

CHAPTER 9

Why Switzerland Refused to Join the European Union

Why has Switzerland remained the sole state of continental Europe to refuse membership even though it would have been readily accepted by the EU? To answer this question we must explore the deep-rooted causes of the mistrust that has existed ever since the ECSC was created in 1950.

To do so, we shall analyze Swiss reticence to accession by examining five themes: (1) identity; (2) neutrality; (3) direct democracy; (4) federalism; and (5) economic distinctiveness. It goes without saying that although these themes are listed here one by one for didactic purposes, in reality, they interact.

We shall proceed as follows: we will start by presenting the reasons for Swiss reticence and then discuss them. Lastly, we will try, as far as possible, to explore these Swiss exceptions in the context of certain theories of European integration.

The Question of Identity

The question of identity is at the heart of the complex relationship between Switzerland and the European Union (Christin 2002). By identity we mean that which allows citizens of a country to be recognized as such, thanks to certain distinguishing features.

Defining the Swiss national identity is no easy task as Swiss identity is not grounded in many common elements. Switzerland is a mosaic of cultures, languages and religions and these disparate elements would not normally give rise to the forging of a nation. Yet a Swiss identity does, in fact, exist, whatever the objections of many theorists.

For a long time, the Federal Council, as well as most political and economic leaders, asserted that Swiss identity would be jeopardized by accession to the European Community. So as to justify its refusal to participate in the creation of the European Community, the Federal Council claimed that Switzerland risked being torn asunder in a borderless Europe that championed supranational objectives.

By way of example, in 1960 the Federal Council noted that the desire for independence of the Swiss people consequently placed them in opposition to accession to the Community. A nation that owes its existence, not to unity of language, culture, or origin, but to political will, cannot consent to a progressive weakening of its political independence¹ (Federal Council 1960, p. 21).

Until the end of the 1980s, the Federal Council, through the country's main opinion-makers, upheld this thesis. That is why in its Report of August 24, 1988, the Council did not hesitate to develop an approach that was motivated by a form of patriotic constitutionalism:

Accession would directly affect our state structure. The transfer of sovereignty rights to supranational bodies of the European Communities [...] would have repercussions on federalism and direct democracy, the very underpinnings of Swiss identity² (Federal Council, 1988, p. 124).

It comes as no surprise, therefore, that according to a December 6, 1992 exit poll the majority of those who voted "No" for the EEA (54.9%) justified their refusal by saying that they feared the "end of Swiss identity"³.

Absence of Traumatic Events

The key point is that the Swiss have not lived through traumatic moments in their recent history that would have incited them to radically change their foreign policy. For the past two centuries they have been spared world war, civil war, dictatorships, foreign occupation and decolonization on their soil. Their country has remained relatively prosperous, and economically and socially stable.

Sweden was the country in the most similar position to that of Switzerland. It is symptomatic that the Swedish people accepted membership of the EU by the lowest percentage of any member state, a mere 52%. It is noteworthy that this slim majority had been able to take advantage of unique circumstances: an economic crisis at the beginning of the 1990s, a questioning of the "social model", and a tag-along effect to Finnish accession.

In all other EU member states, on the other hand, major upheavals had facilitated participation in the European project, along with acceptance of certain limits to national sovereignty.

¹ Translation by Lisa Godin-Roger.

² Translation by Lisa Godin-Roger.

³ Opinion poll by M.I.S. Trend, December 1992.

This is true for the Greeks, Portuguese and Spanish who had endured fascist-leaning dictatorships and now strove to entrench democracy. The nations of Central and Eastern Europe, the most recent targets of communist totalitarianism, dictatorships and wars, saw in the EU a means to position themselves firmly in the West, to stabilize their system, to prevent extremist forces from taking power and to jumpstart growth.

The fact of the matter is that the Swiss people have never lived through such dire moments warranting a move for radical change. The Swiss have never experienced a plight so traumatizing as to incite them to deviate from their current course. The vast majority of the population feels absolutely no need to jeopardize the country's independence, for membership in a European Union which requires a partial transfer of sovereignty.

