

# From Liberalisation to Cooperation: The Diverse Purposes of Swiss-EU Agreements

8. Februar 2019

**Swiss-EU agreements liberalise cross-border movements and enable cooperation in different issue areas and between different actors, ranging from citizens to universities to authorities. The diversity of agreement purposes in Swiss-EU relations is often underestimated by the primary focus on market access.**

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## Summary

In its **2006 report on European policy**, the Swiss government summarised that “this network [of Swiss-EU agreements] consists of approximately twenty major and around 100 secondary agreements” (p. 6846). This widely cited number highlights the multitude of Swiss-EU agreements, but oversimplifies the diversity of their purposes.

These purposes extend from the liberalisation of cross-border movements to cooperation agreements that enable Swiss citizens and institutions to participate in EU programs or establish cooperation mechanisms between Swiss and EU authorities. While the aim of early agreements was frequently economic liberalisation, more recent agreements provide for considerable cooperation between Swiss and EU authorities, in both technical matters and more sensitive areas. In some cases, new cooperation agreements with the EU have merely replaced or extended the long-standing participation by Switzerland in issue-specific pan-European coordination initiatives.

## Diversity of purposes and goals

Researchers have applied a variety of criteria to compare and categorise Swiss-EU agreements in terms of their purposes. Important and recent comparative works are a legal **study by law professor Astrid Epiney and her colleagues** from the University of Fribourg and an **empirical study from the field of political science** conducted by the author of this analysis.

In the legal sciences, it is common to distinguish between liberalisation, cooperation and harmonisation agreements. While liberalisation and cooperation describe the agreement’s aim, harmonisation is rarely an end in itself. In what follows, these various purposes will be elucidated by reference to specific agreements.

## Liberalisation agreements

Liberalisation agreements concern economic liberalisation, mainly with the aim to facilitate cross-border movements. Important areas are the four freedoms of the EU's Single Market (free movement of goods, persons, capital and services; cf. also EFTA-Studies analysis **Switzerland's sectoral Access to the EU's Single Market**). Usually, liberalisation treaties neither fully liberalise cross-border movements, nor do they liberalise movements to the same degree as in the EU.

Apart from the very early agreement with the European Atomic Energy Community (EURATOM), the first Swiss-EU agreements were almost exclusively liberalisation agreements. The most important agreement, the **1972 Free Trade Agreement (FTA)**, is still in force today and forms the basis for Switzerland's sectoral access to the EU's market. Above all, it facilitates cross-border movement of industrial goods by means of the reduction or complete elimination of tariffs.

The next important liberalisation agreement was the **1989 insurance agreement**. It liberalises the cross-border activities of insurance companies, with the exception of the life insurances, by granting them the right to establish subsidiaries in the EU or Switzerland respectively.

The Bilaterals I and Bilaterals II agreement packages extended the economic liberalisation by means of the elimination (or reduction) of technical barriers to trade and reduction of the discrimination against Swiss actors in EU markets compared to EU actors (and vice versa). This new quality of liberalisation was a reaction to the increasing economic integration at the European level and, most importantly, to the creation of the Single Market with the entry into force of the treaty of Maastricht in 1993.

Among other elements, the Bilaterals I contain an agreement that liberalises access to **public procurement markets**, one that reduces technical barriers to trade by means of **mutual recognition of conformity assessments (MRA)**, and an agreement that **facilitates trade in agricultural products**. The Bilaterals II also revised a protocol to the Free Trade Agreement of 1972, liberalising trade in **processed agricultural products**.

The liberalisation agreements are considered to be very important for Switzerland's export-oriented economy. Liberalisation is often achieved through the harmonisation of legal rules between Switzerland and the EU. For both these reasons, liberalisation agreements like the FTA and the above-mentioned agreements of the Bilaterals I package are among the most frequently updated agreements (see also EFTA-Studies analysis **Functioning of Swiss-EU agreements: Hidden Dynamics and their Reasons**).

## Cooperation in Europe and the increasing role of the European Union

Swiss-EU cooperation agreements regulate different forms of cooperation between Switzerland and the EU, ranging from specific projects to multiannual programmes, technical cooperation and

fundamental state competences. As with liberalisation, cooperation also acquired a new quality with the Bilaterals I and II agreement packages. Before these two packages, Switzerland cooperated only in the area of research with what today is the European Union.

