement would have granted Switzerland equal access to the European internal market with its four freedoms: free movement of goods, services, people, and capital. However, at a price of restricted participation in shaping the EU legislation (the EEA States have a decision-shaping role by expressing their views on EU legislation, but cannot vote on it), seen as limiting national sovereignty – the sensitivity of which has been traditionally one of the most contested in Swiss society ²⁷.

Surprisingly, most of the Swiss electorate and cantons rejected ratification of the EEA agreement in December 1992. The popular vote was very close: 50.3% against and 49.7% in favor, whereas 16 cantons voted against, and only 7 in favor. Following the Swiss 'No' to the EEA, the government suspended negotiations regarding EU membership launched immediately after the signing of the EEA agreement in May 1992. In 2016, Switzerland officially withdrew its application for EU membership.

Again, Switzerland's intense economic integration with the EEA and EU member-states was the key factor in shaping a quite unique integration pattern and having the luxury of bending EU to its ways and traditions labeled as 'the Swiss King's Way' (Swiss Königsweg). EU stressed that the bilateral agreements sought by Switzerland would only be concluded if Switzerland, in turn, accepted the free movement of persons, which the EU considered crucial for its interests.

In 1999, Switzerland and the EU signed a package of seven agreements (Bilaterals I), covering, among other things, the free movement of persons. This gave citizens on each side the right to live and work in the EU or Switzerland, provided they had a job or other sources of income. Another set of sectoral agreements (Bilaterals II) came in 2004, establishing Switzerland's participation in the EU's borderless Schengen area.

2.3. Emergence of the Swiss 'Bilateral Path' towards EU integration

In light of Switzerland's refusal to join the EEA, the Federal Council decided to pursue its relations with the EU on a bilateral basis, which laid ground for the unique Swiss approach to partial integration with the EU, known as the *Bilateral Path*. Once the EEA has been established without Switzerland, the EU had to put up with the continuation of cooperation with Swiss counterparts based on multiple bilateral agreements in different sectors and areas of cooperation based on mutual interests.

²⁷ For instance, Switzerland became member of the United Nations only in 2002, an earlier accession referendum of 1986 had failed.

The first bilateral agreements

1972	Free trade of industrial products
1989	Insurance
1990 (revised in 2009)	Customs facilitation and security
Bilaterals I (1999)	Bilaterals II (2004)
<ol style="list-style-type: none"> 1. Free movement of persons (AFMP) 2. Technical barriers to trade 3. Public procurement market 4. Agriculture 5. Research 6. Civil aviation 7. Overland transport 	<ol style="list-style-type: none"> 1. Schengen/Dublin 2. Automatic exchange of information 3. Fight against fraud 4. Processed agricultural products 5. MEDIA (Creative Europe) 6. Environment 7. Statistics 8. Pensions 9. Education, vocational training, youth

Bilateral agreements from 2004 onwards

1. Europol
2. Eurojust
3. Cooperation with the European Defence Agency (EDA)
4. Cooperation of competition authorities
5. Satellite navigation (Galileo, EGNOS)
6. European Asylum Support Office (EASO)

Source: *The Federal Department of Foreign Affairs, Europe Division* ²⁸

2.4. Bilaterals I: Free Movement of Persons and Six More Sectors Bound by a 'Guillotine Clause'

At the end of 1993, the EU declared its willingness to enter into negotiations in seven areas under the condition that the seven sector-based agreements be negotiated in parallel, and that they be signed and come into force at the same time, claiming that the different dossiers would only be in the interest of both partners if adopted as a single package. The agreements were therefore linked in legal terms by what is known as a 'guillotine clause'. This stipulates that the agreements form an overall package and can only be enacted as such: should any of the agreements be terminated, the other six would cease to apply within a six-month term.

In 1999, after seven years of talks, Switzerland and the EU signed the package known as Bilateral Agreements I, thus providing legal framework for relations and cooperation in the areas of free movement of persons, technical barriers to trade, public procurement, agriculture, overland transport, air transport and research. In 2000, the Swiss electorate approved the Bilaterals I in a referendum by an almost two-thirds majority.

Bilaterals I took effect on 1 June 2002, following approval by the EU and its member states. These agreements supplemented the Free Trade Agreement of 1972, facilitating the gradual opening of the market. The easing of trade restrictions plus enhanced competition acted as a catalyst for economic growth in Switzerland, securing and creating more jobs. The agreements are still in force and together with

²⁸ The chart cited in: Altay S. "Remolding Turkey-EU Relations: The 'Swiss Model' of Differentiated Integration as an Alternative to the Customs Union?", Ankara Üniversitesi SBF Dergisi, vol. 76, no. 2, p. 506.

the FTA of 1972 form a key pillar for the legal framework of the Swiss – EU relations.

2.5. Free movement of persons and access to the labor market

The bilateral Agreement on the free movement of persons (AFMP), signed in 1999 and in force since 2002, gradually opened the labor market and granted the citizens of Switzerland and of the EU member states the right to freely choose their place of employment and residence being entitled to the same working conditions as the national residents. This is conditional, however, on possession of a valid employment contract, being self-employed or proof of financial independence and full health-insurance coverage. Employers remain covered for pensions by their home-country, whereas health care, sickness, and workers' compensation are covered by the host country. The agreement also covers cross-border provisions of services for shorter periods.

The AFMP instigated systemic changes in Swiss wage and labor policy, and further extended through the coordination of social security systems and the EU's system of diploma recognition. The so-called 'accompanying measures' included three elements: 1) a new law on minimum wages and working conditions for employees working temporarily in Switzerland; 2) ways of making it easier to declare collective labor agreements as binding; and 3) standard employment contracts with minimum wages in areas without collective labor agreements. Tripartite commissions of representatives of the authorities, employers and trade unions at both federal and cantonal level are to monitor the labor market's compliance and to propose sanctions.²⁹

The AFMP's terms of extension are defined on a case-by-case basis in a protocol modifying the agreement and its annexes. It also lays down transitional periods during which immigration can be restricted. For instance, having joined the EU in 2013, Croatia obtained access to the free movement of persons in January 2017.

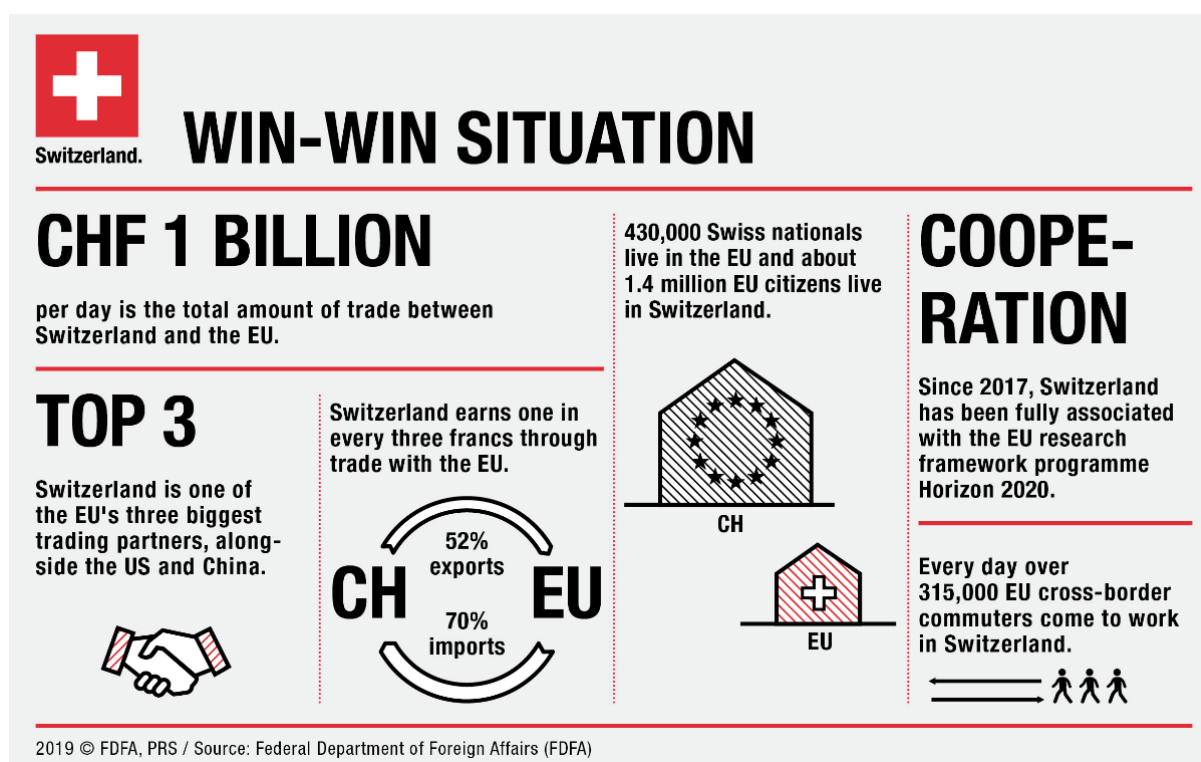
In February 2014, the refugee crisis in Europe reinforced the already existing moods to hold a popular vote 'Against mass immigration' aimed at restricting EU citizens' immigration. The Swiss people endorsed a new constitutional text (Article 121a) requiring the Federal Council and Parliament to introduce a new system to better control and restrict immigration in a three-year term, while safeguarding the economy's interests. The vote has put under risk Swiss-EU relations, as controlling immigration by annual quantitative limits and quotas is not compatible with the AFMP.