The Impact of the Second World War

The aftermath of the Second World War was a decisive period for Switzerland. It was at that moment that the difference between the Swiss Confederation and its neighbours became most marked.

It is war-related trauma that explains the ensuing rejection of extreme forms of nationalism and the rally of many nations to European construction. All the studies conducted on the origins of European integration in the 1950s reveal that the "desire for Europe" is intrinsically linked to the upheavals and destruction caused by the two world conflicts. It is these events, to a great extent, that led the German, Belgian, French, Dutch, Italian, and Luxembourg elites to organize Western Europe on radically different foundations.

Their national leaders and often their peoples drew the following main lessons:

1. War was horrendous and humankind must do its utmost for it never to occur again.
2. There were a number of negative elements in their own forms of nationalism that should be questioned.
3. A certain element of supranationality was necessary to overcome nationalistic self-serving attitudes.
4. Neutrality was a dangerous mirage and could not bring security.
5. Small states would only be able to prevent renewed conflict between Germany and France if they invested in an all-out strategy of reconciliation between the two within the perspective of a "Secure Community" (Schwok 2005, p. 46).

6. The economic protectionism that came in the wake of the 1929 crash had exacerbated the crisis and an end had to be put to it once and for all.

These lessons were only partially taken on board by the Swiss population. Paradoxically, the Second World War even heightened their conviction that their own model was the right one and there was no need to call it into question.

The initial economic consequence of the Second World War was that the Swiss ended up far richer than the other peoples of Europe. In fact, the gap between the war-ravaged continent and unscathed Switzerland never appeared more glaring than in the 1945-1950 period. From that moment on, there were very few Swiss citizens willing to share their prosperity with the less fortunate by means of European construction.

Additionally, the Second World War had the effect of binding the country strongly together. Unlike Belgium, where tensions flared among the main linguistic communities, nothing of the sort occurred in Switzerland. On the contrary, the main linguistic communities banded together as never before in their opposition to Nazism and Italian and German imperialism.

These comments on the paradoxically positive aspects of the world conflict should obviously not overshadow the grimmer pages in the annals of Swiss history. Far too many Swiss shared the racist sentiments and anti-Semitism of the Third Reich. Far too many Swiss collaborated economically with the Third Reich, far beyond what was needed to ensure the country's survival. Far too many Jews were turned back at borders even though the "boat was not full".⁴

Furthermore, mention should be made of the so-called "social peace" agreement of 1938 that is still implemented to this day. It introduced an almost systematic, centralized system of consultation between trade unions and employers' associations in order to fend off social conflicts.

It is politically noteworthy that 1943 marked the entry of the Social Democratic Party into the Federal Council. The main Swiss opposition party has thus never left the government ever since the Second World War, with the exception of a short interruption during the 1950s.

Memories of the 1930-1940s have, of course, faded with time. Yet a large majority of the population is still not convinced that such a positive history should be called into question.

⁴ *The Boat is full* (German: *Das Boot ist voll*) is a 1981 film directed by Markus Imhoof. Based on fact, *The Boat is Full* is set during World War II. It tells the story of a group of Jewish refugees who desperately attempt to escape to the safety of neutral Switzerland.

The Constructivist Approach: Contributions and Limitations

The analysis developed above is based on what is known in political science as the constructivist approach. It is helpful in trying to understand Switzerland's European policy (Gstöhl 2002). Constructivism has rehabilitated concepts such as identity, historic memory, the role of collective ideas and the importance of ideology.

Constructivists consciously attempt to differentiate themselves from "rationalist" concepts such as those held by economists, realists and believers in the theory of rational choice. They hold that these groups all err by analyzing actions in solely materialistic and utilitarian terms (Schwok 2005, p. 109).