Cooperation agreements between Switzerland and the EU are a relatively recent phenomenon. They are a consequence of the development of the EU and its institutions. Switzerland has been actively engaged in pan-European inter-governmental cooperation for many decades. Examples are the European Conference of Transport Ministers, which lost its purely European focus and is now known as the **International Transport Forum**, and the **Intergovernmental Consultations on Migration, Asylum and Refugees (IGC)**. Over recent decades, the EU has gradually increased its activities in these and other issue areas, some pan-European organisations became an EU-institution, while others remained in place, serving mainly as platforms for the exchange of information, whilst losing their regulatory role. Switzerland's increasing number of cooperation agreements with the EU thus only partly means an extension of Switzerland's activities at the European level.

### Switzerland's participation in multi-annual EU programs

In case of EU funded projects and programs, cooperation means that Switzerland participates by providing personnel and funding. The funding can be assigned directly to Swiss project participants, or to a program itself, where persons and institutions from Switzerland obtain the right to apply for funding in exchange.

An example of the first kind of participation in an EU programme and at the same time one of the earliest examples of cooperation is a **framework agreement for research cooperation** from 1986. It has enabled the participation of Swiss scientists in research projects funded by EU programmes. Swiss scientists have been recognised as participants, but they have been funded directly by the Swiss federation.

This still remains the mode of cooperation through which Swiss citizens and institutions (e.g. schools) can participate in projects sponsored by the EU's **Erasmus+** program. Switzerland has the status of a 'partner country' and Swiss participants need to raise their own funds. The Swiss Federation provides funding possibilities through the **'Movetia'** agency, which in part copies Erasmus+ offers.

With the **agreement on research in Bilaterals I**, Switzerland for the first time became formally associated with a multi-annual EU framework program for research. Since then, Switzerland has financially contributed to EU research programs and in exchange, Swiss scientists and institutions have enjoyed the same rights as EU scientists, meaning that they can apply for funding directly to the EU. As a consequence, Swiss scientists can also act as the directors of EU funded projects.

The cooperation in the EU-programs to support the audiovisual and cultural sectors (previously MEDIA, now **'Creative Europe'**) is organised in a similar way to the cooperation in the area of research.

In both areas, Switzerland and the EU must conclude a new association agreement for each new EU multi-annual program in the respective areas. Normally, this is treated as a formality. But recently, the EU temporarily refused to sign the new agreements on the Horizon2020 research program and MEDIA as a way of punishing Switzerland for the outcome of the popular vote on the initiative 'against mass immigration' in 2014. In 2017, Switzerland was re-admitted to the Horizon2020 research program as an associate member with full participation rights. Switzerland has remained excluded from the MEDIA program and has set up a national substitution program (**MEDIA-Desk**). Since 2014, Switzerland and the EU have been negotiating Switzerland's association to the new program 'Creative Europe'.

The need for a new agreement for every new EU program is the only significant difference between the association of Switzerland on the one hand and the other EFTA states on the other. As the EU programs are included in the EEA Agreement, the EEA/EFTA states simply incorporate the respective EU act into the EEA Agreement and automatically acquire membership of an EU programme.

### Cooperation between authorities

With Bilaterals II, Switzerland and the EU deepened their relationship in those EU areas referred to as "justice and home affairs". An example from this area, in which Switzerland and the EU contracted to cooperate within a narrowly defined framework, is the **agreement on the fight against fraud**. It enables legal and official assistance in cases of fraud and money laundering, with the national rules remaining as the basis for any investigation.

More extensive cooperation was established with the agreement on the taxation of savings, totally revised in 2015 and now known as the **agreement on the automatic exchange of information**. The rules of reference for the revised agreement are the standards defined by the **Organisation of Economic Cooperation and Development (OECD)**. The agreement must thus be understood in the context of international developments rather than only as a matter of Swiss-EU relations.

With the association to **Schengen and Dublin** in the Bilaterals II package, Swiss-EU cooperation extended to core state competencies like border control. The core of Schengen is the abolition of systematic controls at the borders between Schengen states. In order to compensate for this, the Schengen states cooperate in securing the so-called external border.