Swiss government tried to renegotiate the AFMP with the EU but failed to obtain any concessions. Brussels refused to either amend the agreement or supplement it with a political clause allowing some flexibility on migration policy. Furthermore, it warned Bern about the threat to the whole Bilateral I package in case of violation of the AFMP with any kind of discrimination or quotas on the domestic job markets. To preserve relations with the EU, the Swiss Parliament came up with a much softer implementation law, which is viewed as a window dressing to demonstrate compliance with the popular vote.³⁰

In December 2016, both chambers of Parliament agreed on an implementation law compatible with the AFMP version of the initial people's requirement. In essence, it provides advanced access to vacancies announcements during a period of five working days in certain professional categories, accessible to Swiss

²⁹ Vahl M., Grolimund N. Integration without Membership. Switzerland's Bilateral Agreements with the European Union, CEPS, Brussels, 2006, p. 62.

³⁰ Schwok R., Najy C. M. Brexit, Swiss "model", pros and cons in comparative perspective. In: Exiting the EU committee, house of commons. London. London : Exiting the EU Committee, House of Commons, 2018.



Switzerland's most important economic partners in 2019 by volume of trade

Source: *The Federal Department of Foreign Affairs*

citizens and all nationals of EU or EFTA and other countries, who are registered with one of the regional employment offices.

On 27 September 2020, the Swiss people and most of the cantons rejected another federal popular initiative "For moderate immigration (Limitation Initiative)" by 61.71%.³¹ The limitation initiative would have called into question the free movement of persons with the EU and, once again, the entire Bilaterals I. In rejecting this initiative, the Swiss people confirmed their willingness to pursue the bilateral approach with the EU and protected Swiss companies from losing direct access to their main market in the event of the 'guillotine clause' application.

2.6. Bilaterals 2: Schengen, Dublin, and Further Sectoral Integration

In 2002, Switzerland and the EU began a new round of negotiations in ten sectors which not only covered further economic interests, such as in the food industry, tourism, and the financial sector, but also extended cooperation between the two parties to important new political areas including security, asylum, and the environment.

The parties, however, failed to reach consensus on a comprehensive agreement on services due to a large number of issues that were unlikely to get resolved any time soon. One of

³¹ Free movement of persons – functioning and current state of play. The Federal Department of Foreign Affairs, Europe Division. (<https://www.eda.admin.ch/missions/mission-eu-brussels/en/home/key-issues/free-movement-persons.html>)

the major stumbling blocks at that time was the issue of banking secrecy, with EU pushing for information exchange and cooperation in spotting and pursuing tax evaders. Switzerland wasn't ready to loosen its traditional approach that treats a relationship with a banker with a confidentiality similar to a doctor or a lawyer. In March 2003, both Bern and Brussels agreed to abandon the talks, despite the joint declaration of intent attached to Bilaterals I. This precedent is quite illustrative of the Swiss government's philosophy of negotiations with the EU, preferring a no agreement to the one that wouldn't sufficiently reflect its national interest.

According to some EU officials, similarly to the services agreement, Brussels unlikely would have accepted an AFMP conclusion without any explicit reference to the *acquis*, had the Bilaterals I been negotiated at a later stage.³²

In autumn 2004, Switzerland and the EU signed the series of Bilateral Agreements II. Unlike Bilaterals I, the second package is not legally linked to one another. In addition to Schengen/Dublin, the Bilaterals II agreements covered eight more sectors: the taxation of savings income, processed agricultural products, the environment, statistics, and pensions, all of which are still formally in force.

A referendum was called against the Schengen/Dublin Association Agreement, which governs border checks on individuals and co-operation in relation to security and asylum seekers. The Swiss electorate endorsed the agreement in June 2005 with 54.6% votes in favor. Switzerland fully completed its access to the Schengen area in 2009.

In total, Switzerland and the EU have concluded around 20 main agreements and some 110 secondary agreements in several stages.

These agreements automatically apply to new member states when they join the EU. Under this framework, Switzerland and the EU have become key economic partners, with trade exchanges amounting to about €1 billion every working day.

2.7. How the Swiss – EU bilateral agreements work

Most of the bilateral agreements are traditional cooperation agreements, where the parties are responsible for implementing and applying them in their territories. Thus, Switzerland does not transfer any legislative or other decision-making powers to a higher, supranational instance, except for air transport agreement, where the EU institutions – the European Commission and the European Court of Justice – have a supervisory role regarding the competition in this field, including surveillance and dispute settlement.³³

Any conflicts between the parties are to be settled by the bilateral committees, in accordance with the mechanisms and procedures of international law. Disputes between the parties can neither be submitted to the European Court of Justice nor to the Swiss courts. There are currently over 20 such joint committees, with equal number of representatives from Switzerland and the EU, which usually meet once a year.

The Federal Council has been viewing the Swiss approach of multiple bilateral agreements as a policy instrument that best allows Switzerland to safeguard its interests vis-à-vis EU. Although the institutional independence provided by this approach doesn't grant the Swiss government access to EU decision-making, limiting it

³² Vahl M., Grolimund N. *Integration without Membership. Switzerland's Bilateral Agreements with the European Union*, Brussels, CEPS, 2006, p. 111.

³³ Vahl M., Grolimund N. *Integration without Membership. Switzerland's Bilateral Agreements with the European Union*, Brussels, CEPS, 2006, pp. 40–41.

with some elements of decision-shaping, like in the case of the Schengen agreement.

Brussels, however, has been increasingly unhappy with Swiss 'cherry picking'. Although membership issue faded away with Switzerland's official withdrawal its accession application in June 2016, further economic integration was welcomed by both sides. This made EU raise institutional issues with Switzerland in order to have a unified legal structure for all the bilaterals, as the existing multilayered structure was too complicated and lacked legal certainty.

An institutional framework would apply to the bilateral market access agreements according to uniform procedures and rules and hence improve legal certainty for authorities and market participants, both citizens and companies, in Switzerland and the EU.

2.8. Institutional Framework Agreement: failed negotiations of 2014 – 2021

No major new sectoral agreement on market access was concluded since 2008, when EU first asked for an institutional framework agreement (IFA) for all sectoral agreements.³⁴ The institutional issues to be resolved were the following:

- bringing the agreements in line with developments in EU law,
- interpreting the agreements,
- monitoring the agreements,
- settling disputes in terms of agreements.

The negotiations on an institutional framework agreement (IFA) were launched in 2014, while

Swiss government was still seeking resolution of the controversial vote against mass migration that threatened implementation of AFMP and the whole package of Bilaterals I. In addition to preserving the bilateral path, IFA was expected to open way for extending and strengthening it through new market access agreements on electricity and financial services.

In December 2014, the Council of the EU ruled in its Conclusions on a Homogenous Single Market and EU Relations with Non-EU Western European Countries that "a precondition for further developing a bilateral approach remains the establishment of a common institutional framework for existing and future agreements through which Switzerland participates in the EU's internal market, in order to ensure homogeneity and legal certainty in the internal market. ...without such a framework no further agreements on Swiss participation in the internal market will be concluded."³⁵

During the 2014–2018 negotiation process, Swiss officials complained being pressured by the EU to adapt to its norms and legal framework, which was seen as infringement of its national sovereignty. Brexit seems to have further complicated this process. EU feared to grant Switzerland or UK the concessions that could be later claimed by the other party. According to University of Kent professor Paolo Dardanelli, the EU used to be "quite accommodative, but because of Brexit, it has become much more worried about making exceptions and creating new loopholes that then could be exploited"³⁶.