Constructivists describe as "rationalist" all those theories that postulate that individuals' policies and interests are dictated by their material resources. In that way, they contest the analyses which claim that Switzerland's European policy is determined by economic interests, geo-strategic considerations, or by internal power struggles.

However, it should be underscored that constructivism does not consider the identities of political players to be "givens". On the contrary, these identities are constructed during social interaction and are constantly constructed and even reconstructed through complex processes.

Consequently, our observations about Swiss identity may evolve with the passage of generations, contacts with other peoples, learning experiences as well as social constructions desired by the players.

For example, a major identity split was noted between German-speaking and French-speaking Swiss during the December 1992 EEA referendum. This rift narrowed considerably during the September 2005 vote on the Bilateral Agreements I on Central and Eastern Europe. The linguistic division was, therefore, not "cast in stone".

Another interesting aspect of the constructivist approach is that it makes us reflect upon the language and rhetoric used to describe relations between Switzerland and the EU. It enables us to compare the numerous Federal Council Reports on European integration and analyze the different ways such notions as Swiss identity, EU contributions, the importance of neutrality and direct democracy are treated.

More specifically, the Swiss case is paradoxical because the Federal Council Reports reflect a rhetoric that was very supportive of the EU objectives of peace, security, prosperity and trade. The Swiss government had even announced that accession would be Switzerland's "strategic objective". But the fact is that Switzerland had never before

been caught up in this type of rhetoric by certain pro-enlargement constructivist theoreticians (Schimmelfennig 2001).

We should, thus, eschew a dogmatic conception of constructivism. We refuse to analyze Switzerland's European policy through the prism of this ontology alone. It is obvious that the concept of identify cannot by itself explain Swiss Euro-scepticism. Other more rationalist mindsets must also be factored in, such as geo-strategic considerations, distinctive features of the Swiss political system and the country's economic particularities.

Neutrality

Membership in the EU would not mean that Switzerland would have to abandon its policy of neutrality but the majority of Swiss citizens are less than convinced about this.

The facts, however, speak for themselves: neutrality would not be jeopardized in the event of accession because the European Union is not a military defence alliance like NATO. Nor does it oblige its member states to participate in military engagements.

All military decisions may be vetoed by a member state. No state is obliged to participate in an operation if it does not so desire. Four EU States (Austria, Finland, Ireland, and Sweden) are non-allied. On May 1, 2004 Cyprus and Malta joined their ranks and were exempted from any participation in EU defence.

The European Union has, it is true, developed activities beyond its own borders but Switzerland is already a participant. Swiss soldiers, for example, participated in the two EU civilian police missions in (EUPM) in Macedonia (Proxima), and in the *Aceh Monitoring Mission* (AMM) in Indonesia. They even served in the ALTHEA (EUFOR) military operation in Bosnia.

The main overseas mission with Swiss military participation, however, did not take place within the context of the European Union. Since August 1999 a Swiss company has been participating in peace-keeping operations in Kosovo (KFOR), under NATO auspices as provided for under UN Resolution 1244. SWISSCOY (for Swiss Company) comprises approximately 220 Swiss troops.

Despite Ireland's non-ratification, the Lisbon Treaty guides defence policy and provides an indication of future EU military policy. Contrary to common misconceptions, it does not anticipate the establishment of a genuine European defence system. There is, in fact, no clause stipulating automatic military cooperation in the event of an attack against an EU member. In concrete terms, if Latvia were to be attacked by Russian

armed forces, Austria would not be obliged to come to its aid militarily. The right to neutrality, in the original sense of the term, would not be contested.

Neutrality, however, might have been an issue because the Treaty introduced an ambiguously-worded *solidarity clause* (Art. 188R). It stipulates that "The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster. The Union shall mobilise all the instruments at its disposal, including the *military resources* made available by the Member States" (italics added).

It is the European Union that mobilizes all instruments at its disposal, including military ones and not the member states and no country would be obliged to participate militarily in the operation.