To that end, they established **Frontex**, the European Border and Coast Guard Agency, as well as the **Schengen Information System (SIS)**, a database which allows Schengen states to exchange information in order to control migration movements and combat organised crime etc. While the abolition of border controls resembles a liberalisation aim in the sense that it makes crossing borders easier, Swiss contributions to Frontex and Switzerland's access to the SIS are typical forms of cooperation between state authorities.

For Switzerland, the association to Schengen and Dublin did not require substantial policy changes, as Switzerland already had relatively permeable borders with its neighbouring countries and had for decades aligned its migration and asylum policies with pan-European policies. What was new for Switzerland was the quality of legal assistance required between Schengen countries and especially the legal quality of the association agreement with the EU: the Schengen and Dublin agreements are the first Swiss-EU agreements that oblige Switzerland to continuously adopt new Schengen legislation, and the first to give it considerable so-called “decision-shaping” rights during the drafting of new legal instruments (for more details see [The diverse instruments of Swiss-EU agreements \[analysis to follow\]](#)).

Not all of the more recent agreements on cooperation between Swiss and EU authorities go as far as the Schengen and Dublin associations. For example, Switzerland and the EU recently concluded an **agreement to enable cooperation between their competition authorities** which regulates the exchange of information regarding anticompetitive activities and related enforcement activities. The agreement does not foresee Switzerland’s participation in the relevant EU authorities or further legislative harmonisation.

## Cooperation through the exchange of information and experts

Two further agreements of the Bilaterals II package establish cooperation in technical areas that are mostly aimed at the gathering of similar kinds of data and exchanging them at the European level. The agreements concern the **cooperation with the European Environment Agency** and **cooperation in the area of statistics**. Switzerland contributes financially to the funding of the **Environment Agency** and **Eurostat**. As Switzerland has thereby become a full member of the Environment Agency, Swiss citizens can be employed by the agency. In contrast, Swiss citizens and institutions cannot obtain funding from the EU for their cooperation with Eurostat.

Less well known than the areas of cooperation discussed so far is **Switzerland’s participation in various peace promotion missions coordinated by the EU**, such as the EULEX mission in Kosovo, the EUFOR Althea mission in Bosnia and Herzegovina and the EUTM in Mali. This form of cooperation must be seen in the light of Switzerland’s tradition of providing expertise in specific issue areas, rather than as a means of integration into an EU program.

Switzerland makes civilian or military personnel available based on specific agreements for specific missions (see for example the **2004 agreement on Switzerland’s participation in operation ALTHEA**). The missions have the EU stars in their logos, but not all EU members participate and Switzerland is not the only non-EU member state that participates. The Swiss personnel remain fully under the command of Swiss authorities, are fully funded by the Swiss state, and Swiss representatives have the same rights and obligations as representatives from EU member states.

## Conclusion

While the purpose of economic liberalisation is straightforward and is often analysed in the context of Swiss-EU relations, the differing cooperation goals pursued by an increasing number of Swiss-EU agreements are less well known. Cooperation can be a technical matter, as in the area of statistics or research, requiring the harmonisation of formalities, but no policy or legal changes. Cooperation with the EU can mean the 'EU-isation' of European activities that Switzerland was already involved with before the respective agreement with the EU, or an 'EU flag' on an initiative conducted by EU member states and non-member states alike, as in the case of the peace promotion missions.

In the sphere of liberalisation agreements, the EU has over time increasingly demanded that Switzerland accept its legal terms for liberalisation. All five of the agreements that are covered by the draft institutional framework agreement are liberalisation agreements.

In the realm of cooperation agreements, the development is less clear-cut. Currently, the agreements with the strongest institutional link with the EU are two cooperation agreements, the Schengen and Dublin association agreements. But other recent cooperation agreements are much less far-reaching. The Swiss-EU agreements thus show that, as in the case of the European integration of the EU member states, also in the case of issue-specific alignment via sectoral agreements, different integration goals require different kinds of agreement.

## To cite this article

Jenni, Sabine (2019): From Liberalisation to Cooperation: The diverse Purposes of Swiss-EU Agreements. Analysis. [efta-studies.org](http://efta-studies.org).

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