However, Brussels agreed with Bern's long-standing demand to participate in the EU Comitology processes ('decision shaping').

³⁴ Jenni S. "Switzerland's Regulatory European Integration: Between Tacit Consensus and Noisy Dissensus." *Swiss Political Science Review*, 21 (4), 2015, pp. 508–537.

³⁵ Council conclusions on a homogeneous extended single market and EU relations with Non-EU Western European countries. Council of the European Union. General Affairs Council meeting, Brussels, 16 December 2014, p. 7., para 44. (https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/er/146315.pdf)

³⁶ Amiel S. What's the future of EU-Swiss relations now talks have collapsed? *EuroNews*, 28/04/2021 (<https://www.euronews.com/2021/05/28/what-s-the-future-of-eu-swiss-relations-now-talks-have-collapsed>)



Swiss withdrawal from IFA talks with EU: 'Too much is too much!'

Source: [EuroNews](#)

Along with the EEA members Norway, Iceland, and Liechtenstein, the Swiss government would now be systematically consulted and have a say in shaping relevant EU laws, including raising its concerns early in the process.³⁷

The negotiations essentially stumbled over EU demands for its citizens to have full access to the Swiss labor market and immigration issues. Specifically, three issues have emerged: 1) the guaranteed protection for Switzerland's traditionally high wages related to the so-called 'posted workers', EU companies' employees temporarily posted in Switzerland under foreign contracts; 2) the rules for social security payments which created problems for the Swiss cantons; and 3) the question of whether to accept the EU citizens' rights directive (2004/38/EC) and give EU immigrants access

to Swiss welfare.³⁸ Swiss government resisted such a move, arguing it might result in non-Swiss citizens getting social security rights, which are among the highest in Switzerland along with its wage levels. The EU kept insisting on equal terms of competition for all. These long-time tensions between Switzerland and the EU again came into play during recent negotiations of 2021.

Additionally, the EU kept pressing Switzerland that no new bilateral agreements could be signed without an overarching institutional framework implying the dynamic adaptation of Swiss legislation to legislative developments in the European Union, and a certain role of the Court of Justice of the EU (CJEU). The EU initial demand set out in the IFA text of 2018 was that the CJEU be the final and binding arbitrator on disputes, to avoid

³⁷ Schwok R. "Switzerland-EU Relations: The Bilateral Way in a Fragilized Position." *European Foreign Affairs Review*, 25, no. 2, 2020, p. 165.

³⁸ Schwok R. "Switzerland-EU Relations: The Bilateral Way in a Fragilized Position." *European Foreign Affairs Review*, 25, no. 2, 2020, pp. 159–176.

deception on the part of Swiss actors.³⁹ As University of Basel professor Laurent Goetschel noted, the Swiss "are allergic to what we call foreign judges", which made the government conclude that the treaty would not have enough chances in a popular referendum.⁴⁰ Eventually, the Swiss government decided that these issues could not be resolved and abandoned negotiations altogether. The talks ended abruptly on 26 May 2021, with the Swiss government's announcement of its withdrawal from the negotiations.

2.9. What's next? Is there a plan B for Swiss – EU relations?

In its official commentary on Swiss withdrawal from IFA talks, echoing its post-Brexit rhetoric, the EU implied deteriorating effects of no agreement for the bilateral relations. Stressing that IFA's "core purpose was to ensure that anyone operating in the EU Single Market, to which Switzerland has significant access, faces the same conditions", Brussels reminded of the Agreement's essential role in "deciding upon further progress towards mutually beneficial market access". It further emphasized that without IFA, the "modernization of our relationship will not be possible, and our bilateral agreements will inevitably age: 50 years have passed since the entry into force of the Free Trade Agreement, 20 years since the bilateral I and II agreements. Already today, they are not up to speed for what the EU and Swiss relationship should and could be."⁴¹

The EU disappointment had other more tangible effects. Following the collapse of the talks, Brussels cast doubt on Switzerland's continued participation in the EUR 95 billion Horizon Europe research program and Erasmus+ student exchange scheme. In July 2021, the European Commission followed through with downgrading Switzerland from the associated to a third country status in the Horizon program, which raised serious concerns on the damaging consequences for the Swiss research community among its members.⁴²

Furthermore, EU may increasingly limit Switzerland's access to the future single market in electricity. Additionally, Switzerland lost access to the EU market for new medical devices because the bilateral Mutual Recognition Agreement was not updated. Machinery and chemicals could be next in line. Meanwhile, Switzerland will withhold the second enlargement contribution of CHF1 billion (\$1.1 billion) to the EU cohesion fund.

Swiss President Guy Parmelin, however, stressed that Swiss policy would now concentrate on finding ways of updating existing bilateral agreements to iron out differences between the two sides. He complained that it would be hard to find a joint win-win solution by means of the reprisal measures.⁴³ Neither of the sides seems to have a prepared plan B at this stage, with the 'old' bilateral model being clearly outdated. The prospects of the 'new' one appear unclear at this stage.

³⁹ Schwok R. "Switzerland-EU Relations: The Bilateral Way in a Frailized Position." *European Foreign Affairs Review*, 25, no. 2, 2020, p. 163.

⁴⁰ Amiel S. What's the future of EU-Swiss relations now talks have collapsed? *EuroNews*, 28/04/2021 (<https://www.euronews.com/2021/05/28/what-s-the-future-of-eu-swiss-relations-now-talks-have-collapsed>)

⁴¹ Commission Statement on the decision by the Swiss Federal Council to terminate the negotiations of the EU-Swiss Institutional Framework Agreement. European Commission. Brussels, 26 May 2021. (https://ec.europa.eu/commission/press-corner/detail/en/statement_21_2683)

⁴² Durrani J. Switzerland loses associated country status in Horizon Europe programme. *Chemistry World*, 22 July 2021 (<https://www.chemistryworld.com/news/switzerland-loses-associated-country-status-in-horizon-europe-programme/4014036-article>)

⁴³ Swiss president warns against EU reprisals over collapsed talks. *Swissinfo*, May 30 May 2021 (<https://www.swissinfo.ch/eng/swiss-president-warns-against-eu-reprisals-over-collapsed-talks/46662614>)

SECTION 3.

ANALYSIS OF SWISS MODEL DISTINCTIVE ELEMENTS

3.1. Swiss approach: Europeanness not questioned, membership not discussed

When discussing Swiss model's relevance for Ukraine, first thing to keep in mind is that it is not aimed to bring Switzerland closer to a membership perspective. Its purpose often seen as quite the opposite. As professor Goetschel puts it: "The Swiss would want to be part of the EU economically, but they don't want to be part of the EU politically"⁴⁴. The bilateral approach allows Switzerland to conduct its own policies in foreign affairs, economy, social welfare, agriculture, etc. Being historically and geopolitically in the heart of Europe, Swiss don't question their Europeanness, and neither does Brussels. Hence, full membership in the EU is not seen as something that would bring any value added to Switzerland's European identity.

On the contrary, according to Swiss government's position, unlike EEA or EU membership, the bilateral approach allows Switzerland to preserve its sovereignty and identity that combines neutrality and direct democracy with high social security standards. Bern's push back on Brussels over the past decades has been specifically aimed to maintain these principles and avoid Switzerland's becoming EU's vassal. The same sentiment was mainly behind the Federal Council's withdrawal

from talks with the EU on Institutional Framework Agreement (IFA) in May 2021. A luxury to many non-EU countries, but as the third richest country in Europe⁴⁵, an important transit country between Italy and Germany and significant market for EU goods and labor force, Switzerland is clearly in a much better position to afford it.

The Swiss government's withdrawal from the IFA, however, raises questions at to the sustainability of the relations with the EU and the future of the current bilateral way. The Brussels made it clear that the status quo is no longer available, and all that Bern can now look forward to is the gradual deterioration of the relationship as present bilateral agreements die down without being replaced. Despite this warning, Swiss thinking appears to be fixed on bilateralism.⁴⁶

Nevertheless, scholars note⁴⁷ the EU's asymmetric approach by default. Despite Swiss rhetoric of maintaining policy and legal sovereignty, the scope of its adjustment to EU laws confirms the opposite: it is practically impossible to maintain a dynamic economic integration with the EU without significant incorporation of its laws into the national legal system.