The treaty also contains a clause on *mutual defence* (Art. 28A-7) stating that if a member state is the victim of armed aggression, the other states shall give it aid and assistance by all the means in their power.

It also states, however, that this clause shall not prejudice the specific character of the defence policy of certain member states, for example the neutrality of self-proclaimed member states. This analysis shows that the right to neutrality is compatible with accession, even with the adoption of the Lisbon Treaty.

Despite the above-mentioned guarantees, a majority of the Swiss still continue to consider the issue of neutrality to be a disqualifying obstacle to membership.

Apprehension Felt by a Majority of the Swiss

Most Swiss people feel their policy of neutrality is inextricably linked to the success of their foreign policy over more than two centuries. Neutrality is not perceived as being an outdated concept that the major European powers no longer respect.

Here we get the true measure of the gap separating the overwhelming majority of the Swiss, who feel that their neutrality played a decisive role in safeguarding their independence, from the Belgians and the Dutch, who rejected neutrality in the aftermath of the Second World War because it had not prevented them from being invaded.

The Swiss did not embrace the revolutionary concept that had led, *inter alia*, Belgium, and the Netherlands to revisit their international relations in post-war Europe, by turning to certain "security communities" (Schwok 2005, p. 45-51). The Swiss people has long remained sceptical about the need to set up, through the EU, a system

that would channel Germany's imperialist tendencies while achieving a lasting reconciliation with France and maintaining an asymmetrical balance among the leading European powers.

Their attachment to neutrality remains deeply-rooted. All the opinion polls consistently show that for more than 40 years a huge majority of the Swiss, more than 92%, hold neutrality dear and are not ready to give it up (Haltiner 2007).

This attachment is above all an emotional one. Rare are the Swiss who are able to come up with a legal definition to neutrality. Rare also are those who are capable of differentiating between the "right to neutrality" and the "policy of neutrality". Nonetheless, the issue is a "sacred cow", a kind of taboo about which there is practically never any debate. The Swiss vote every year on a myriad of subjects. Yet never once have the requisite 100,000 voters dared to suggest that neutrality be abolished or even reconfigured.

That is why the Swiss only agreed to membership of the United Nations (UN) in March 2002, after the government promised that Swiss neutrality would never be called into question. It had also taken more than 60 years to see clearly that no-one was obliged to participate in UN operations. Adding insult to injury, only twelve cantons voted in favour of UN membership. If a mere 2700 people more from the Valais had actually voted "No" then Switzerland would not even have joined the UN.⁵

Neutrality does not, therefore, create a legal obstacle to EU membership, although this is a misconception that continues to maintain a hold on a large majority of Swiss citizens.

The Realist Approach: Contributions and Limits

Once again, a constructivist approach may help us to understand the attachment many Swiss feel to neutrality (Goetschel 1999, p. 116-117). This concept seems to correspond much more to a sense of identity than to a legal or geopolitical requirement. From a dialectical perspective, neutrality has become a tool enabling many Swiss citizens to differentiate themselves from others.

This approach is not incompatible with certain trends of realism and neo-realism that cross-cut Switzerland's European policy.

Realism theory is one of the dominant models used to study inter-state relations. According to this concept, the international system is intrinsically conflictual and war cannot be eradicated. International law is not comparable to domestic law since no authority is capable of

⁵ <http://www.admin.ch/ch/f/pore/va/20020303/index.html>.

imposing it on others and states cease to respect it when it conflicts with their vested interests.

Realism stresses the centrality of the state in the international system. The objective of a state is to defend its own interests, rather than morality. States will never relinquish the fundamental instruments of their sovereignty.

They can, of course, enter into modes of international cooperation, but only on the condition that they continue to control the rules of the game. Realism theory is sceptical about expecting international institutions to be able to change the basis of relations between states. The theory postulates that it is impossible to establish stable norms and that formal institutions cannot generate meaningful autonomy.

Consequently, the approach adopted by realism theory does not accept the premise that independent states could, in the long term, relinquish part of their sovereignty. Those who espouse this philosophy hold that countries could not agree to integrate a system whose internal dynamics are beyond their control.

Realism, therefore, offers a rather pertinent explanation of Swiss wariness *vis-à-vis* the UN, NATO and the EU. The realistic approach shares a number of characteristics with the scepticism of the majority of Swiss citizens regarding international institutions and international law in general.

Most Swiss people doubt that small states can be protected by the impartial rules of European law and supranational bodies which purport to defend them against other powers. The Swiss prefer to cling to their traditions of sovereignty and neutrality.

Yet there is an important distinction to be made here. Advocates of realism hold that political leaders can apply this theory to international relations. This is based on the idea that leaders do not have to take public opinion into account. In Switzerland's case, the contrary holds true, for in their efforts to safeguard Swiss security, political leaders, diplomats and sometimes even the military tend to have more faith in international institutions and international law than the general population.

The realist approach comes up against its limits in the case of a country like Switzerland where foreign policy is, to a large extent, dictated by considerations of domestic policy. The Swiss government, perhaps more than in any other European nation, is subject to domestic political pressure, first of all due to the relative weakness of its executive branch, and secondly, to the unusual constraints imposed on it because of the system of direct democracy that operates in Switzerland.

The Neorealist Approach: Contributions and Limits

Neorealism is seen as a more sophisticated version of realism. It takes up the realist premises of the anarchy of the international system and its absence of hierarchy. However, as the popularity of this theory was contemporaneous with the Cold War, it attempts to demonstrate that an order may emerge from this anarchy. This order does not come from national characteristics, international law or international institutions, but from structural factors, such as the potentially decisive balance of power.

That is why in Europe during the 1945-1990 period, structurally but informally, the Cold War proved to be the most decisive factor. Peace and cooperation efforts were founded as a reaction to it. Since it was impossible to wage war because of the threat of a world-wide nuclear holocaust, there were no armed conflicts between the Western European nations and they even managed to develop advanced forms of cooperation.

For neo-realists, European integration is basically perceived as the offspring of the bipolar system that emerged from the momentum of East-West rivalry. It has been a kind civilian branch of NATO. Thus, when the Cold War ended, the European Union could logically have disappeared. European states should have slid back into old rivalries and conflicts, as suggested by the title of the article written by the neorealist theoretician John Mearsheimer: "*Back to the Future*" (Mearsheimer 1990).

This American political scientist forecast that the EU would dissolve when the Soviet enemy disappeared and the Americans disengaged from Europe. He stated that Europe was at the eve of a crisis comparable to that triggered in Sarajevo in 1914 which led to the outbreak of the First World War.

Continuing this neo-realist perspective, certain proponents have argued that the small European states were more dependant than the larger ones upon the structure of international relations. They could not assert their autonomy to the same extent as a country like France (Hakovirta 1989, p. 75).

A small state would be more vulnerable to a structural upheaval, such as the end of the Cold War, than a large one. Such views have led the neo-realists to establish a causal link between this historic event and the EFTA countries' applications for membership to the EU. With the fall of communism, neutral states were able to free themselves of their inhibitions, their imposed neutrality, and even their neutralization (Arter 1993, p. 217).

One of the contributions of neo-realism was to underscore the importance of global developments in the international system. It is clear that the collapse of the Cold War system enhanced certain neutral countries' freedom of action. This was the case for Austria and Finland, two countries that had been neutralized by the East-West confrontation and had been denied the right to join the EU.

This notwithstanding, an overly neo-realistic approach, bringing everything back to the Cold War, may lead to misinterpretations of Swiss neutrality, which is endogenous. Switzerland had become neutral well before the advent of the Soviet Union and the rise of the threat of communism. It had not defined its neutrality principally along the lines of the East-West conflict. Switzerland could have joined the EU at any moment without jeopardizing European equilibrium and without incurring the Kremlin's wrath.