Paradoxically, Ukraine seeks assertion of its identity in relations with the EU in exactly the opposite: through full membership as fulfillment of its

⁴⁴ Amiel S. What's the future of EU-Swiss relations now talks have collapsed? EuroNews, 28/04/2021 (<https://www.euronews.com/2021/05/28/what-s-the-future-of-eu-swiss-relations-now-talks-have-collapsed>)

⁴⁵ International Monetary Fund. World Economic Outlook Database, April 2021. (<https://www.imf.org/en/Publications/WEO/weo-database/2021/April>)

⁴⁶ Church C. H. Switzerland is facing a dual crisis over its relations with the EU. London School of Economics Blogs, 29 June 2021. (<https://blogs.lse.ac.uk/euoppblog/2021/06/29/switzerland-is-facing-a-dual-crisis-over-its-relations-with-the-eu/>)

⁴⁷ M. Oesch. The Swiss Model of European Integration. In: Brexit: The Legal Implications. Edited by: A. Biondi, P. J. Birkinshaw, M. Kendrick. Walters Kluwer, The Netherlands, 2018, pp. 35–47.
Jenni S. "Switzerland's Regulatory European Integration: Between Tacit Consensus and Noisy Dissensus." Swiss Political Science Review, 21 (4), 2015, pp. 508–537.

Europeanness and securing its sovereignty and independence from Russia. By contrast to Switzerland, Ukraine sees membership perspective as an additional anchor for getting rid of the traumatic post-communist legacy, rather than watering down its uniqueness in the EU's melting pot.

3.2. Advantages and Limitations of 'Going Swiss'

The Swiss model of multiple bilateral agreements with the EU consists of sectoral agreements and the alignment of domestic legislation. Legally, the sectoral agreements are treaties of international law, but in practice they very often rely on policy principles and even legal rules specific to the EU. However, even when Swiss legislation is adjusted to the EU law, it remains applicable as the domestic one. In this regard, the scope of Swiss law adjustment to the EU acquis is often-times underestimated in the Swiss official and public discourse.⁴⁸

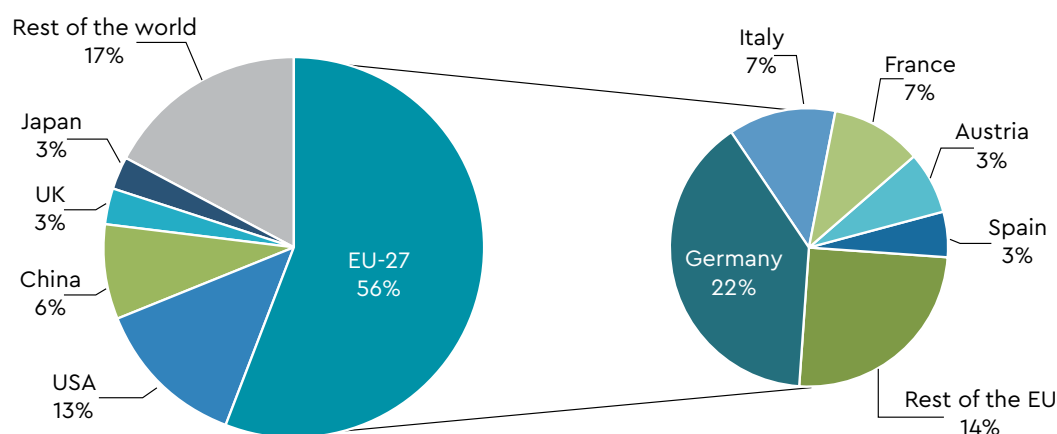
In a nutshell, the Swiss approach can be described by the formula:

Swiss model = Sectoral agreements + Partial legal approximation.

This approach gives Switzerland freedom from adopting EU acquis in other sectors and areas and autonomy in foreign trade. An additional element – the overall institutional framework, which would reflect a modernized Swiss model in line with EU expectations – is no longer on the agenda since May 2021. Therefore, the below analysis of the Swiss model mostly covers the current 'old' bilateral approach, without the institutional elements.

Partial access to the single market, without participation in the Customs Union, allows Switzerland to maintain economic co-operation with the EU, while preserving national sovereignty. Although, as compared with the EEA model, EU is critical of this "cherry picking" approach and compares it to having an à la carte menu instead of the full menu.

Pointing at the Swiss traditional dilemma about how much of national sovereignty one is ready to pay to get access to EU domestic markets, Calmy-Rey underscores the main advantage of the Swiss approach in being able to conclude free trade agreements worldwide.



Switzerland's most important economic partners in 2020 by volume of trade

Source: [The Federal Department of Foreign Affairs](#)

⁴⁸ Jenni S. "Switzerland's Regulatory European Integration: Between Tacit Consensus and Noisy Dissensus." *Swiss Political Science Review*, 21 (4), 2015, pp. 508–537.

The Swiss bilateral way, however, has a number of limitations:

- 1) Absence of the Customs Union with EU preserves customs border control procedures for goods. Although the smooth and highly digitalized procedures, mainly due to the agreement on the technical barriers to trade, have been significantly simplified and became almost 'invisible' over the past years.
- 2) Despite Swiss aspiration for political and legal sovereignty, it is affected by EU's asymmetric approach and Swiss aligning in most cases⁴⁹ with the evolving EU legislation, even when not required to do so under the bilateral agreements.⁵⁰
- 3) Furthermore, Switzerland has no decision shaping right regarding EU policies affecting the bilateral relations, except for the Schengen Agreement.
- 4) The 'guillotine clause' applied to Bilaterals I package limits Switzerland in introducing changes to any agreement therein under the risk of the whole package cancellation. This is particularly relevant to the AFMP, occasionally challenged by Swiss political forces aiming to limit immigration and access to the domestic labor market.
- 5) Finally, today's stalemate in Swiss – EU relations following the failure of 7-year process of negotiating a new IFA aimed to modernize the existing partial integration model sug-

gests that replication of this model with other non-members is highly unlikely.

3.3. Comparative Analysis of the Swiss Model with Ukraine's DCFTA

Some interesting parallels can be drawn between the Swiss model and the signed in 2014 Ukraine – EU Association Agreement that includes Deep and Comprehensive Free Trade Agreement (see Table 1–2, pp. 22–23)⁵¹:

EU Single Market Access

- Both Swiss and Ukraine's paths envisage deeper integration than simple FTAs, but less than envisaged by the European Economic Area membership.⁵² Both don't have Customs Union with the EU, which allows them to freely negotiate FTAs with the third countries but preserves customs border control.
- Switzerland is much better integrated in terms of the technical barriers to trade, with its EU-aligned laws, standards, certifications, and testing mechanisms allowing for smooth and 'invisible' border control procedures, despite not having a Customs Union with the EU.⁵³
- DCFTA appears to be quite competitive with upgraded Bilaterals in terms of internal market access and formal sovereignty preservation. Although it would be an overstatement

⁴⁹ Note: Among the main exceptions are the social rights of EU citizens living in Switzerland.

⁵⁰ Schwok R., Najy C. M. Brexit, Swiss "model", pros and cons in comparative perspective. In: Exiting the EU committee, house of commons. London. London : Exiting the EU Committee, House of Commons, 2018.

⁵¹ Schwok R., Najy C. M. Brexit, Swiss "model", pros and cons in comparative perspective. In: Exiting the EU committee, house of commons. London. London : Exiting the EU Committee, House of Commons, 2018, pp. 4–5.

⁵² Schwok R., Najy C. M. Switzerland's Bilateral Approach to European Integration. A Model for Ukraine?. In: The European neighbourhood policy in a comparative perspective : models, challenges, lessons. London : Routledge, Taylor & Francis Group, 2016, p. 139.

⁵³ Note: Following Switzerland's rejection of the IFA, the EU announced that it would not update Swiss agreements on technical barriers to trade for in some key sectors, e.g. medical devices, machinery, etc. This could slowly re-instate the regular border control procedures, depriving Switzerland of its current privileged status.

to claim that DCFTA was tailored based on the Swiss model⁵⁴.

- In some goods and services sectors, DCFTA is even more ambitious than Bilaterals and covers agriculture, services, including financial and postal services.
- Switzerland has far-reaching transport agreements (road, rail, air, and water transport), while DCFTA only covers international maritime transport⁵⁵.
- Unlike Switzerland's, Ukraine's access the Single market is gradual and depends on Ukraine and EU decisions. Thus, the EU has a leverage of the veto right if Ukraine fails to comply with its approximation obligations.⁵⁶
- Another major outstanding differences of the Swiss model in terms of access to the EU single market, is the Agreement on free movement of persons. However, the rationale for the AFMP with a non-EU member is quite different here. In the Switzerland's case, the EU is interested in its citizens' free access to the Swiss labor market with the same social rights and wages as the local residents.