Direct Democracy

Direct democracy is one of the main obstacles to accession. Switzerland is the only country in the world where direct democracy is so deeply embedded in national institutions and the electorate can vote on almost any subject. This, moreover, holds true at any political level, be it at the level of the federal government, the canton, or the commune.

Thus, we will: (1) begin by refreshing our memory about Switzerland's direct democracy system; (2) look at the main difficulties that accession would face regarding direct democracy; (3) attempt to show why the importance of these obstacles may be relativized; and finally, (4) see what lessons the EU could draw from the Swiss case in order to develop its own public sphere and a greater feeling of identity and legitimacy of its own.

Switzerland's Direct Democracy: a Reminder

One distinctive feature of Swiss democracy is that the people maintain permanent control over their elected officials. Switzerland is a democracy that could be classified as semi-direct, in the sense that it includes elements of representative democracy (with the election of Members of Parliament as well as the cantonal executive) and of direct democracy.

In Switzerland the electorate has two instruments which allow it to take action on an act undertaken by the state: it may call for a referendum which may be optional or compulsory, and for a popular initiative, which is the right enjoyed by a fraction of the electorate to initiate a procedure for adoption, revision, or abrogation of a constitutional provision.

1. Popular or citizen's initiative: This entitles Swiss citizens to draft a text creating or amending a constitutional article. To do so they must collect 100,000 signatures (approximately 2.1% of all voters) on a petition proposing a vote on the issue at hand, within an 18-month period dating from official publication of the initiative by the Federal Chancellery. If the initiative is successful, a vote is organized which must obtain a double majority, that is, a majority of voters at the national level and a majority of the voters in at least 12 of the 23 cantons. This double-majority requirement is designed to ensure that the opinion of citizens of small cantons is taken into account.

2. Legislative or general initiative: This provision allows 100,000 citizens to request the Federal Assembly to enact a law on a given subject. Although the provision is enshrined in the Swiss Constitution, it has not yet entered into force. Consultations are currently being held on its enactment. This type of initiative will prevent items that should by right be enshrined in law from inclusion in the constitution.

3. Obligatory referendum: Any amendment to the Constitution, membership of supranational organisations and federal laws deemed urgent and exceeding a one-year duration must be submitted to a vote by the people and the cantons (double majority required).

4. Optional referendum: This empowers 50,000 citizens or 8 cantons to petition for a vote within a 100-day period dating from official publication of the initiative in the Federal Gazette (*la Feuille fédérale*).

These options are frequently adopted, therefore making Switzerland one of the countries where citizens vote the most often (on the average 4 to 5 times per year, generally with several proposals submitted to the voters at the same time).

Main Difficulties that Accession Would Encounter in Regard to Direct Democracy

By joining the European Union, Switzerland would be transferring certain legislative powers to the EU and pledging not to apply any others that clash with Community law.

In the EU laws are adopted by the Council of Ministers, often in codecision with the European Parliament. The parliaments of member states do not participate in the legislative process, nor is there any way referendums can be organized on a European Union-wide level.

Once an EU law is adopted, it must be implemented by the member states. There is a general precedence of EU law over national law.

One consequence of this precedence is that the scope of the application of the direct democracy system in Switzerland would be narrowed where the EU came to enact a specific and directly applicable law.

The Double Majority of the Electorate and the Cantons

Certain votes are organized according to a double-majority system, so as to ensure that smaller cantons will be represented and to take into account religious, cultural and linguistic diversity.

As there are small cantons with some ten thousand inhabitants and others whose population is close to one million, a system that only took into account the Swiss population as a whole would lead to a problem of minority representation.

To mitigate this problem, certain voting issues (popular initiatives and obligatory referendums) must be put to both the people and the cantons. In practice, the majority of Swiss voters as well as a majority of cantons must accept the proposal for it to be adopted. Thus, if the majority of the canton's population is favourable, the cantonal vote is considered won.