Switzerland. If adopted, IFA would resemble the institutional model applied to Ukraine.⁵⁷

- In terms of institutional participation, the IFA would have offered Switzerland a 'decision-shaping' right through the access to EU Comitology procedures that would allow it to participate at an early-stage consultation and raise its concerns, thus shaping the provisions of relevant EU laws. Ukraine's AA and DCFTA currently don't envision any access to the EU 'decision-shaping'.
- However, under the AA and DCFTA, Ukraine is subject to much stricter control by the European Commission than Switzerland would be. For instance, the EU has the right to ensure that Ukraine's legislation is aligned and applied in conformity with EU law and can identify lists of areas needing improvement in its public reports.
- Finally, unlike Ukraine, Switzerland has been paying financial contribution for the EU enlargement. Between 2007–2019, such contribution amounted to 1.4 billion USD and financed specific projects selected by the Swiss government and aimed to reduce economic and social disparities in the 13 new EU member states.⁵⁸

Institutional and Financial Dimensions

- With Swiss government's rejection of the Institutional Framework Agreement, Ukraine remains more institutionally integrated than

Despite the listed similarities, their very different broader historic, geopolitical and security contexts put Switzerland and Ukraine in quite different policy settings and negotiating positions vis-à-vis EU, which is discussed in the next Section.

⁵⁴ Schwok R., Najy C. M. Switzerland's Bilateral Approach to European Integration. A Model for Ukraine?. In: The European neighbourhood policy in a comparative perspective : models, challenges, lessons. London : Routledge, Taylor & Francis Group, 2016, pp. 142–143.

⁵⁵ Schwok R., Najy C. M. Switzerland's Bilateral Approach to European Integration. A Model for Ukraine?. In: The European neighbourhood policy in a comparative perspective : models, challenges, lessons. London: Routledge, Taylor & Francis Group, 2016, p. 139.

⁵⁶ Schwok R., Najy C. M. Brexit, Swiss "model", pros and cons in comparative perspective. In: Exiting the EU committee, house of commons. London. London : Exiting the EU Committee, House of Commons, 2018.

⁵⁷ Schwok R. "Switzerland-EU Relations: The Bilateral Way in a Fragilized Position." European Foreign Affairs Review, 25, no. 2, 2020, pp. 159–176.

⁵⁸ Switzerland's contribution to the enlarged EU. The Federal Department of Foreign Affairs. (<https://www.eda.admin.ch/erweiterungsbeitrag/en/home/the-swiss-contribution/kurzportraet-erweiterungsbeitrag.html>)

Table 1. **Market Access:** Comparison of several regimes for third states

© Cenni Najy and René Schwok (February 2018)

	EEA/EFTA (Norway)	Swiss B.A. (in force)	Swiss B.A. (future)*	EU-Ukraine (DCFTA)	EU-Canada (CETA)
4 freedoms/Internal market					
Free movement of goods [tariff barriers]					
- Industrial goods	Yes	Yes		Yes	Yes
- Unprocessed agric. products	No	No		Yes	Yes**
- Processed agric. products	Limited	Limited (CH still applies duties)		Yes***	Yes
- Fisheries	Limited	Yes		Yes***	Yes
[non-tariff barriers]					
Conformity assessment	Yes	Yes		Yes	Yes
Mutual recognition (Cassis de Dijon principle)	Yes	No (CH unilat. application)		No	No
Trade facilitation (simplification of border controls and formalities)	Yes	Yes		Yes	Yes
Anti-fraud cooperation (customs)	Yes	Yes		Yes	Yes
Identical rules on preferential origin (Pan-Euro-Med Convention)	Yes	Yes		Yes	No
Free Movement of persons	Yes	Yes		No	No
- Mutual recognition of diplomas	Yes	Yes		No	No****
- Social security coordination	Yes	Yes		No	No
- Posted workers	Yes	Yes (special rules)		No	No
- Citizens' right directive	Yes	No		No	No
Free movement of services					
Postal services	Yes	No		Yes***	Limited
EU no-roaming area	Yes	No		In negotiation	No
EU financial passport	Yes	No		No	No
Equivalences (if no financial pass.):					
- MiFID II (trading obligation shares)	-	Limited*****		No	No
- Solvency II (insurance)	-	Yes		No	Limited
- EMIR (central counterparties)	-	Yes		No	Yes
Air transport	Yes	Yes		No	limited
Public procurements	Yes	Yes		Yes***	Yes
Free movement of capital (removal of capital controls)	Yes	in force before the B.A.		progressive removal	in force before the CETA
EU Capital Markets Union	Yes	No		No	No
Customs Union					
EU common external tariff	No	No		No	No
Controls on rules of origins	Maintained	Maintained		Maintained	Maintained
Freedom to negotiate trade agreements with non-EU countries	Maintained (alone or via EFTA)	Maintained (alone or via EFTA)		Maintained	Maintained
EU Value added tax					
EU VAT area (removal of border controls on indirect taxation)	No	No		No	No
Energy policy					
EU market-coupling (electricity)	Yes	No (negotiations frozen)		No	No
EU emission trading system	Yes	Participation in 2019		No	No
Competition policy					
Cartel, abuse of dominant position and mergers (alignment on EU rules)	Yes	Yes (coop. agreement + CH aligns on <i>acquis</i>)		Yes	No
State aid (alignment on EU rules)	Yes	No	Yes (proposed by EU)	Yes	No

*An institutional agreement is in negotiation between CH and EU since 2014 (the following elements are based on the CH-EU agreed guidelines for negotiation). ** Except some "sensitive" products (eggs, poultry etc.). ***The Openings of new segments of the Single Market depend on Ukraine's approximation to EU *acquis* and requires the agreement of both parties. Here, Ukraine is usually the requesting party (the EU is therefore in a strong position). **** However, CETA provides a framework for Canada and the EU to recognize each other qualifications in some regulated professions. ***** A third country is granted an equivalence only if its legislation is close enough to the one of the EU. Here, the equivalence was granted to CH for one year only (due to the lack of progress in the institutional agreement). Thus, political considerations can also play a role.

Source: Schwok R., Najy C. M. *Brexit, Swiss "model", pros and cons in comparative perspective*. In: *Exiting the EU committee, house of commons*. London. London : *Exiting the EU Committee, House of Commons*, 2018, p. 4.

Table 2. **Institutional and financial dimensions: Comparison of several regimes for third States**

© Cenni Najy and René Schwok (February 2018)

	EEA/EFTA (Norway)	Swiss B.A. (in force)*	Swiss B.A. (future?)	EU-Ukraine (DCFTA)	EU-Canada (CETA)
Institutional participation					
EU institutions (decision-making)	No	No	No	No	-
EU institutions (decision shaping and comitology)	Yes (SM issues)	No	Yes (relevant issues)	No	-
EU agencies	31	11	Unchanged	Limited cooper. in few agencies**	-
Major EU Programmes (research, education and culture)	All	Research only***		All	-
Common integrated (supranational) institutions	Yes (EEA/EFTA pillar)	No		No	-
EU acquis (Single market - SM)					
Legal obligation to adopt of all SM laws at the concl. of the agreement	Yes	Only B.A. relevant laws	Only B.A. relevant laws	No	-
Legal obligation to adopt later SM relevant laws	Yes	No	Yes	Yes (approximation)	-
Procedure to incorporate later SM relevant laws	Dynamic Procedure (within EEA/EFTA institutions)	Static procedure often autonomous incorporation	Dynamic procedure	Static procedure (but for services, pub. procurement)	-
Adoption of all later SM laws (current situation in the legal order of third states)	Complete (but EU wants a faster adoption)	Most B.A. relevant laws	All B.A. relevant, opt-out for free movement issues (proposed by CH)	All DCFTA relevant laws (approximation)	-
Institutionalized right of reservation (adoption of later SM relevant laws)	Yes EEA/EFTA right of reservation	No	No?	No	-
Surveillance et jurisdiction					
Supervision by a surveillance authority (ensuring EU relevant <i>acquis</i> is applied)	Yes	No	No (EC might have a "right of enquiry")	No (EC checks approximation)	-
Obligation to conform with ECJ's jurisprudence (interpretation of the relevant <i>acquis</i>)	Yes (EFTA court follows ECJ)	No	Yes	No (but for services, pub. procurement)	-
Dispute settlements					
Nature of dispute settlement (on interpretation and application of the agreements)	Hybrid (multilateral neg. in EEA JC, ECJ ruling when on EU law)	Diplomatic (bilateral neg. in the mixed committees)	Hybrid? (arbitration panel, ECJ ruling when on EU law)	Hybrid (arbitration panel, ECJ ruling when on EU law)	WTO standards (arbitration panel, ISDS)
Rebalancing measures	Appropriate measures, up to partial suspension of EEA agreement	Appropriate measures, Guillotine**** attached to B.A. I	Similar system as for EEA? (proposed by EU)	Appropriate measures, WTO standards	Appropriate measures, WTO standards
Review of the rebalancing measures by an arbitration panel	Yes	No	Yes? (proposed by CH)	Yes	Yes
Financial contributions					
2013 annual financial contribution per capita (in 2013 £)*****	~115 £	~60 £	[?]	Ukraine is a net recipient	No
Participation in the reduction of social and economic disparities within the EU	Yes	Yes (CH: on a "voluntary basis")	EU proposes an institutionalized contribution	No	No