Articles 140 and 142 of the Swiss Constitution require a double-majority referendum vote before accession to a supranational community. This requirement was applied for the EEA vote. Accession to the EU would, therefore, require adoption not only by the simple majority of all voters across the Confederation but also by the majority of the voters in each of the 23 cantons.

As opponents are usually located in the relatively sparsely populated and peripheral cantons in German-speaking Switzerland, political scientists all agree that a majority of about 55% of the national population is needed to overcome the cantonal hurdle.

For example, in June 2005, participation in the Schengen/Dublin referendum was rejected by a majority of 12 cantons to 11, even though 54% of the electorate had voted for it. As this vote only required a simple majority to pass, there were no practical consequences to the failure to win a majority of the cantons. Nonetheless, this gives an indication of the additional hurdle presented by the double-majority. Under these conditions, Sweden, where only 52% of the electorate voted for accession, would not have been able to become a member of the EU.

The Consensus Method

Switzerland is a consensus democracy. Unlike a system which only adopts decisions based on the principle of a majority vote, the Swiss system favours consensus and amicable solutions arrived at by the various political parties. As a result there is no real opposition move-

ment in Switzerland. 'Sachpolitik' (issue-oriented politics) is the kind of politics practised in Switzerland as opposed to the kind where ideology or power struggles hold sway. This consensual system stems, on the one hand, from direct democracy, and on the other, from the presence of many linguistic, religious, and regional minorities.

Direct democracy, upon which the entire Swiss system is hinged, is a painstaking method that allows the parties to seek consensus or go even further. Upon this consensus, as the Dutch political scientist Arend Lijphart has suggested, one can build a new, democratic and efficient way of managing societies profoundly segmented by broad power-sharing.

The way the Federal Council is formed, according to a so-called "magic formula", illustrates the spirit of Swiss consensus. A set of unwritten rules determine the composition of the government, whose purpose is to designate an executive that will draw together the main political parties, the main linguistic communities, the main regions, the main religions as well as a significant number of women (see the "Annex - The Swiss Political System" for more details about the Swiss political system and its "magic formula").

Without this "magic formula" the Swiss politics would be paralyzed by lobbies of numerous kinds of minorities calling for more and more referendums in order to have their say in the system. That is the link between direct democracy and the wise balance struck by the Swiss political system. As a consequence, if direct democracy is weakened the likelihood of a greater number of major political crises increases.

In December 2007, the SPP leader, Mr. Christoph Blocher, was replaced by another SPP member, Ms. Eveline Widmer-Schlumpf. This change of leaders had the effect of throwing the future of Swiss consensus-based system into uncertainty. It is yet not clear whether the Swiss People's Party decision marks the end of Switzerland's consensus (see more details in the Annex).

Identity and Public Sphere

Direct democracy appears on a daily basis as the fundamental feature of national identity for a country that lacks a common language, culture or religion. It is an extraordinary integration tool for a variety of minorities: linguistic, political, social, environmental and sexual (Windisch 1995).

This system ensures a broad spectrum of participation and is all the more noteworthy as other traditional factors of national integration are becoming less important: the absence of a foreign enemy, loss of

prestige for the army, relativization of neutrality, and cultural splintering (globalization, predominance of English, etc.).

In actual fact, the numerous referendums held regularly in Switzerland constitute almost the only moment when the different components of the country can connect with one another. The popular votes help to create a Swiss public sphere. Furthermore, they play an integrating role by "winning over" the inevitable group of politically disenchanted.

After having enumerated the difficulties that accession would bring, we shall now show the factors that mitigate the threat EU accession presents for direct democracy.

Factors that Mitigate the Threat EU Accession Presents for Direct Democracy

The Instruments of Direct Democracy May Be Maintained

Formally speaking, accession to the EU does not require popular rights to be amended. The instruments of direct democracy may thus be maintained. However, the current scope of popular rights would be restricted in proportion to the powers that Switzerland would grant the EU. In other words, there would be a delegation of sovereignty once these powers were transferred to the EU.