*Schengen/Dublin, Air Transport, Customs Facilitation and Security B.A.s are based on other institutional rules. ** For the Erasmus and Creative Europe programmes, the EU refused to renew its agreements with Switzerland after the 2014 referendum on immigration. *** 20 agencies + 19 programmes are opened to Ukraine's participation (Ukraine could join them depending on its approximate and implement EU relevant laws). **** The activation of the guillotine clause is of an automatic nature. If one of the parties terminates one of the agreement of the B.A. I package, all the others are also terminated. ***** The numbers for Norway and Switzerland do not include participation to Schengen and do not take into account returns of funds. Also, they do not take into account. As an EU member, the UK topped 240 £ in 2013 (number obtained using a similar calculation method).

Table legend:

EC = European Commission

EEA JC = Joint Committee of the European Economic Area

ECJ = European Court of Justice

Guillotine = this clause states that if any of the B.A. I agreements were to be terminated, the other 6 would cease to have effect

ISDS = investor-state dispute settlement

WTO = World Trade Organization

Source: Schwok R., Najy C. M. Brexit, Swiss "model", pros and cons in comparative perspective. In: *Exiting the EU committee, house of commons*. London. London : *Exiting the EU Committee, House of Commons*, 2018, p. 5.

SECTION 4.

RELEVANCE OF SWISS MODEL FOR UKRAINE

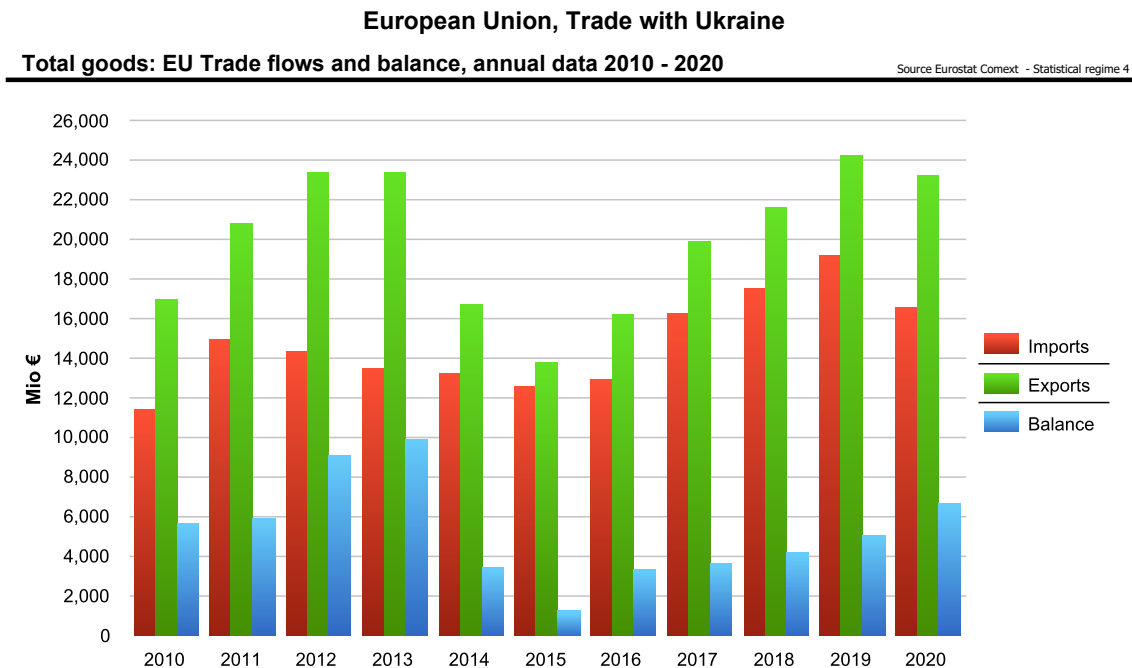
4.1 Ukraine is not Switzerland: different goals and potentials

4.1.1. Disparity of negotiating potentials: different ends, different means

The philosophy of EU agreements and state of relationships with Switzerland and Ukraine have quite distinct backgrounds and settings. In addition to different starting positions and aspirations, Bern and Kyiv have a clear disparity of negotiating weight vis-à-vis Brussels. Although this should not preclude Ukraine from weighing in the applicability of at least certain

elements of the Swiss model, still it should be assessed in realistic terms.

For instance, with only 8.5 million population, which is 1.9% of EU's, Switzerland is its 4th largest trading partner. In 2020, the EU-Swiss trade amounted EUR 251 bn, with Switzerland's share in EU's total trade of 7%, including the share of 6.3% in total imports and 7.4% in total exports.⁵⁹ Whereas Ukraine with its 41.5 million population is EU's 18th trading partner accounting for around 1.1% of EU's total trade. The EU is Ukraine's largest trading partner, accounting for more than 40% of its trade in 2019. Total trade between EU and Ukraine reached EUR 39,6 bn in 2020.⁶⁰



Source: European Commission

⁵⁹ European Union, Trade in goods with Switzerland. European Commission, 12 April 2021. (https://webgate.ec.europa.eu/isdb_results/factsheets/country/details_switzerland_en.pdf)

⁶⁰ European Union, Trade in goods with Ukraine. European Commission, 12 April 2021. (https://webgate.ec.europa.eu/isdb_results/factsheets/country/details_ukraine_en.pdf)

Hit hard by Russian aggression and 7% of its territory occupation, in addition to deteriorating effects of COVID-19 pandemic, Ukraine is on the 41st position among 43 Europe's sovereign states with 13,943 USD GDP per capita⁶¹.

Furthermore, Switzerland and EU stand on the common ground of democratic values, rule of law and human rights. Despite Brussels' decision-making asymmetry towards Bern, their equal standing in promoting common values is beyond any doubt. Rather, it is Switzerland's neutrality, solid tradition of direct democracy and high living standards that project its 'soft power' over EU. The latter is well illustrated by the number of EU nationals willing to work in Switzerland, which even triggered the Switzerland's controversial popular vote that ended up with at least securing some privileges for its own nationals. Finally, it is hard to clearly identify donor and recipient in their bilateral relations, which seem to be winning for both sides. In exchange to EU's markets access and multiple cooperation programs, in 2007–2019 Switzerland paid over 1.4 billion USD of enlargement contributions⁶² to the EU to help reduce economic and social disparities with its new members and ensure Europe's security, stability and prosperity.

Regarding Ukraine, EU has traditionally been playing the role of 'the agent of socialization' to promote democratic reform agenda in Ukraine by means of conditionality with the focus on the rule of law, judicial system reform and developing anti-corruption institutions. For instance, this is the primary purpose of the political asso-

ciation framework with the Ukraine – EU Association Agreement. Financially, Ukraine is clearly in a recipient's position, with the EU Macro-Financial Assistance received since 2014 totaling EUR 3.8 bn. Reportedly, the largest amount of such assistance allocated to any single partner country.⁶³

The framework of Eastern Partnership (EaP) has also been putting Ukraine in one pool with other Eastern Neighborhood countries with a similar toolkit for political association and economic integration, despite the differences in their geopolitical and economic standing. Ukraine's failed attempts to break out of this pool, despite multiple criticisms of the EaP framework from both inside and outside the EU, is illustrative of the EU's policymaking asymmetry and Kyiv's limited decision-shaping capacity.

4.1.2 Swiss model's limited applicability: EU wants no more "cherry picking"

According to international and Swiss experts,⁶⁴ Swiss model, i.e., its bilateral path, is hardly transferable to other countries as not acceptable for Brussels in its current 'non-modernized' form. Specifically, because EU has multiple times expressed its dissatisfaction with a "cherry picking approach", or an a la carte choice versus full menu.

All the tensions with the EU following Swiss government's withdrawal from talks on IFA suggest that the 'old' Swiss model of Bilateral Agreements today seems to be outdated even for

⁶¹ International Monetary Fund. World Economic Outlook Database, April 2021. (<https://www.imf.org/en/Publications/WEO/weo-database/2021/April>)

⁶² Swiss contribution (enlargement contribution) to selected EU states. The Federal Department of Foreign Affairs, January 2020. (https://www.eda.admin.ch/dam/europa/en/documents/fs/01-FS-Beitrag_en.pdf)

⁶³ EU-Ukraine relations – factsheet. European Union External Action Service, Brussels, 5 October 2020. (https://eeas.europa.eu/headquarters/headquarters-homepage/4081/eu-ukraine-relations-factsheet_en)

⁶⁴ Switzerland and the EU: Lessons for a Post-Brexit UK. Transcript of the expert discussion. Chatham House, London, April 2018. (<https://chathamhouse.soutron.net/Portal/DownloadImageFile.ashx?fieldValueId=1341>); Emerson M. Which model for Brexit? Special Report No. 147, CEPS, Brussels, October 2016. (<https://www.ceps.eu/wp-content/uploads/2016/10/SR147%20ME%20Which%20model%20for%20Brexit.pdf>); Oesch M. The Swiss Model of European Integration. In: Brexit: The Legal Implications. Edited by: A. Biondi, P. J. Birkinshaw, M. Kendrick., Walters Kluwer, Netherlands, 2018, pp. 35–47.

Switzerland. Whereas at this stage, there seems to be no clarity on a Plan B from both sides regarding any potential 'new' Swiss model.

Given the mentioned disparity of economic potentials and difference of geopolitical contexts vis-a-vis EU, applying current Swiss approach seems mission impossible. However, as an analytical exercise, it is still worth considering the applicability of some of its elements in setting a more ambitious horizon for Ukraine's deeper integration with the EU beyond the Association Agreement.

As discussed in Section 3.3., despite all the dissimilarities between the two countries, the Ukraine's DCFTA with EU has a lot of parallels and similarities with the Swiss bilateral way in terms of access to the EU single market while preserving relative policy and legal sovereignty. Therefore, it is the outstanding elements of the Swiss model that present a 'value added' compared to DCFTA, which are of particular interest to Ukraine.

4.2. Elements for Ukraine's consideration

4.2.1. What is of interest to Ukraine?

Today's Ukraine – EU relations are in the crisis of a new perspective, which increases fatigue on both sides. While membership perspective is not discussed, broadening the horizon beyond the AA is needed for both sides. For Ukraine, to overcome the current frustrations and create new incentives. And for EU, to strengthen its leverage on Ukraine's domestic reform agenda as well as strengthen security and stability in Europe.

Ukraine's expert and policy-making community is discussing various modalities of deepening sectoral integration⁶⁵ and intensifying

cooperation with the EU beyond the AA and DCFTA framework. In this regard, Swiss example provides some interesting and quite ambitious alternatives to the status quo.

4.2.2. Access to EU Comitology procedures

The failed Swiss – EU Institutional Framework Agreement would have responded to Switzerland's long-standing demand for access to EU Comitology processes and thus, similarly to the EEA member states, a 'decision-shaping' role in the process of relevant EU laws development and expert consultations. This would not give Switzerland a voting right of 'decision-making', but still would enable to have a say and raising its concerns at the early stages of the lawmaking process.

Given the similarities between the IFA and current institutional framework of the AA and DCFTA, Ukraine could follow Switzerland's footprints and explore advantages of raising with the EU the issue of its access to EU Comitology procedures and obtaining similar 'decision-shaping' right.

4.2.3. Sectoral Cooperation and Smooth Border Control rather than Customs Union

In economic terms, Swiss sectoral integration with the EU could be of interest regarding further expanding the scope of DCFTA to additional markets (e.g., digital and energy markets). It also demonstrates advantages of deeper sectoral integration as an alternative to Customs Union. Among the main advantages of Swiss bilateral approach is the ability of Swiss government to negotiate FTAs with the third countries on its own terms, like with China, which is Swiss 4th largest trading partner. Ukraine's DCFTA with EU, without Customs Union equips it with the similar advantages.

⁶⁵ Shmyhal: We Plan to Agree with the European Union on 5 "Visa-Free Regimes". *Economichna Pravda*, 27 June 2021. (<https://www.epravda.com.ua/news/2021/06/27/675400/>)

Moreover, Customs Union without EU membership would have significant disadvantages, such as opening national markets to all the EU's FTA partner countries without a leverage to negotiate any favorable access to their markets in return.⁶⁶ Thus, Swiss example offers a good alternative to the Customs Union in the form of deeper sectoral integration combined with "invisible" customs border for goods thanks to digitalized and smooth border checks. Respective procedures are envisaged in the Swiss – EU Agreement on the simplification of inspections and formalities in respect of the carriage of goods and on customs security measures of 2009, revised and updated in 2021.

4.2.4. Free Movement of Persons and Access to Labor Market

Key and most tangible achievement in Ukraine – EU relations since the AA signature is the visa free regime, in effect since 2017, though halted in 2020 due to COVID-19 pandemic. The next ambition for Ukraine could be aspiration for a gradual access to Schengen Area. As evidenced by Swiss example, this could be achieved without full EU membership. Though in post-pandemic context, political prospects of joining Schengen for non-EU members appear problematic. However, at the current stage, Ukraine could demand to intensify relevant police cooperation with the EU to simplify and smoothen the border control procedures. Specifically, following Swiss example Kyiv could demand joining Schengen Information System and the Prüm cooperation legal framework that provides for speedy and efficient exchange of relevant information between the police authorities of the participating states.

Another attractive component of the Swiss model is the 1999 bilateral agreement on free movement of persons granting access to each

other's labor markets. No less sensitive and politically problematic than Schengen Area access, nevertheless, this option presents quite a strong and tangible incentive for Ukraine's deeper integration with the EU. Similarly to the visa-free regime, it could equip both EU and pro-reform forces in Ukraine with possibly the strongest leverage to push for the implementation of the most sensitive reforms in judicial and anti-corruption sectors.

The concept of 'posted workers' applicable in Swiss-EU relations could be worth exploring. Specifically, the status of 'posted workers' would allow Ukrainians to be legally employed and temporarily posted in the EU under the same remuneration conditions with the EU residents, while not settling there permanently and therefore preventing mass labor migration of Ukrainians abroad. Additional relevance in this context gains Switzerland's discussion of introducing quotas for EU workers. Eventually it was replaced with a compromise decision to prioritize Swiss nationals and residents over EU workers by five-day earlier access to vacancies announcements in certain professional categories. These measures could be viewed by Ukraine as a room for compromise in discussing different modalities with the EU.

It is worth emphasizing, however, that it was the EU that initiated conclusion of the Agreement on Free Movement of Persons with Switzerland as a non-member state, guided by a clear self-interest in getting access to Swiss labor market with its high wage levels and social protection.

Last but not least, Ukrainian policymakers could benefit from some lessons learned from Switzerland's negotiations with the EU. For instance, Swiss top-negotiator and former State Secretary of Federal Department ETH Zurich

⁶⁶ Emerson M., Movchan V. Should Ukraine aim to join the EU's customs union? Policy Paper for 3 DCFTAs Project, 8 September 2017 (<https://rasmussenglobal.com/wp-content/uploads/2017/09/Ukr-customs-union-final-8-sept-17.pdf>)

(2005–13) professor Michael Ambühl advised the following⁶⁷:

1. Do not question fundamental EU principles. Focus on their implementation flexibility. The European Union has a lot of flexibility when they themselves implement their principles.
2. Have a certain nuisance value to be taken seriously as an outsider. In the Swiss case, it was transportation, electricity, financial market.
3. Contribute in a constructive way, for example, to addressing security issues, in international cooperation, etc.

⁶⁷ Switzerland and the EU: Lessons for a Post-Brexit UK. Transcript of the expert discussion. Chatham House, London, April 2018, p. 8. (<https://chathamhouse.soutron.net/Portal/DownloadImageFile.ashx?fieldValueId=1341>)

SECTION 5.

POLICY RECOMMENDATIONS: BE REALISTIC, DEMAND THE IMPOSSIBLE

5.1. For the European Union

5.1.1. What to think through?

► How to strengthen EU leverage and reform incentives for Ukraine?

The current strategic stalemate in the EU – Ukraine relations demands for a new and more ambitious horizon that would re-energize the political dialogue on the one hand and Ukraine's domestic Europeanization agenda on the other hand. With the EU visa-free regime application significantly restricted by the pandemic-related measures, the EU leverage has been weakening, thus lowering the level of ambition, and increasing dissatisfaction with the political dialogue on both sides. Ukraine's frustrations are only growing in the context of key EU member states' re-engaging with Russia and advocating for the Nord Stream 2 pipeline project.

While the membership perspective is not on the table, the European Union's policymakers should think through a more ambitious and strategic approach able to provide Ukraine with some intermediary benchmarks and goals on its path towards EU membership. It could include a broader set of incentives and conditionality mechanisms for Ukraine's domestic reforms beyond the leverage previously provided by the visa-free regime and currently by the micro-financial assistance package. Economically, it would be also mutually beneficial to think through the modalities of Ukraine's deeper integration to the EU internal market within the DCFTA review process.

With regard to Switzerland's example, broadening Ukraine's access to the EU single market, including some elements of the free movement of persons, could be considered among such incentives. Specifically, it would provide a partial response to both Ukraine's aspiration for closer integration, and EU's demand for a more dynamic pace of internal reforms, especially the politically sensitive judiciary and anti-corruption reforms.

► What could be a new horizon for Ukraine beyond the AA and DCFTA bilaterally, and within the Eastern Partnership framework beyond 2020?

EU policymakers should think through a more ambitious strategy towards its East European neighbors Ukraine, Moldova and Georgia, from economic, geopolitical and security perspectives. Ukraine's belonging in Europe needs be reflected in a more ambitious and specific way that would incentivize its domestic reform and comprehensive Europeanization efforts. Against the background of the current global, regional, and internal challenges, EU needs to think East in geostrategic terms.

The European Commission's Joint Staff Working Document of July 2021⁶⁸ aimed to provide a renewed vision and targets for 2025 with the focus on recovery, resilience and reform, clearly lacks such strategic horizon. The comprehensive Europeanization and domestic reform agenda mentioned in the document lacks any ambition and dynamic that would refer to and at least partially reflect the quest for advancement on the path of EU membership by Ukraine, Moldova

⁶⁸ "Recovery, resilience and reform: post 2020 Eastern Partnership priorities." Joint Staff Working Document. European Commission, Brussels, 2 July 2021. (https://eeas.europa.eu/sites/default/files/swd_2021_186_f1_joint_staff_working_paper_en_v2_p1_1356457_0.pdf)

and Georgia. In this context, the renewed EaP fails to provide appealing incentives, 'carrots', and pragmatic yet efficient leverage, 'sticks', that would re-energize its 'more for more' approach.

5.1.2. What steps to take towards Ukraine?

► Engage Ukraine in a strategic dialogue and provide space for its quest for more ambitious cooperation

Engage Ukraine in the strategic conversation about the EU's future, both bilaterally and within the Eastern Partnership. Discuss the range of more ambitious tasks, incentives and policy tools that could re-energize EaP and be of interest for all sides, in line with Ukraine's EU membership aspiration and EU interest in stability and security in Europe. Broadening the cooperation horizon beyond the AA and DCFTA, could provide EU with stronger leverage on Ukraine's domestic reform agenda, additional benchmarks, and related conditionality.

► Translate Ukraine's ambition for closer cooperation into practical integration components. The Swiss case could be of inspiration here in the following aspects:

Expanding the Association Agreement's institutional framework with Ukraine's access to EU Comitology processes, including the right to 'decision shaping' and raising concerns about relevant EU laws at an earlier stage of their preparation.

Another avenue, based on Swiss example, is the Agreement on free movement of persons. As evidenced by the visa-free regime, which was among the strongest EU incentives for Ukraine's adoption of anti-corruption reform, gradual liberalization of the movement of persons could equip Brussels with a strong set of incentives

and leverage regarding Ukraine's reforms in the field of the rule of law, security, and countering corruption.

EU should consider Ukraine's gradual access to labor market, with clear criteria and benchmarks to measure reform progress. The concept of 'posted workers', applied in relations with Switzerland, can be explored in this regard. Among other elements of the Swiss model to be considered in relations with Ukraine, are smooth and digitalized customs and Schengen border control procedures, Ukraine's potential accession to Schengen Information System and Prüm legal framework for police cooperation schemes.

5.2. For Ukraine

5.2.1. What to do domestically?

► Demonstrate ability to implement and benefit from the full scope of the current Association Agreement and DCFTA framework. Show credibility and capacity to deliver 'more for more'.

The lack of new incentives and a strategic vision reflecting Ukraine's EU membership aspiration even in a remote perspective clearly contribute to the slow-down in its Europeanization dynamic. However, to be able to advocate for a renewed vision and update of the AA and DCFTA, Ukraine needs to demonstrate its ability to fully benefit from the available framework and policy tools. According to the government's reporting, between 2015–2020 Ukraine has implemented the Association Agreement by approximately 50%⁶⁹.

Another important aspect of Ukraine's 'homework' is speeding up the implementation of the rule of law and anti-corruption reform agenda that would strengthen Ukraine's credibility and

⁶⁹ The Government of Ukraine has summed up the results of 6 years of implementation of the Association Agreement between Ukraine and the EU. Cabinet of Ministers of Ukraine, 24 June 2021. (<https://www.kmu.gov.ua/news/uryad-ukrayini-pidbiv-pidsumki-6-rokiv-vikonannya-ugodi-pro-asociaciyu-mizh-ukrayinoyu-ta-yes>)

demonstrate its readiness for new formats and elements of deeper integration with the EU. The roadmap for judicial and anti-corruption reforms laid out by the G7 Ambassadors' Reform Support Group in Ukraine quite comprehensively reflects EU's reform expectation in this field.

➤ **Identify next steps beyond AA and DCFTA to advocate for with the EU**

When discussing with the EU more ambitious horizons, additional Europeanization incentives and long-term goals reflecting its membership aspiration, Ukraine needs to have clearly researched and identified some key intermediary tasks and benchmarks, integration 'milestones', that would bring Ukraine closer to the EU and eventually the membership perspective. Such 'milestones' could be in line with and beyond the Association Agreement and Deep and Comprehensive Free Trade Area (DCFTA).

5.2.2. What to advocate for with EU?

In the context of advocating for a new horizon, incentives and policy tools that would advance Ukraine on the path of EU membership, Ukrainian policymakers should take a closer look into the applicability of the following elements of the Swiss Model:

- Explore and fully implement available mechanisms of simplifying customs control and creating the effect of 'invisible' customs border thanks to the smooth and digitalized procedures. In the Swiss case, customs border control procedures for goods are highly digitalized and significantly simplified mainly due to the agreement on the technical barriers to trade.
- Ukraine's full participation in the Schengen Area may be a remote perspective, but as an intermediary goal, similarly to Switzerland, Ukraine could seek participation police cooperation such as the Schengen Information System and the so-called Prüm cooperation schemes. The latter provide legal framework for speedy and efficient exchange of relevant

information between the police authorities of the participating states.

- Conduct analysis of possible modalities to conclude and gradually implement free movement of people agreement with EU and obtaining gradual access to each other's labor market. Specifically, Ukraine would be interested in providing its citizens with access to the status of 'posted workers'. This status would allow Ukrainians to obtain legal employment in the EU under the same remuneration conditions with the EU residents, while not settling there permanently and therefore preventing mass labor migration of Ukrainians abroad.
- Explore advantages of and advocate for Ukraine's access to EU Comitology procedures within the Association Agreement's institutional framework, which would provide Ukraine with the right to 'decision shaping', similarly to the EEA member states. (Access to EU Comitology was envisaged by the failed Swiss – EU Institutional Framework Agreement.) In this case, Ukraine would be consulted and have access to shaping the relevant EU laws and raise its concerns regarding their provisions at their earlier preparation stages.

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The New Europe Center was founded in 2017 as an independent think-tank. Despite its new brand, it is based on a research team that has been working together since 2009, at the Institute for World Policy. The New Europe Center became recognized by offering high-quality analysis on foreign policy issues in Ukraine and regional security by combining active, effective work with advocacy.

The New Europe Center's vision is very much in line with the views of the majority of Ukrainians about the future of their country: Ukraine should be integrated into the European Union and NATO. By integration, we understand not so much formal membership as the adoption of the best standards and practices for Ukraine to properly belong to the Euroatlantic value system.

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