Switzerland's transfer of powers to the European Union would be comparable to those of other countries that have joined the EU. The "democratic deficit" would be neither greater than lesser than in any other European state.

The transfer of powers, however, only concerns a minority of cases. The instruments of referendum and of popular initiatives could continue to be used in all domains not covered by Community law.

Studies show that only between 10% and 15% of the issues submitted to a federal vote would have had to be amended or forbidden if Switzerland joined the EU (Federal Council 1999, p. 329). Thus, between 85% and 90% of votes on a federal level would be maintained.

'Satellization'

Direct democracy has already been partially removed of its substance because Switzerland is obliged to transpose EU law into its own legislation. This process is rather ponderously called "the autonomous adaptation of law" (Federal Council 2006, p. 7). This is a euphemism because this so-called voluntary adaptation is really anything but. In fact, it is a form of 'satellization', under which Switzerland has become *de facto*, if not *de jure* satellite of the EU (Schwok 1988).

Switzerland has increasingly duplicated the texts of EU ordinances and transposed them into its own legislation as this is the only way to avoid the discrimination and economic drawbacks that Switzerland might be subject to as a result of derogation provisions in Community law. The "Europeanization" of Swiss legislation has grown greatly over the past few years and Switzerland's political sovereignty has been eroded.

By joining the EU and participating in the drafting of European legal texts and voting on them in the European Council and the European Parliament, Switzerland would recover part of its sovereignty.

Possibility of a Referendum on Implementation of Community Directives

Switzerland could also refine its popular rights. For example, when a Community directive is implemented domestically, a referendum could be launched against its provisions.

We should not forget that it is the system of directives that forms the base of most European law. Directives, however, only set a framework for action. The various member states have a great deal of leeway in defining their own priorities when implementing these texts.

This is why the referendum system would still be feasible when adopting laws related to the implementation of directives. There is, of course, a risk that decisions adopted by the electorate could run counter to Community law, but this risk is negligible. The Federal Council argues that it would therefore be disproportionate for the Federal Assembly to be empowered to declare as null and void any referendum on adapting Swiss law to Community law (Federal Council 2006, p. 109).

Similarly, it would always be possible to launch initiatives concerning the EU's areas of competence. If decisions voted on by the electorate were to contradict Community law, solutions would have to be negotiated with the EU.

The Federal Council feels that Switzerland should try to bargain with the EU, to run the risk of being brought before the European Court of Justice and ultimately, to inform people of the dangers of maintaining a position that is so contrary to Community law.

The Federal Council is, nonetheless, aware that in extreme cases, like that of the abolition of VAT or restricting the free establishment of persons, Switzerland would be forced to leave the EU.

Countervailing Measures for the Loss of Direct Democracy

Countervailing measures could be considered for any loss in direct democracy stemming from membership. For example, a popular initiative could be launched for a referendum to be called if a sufficient number of people so requested. If the outcome were positive, Swiss ministers sitting on the Council would be bound by the text of the initiative.

If the wording were precise and applicable to Federal Councillors without any changes, it would be called *the direct European initiative*.

On the other hand, if the wording of the initiative were vague, requiring the Federal Assembly to draft a text binding Swiss ministers, it would then be known as a *European motion*.

Lessons the EU Could Draw from the Swiss Case in Order to Develop its Own Public Sphere Through Legislative Referendums

By examining the case of Switzerland we have seen that direct democracy helps develop a public sphere for diverse populations. The EU could follow this example to develop a greater feeling of identity and legitimacy of its own.

Based on our analysis of the advantages and disadvantages of direct democracy, we suggest an optional legislative referendum be promoted on a European level. We find this preferable to a popular initiative or obligatory referendum. It is more in keeping with the hybrid nature of EU institutions, which characteristically lack a true European *demos*.

Amongst all the instruments of direct democracy, we rank the optional legislative referendum as top of the list. In concrete terms, this means that a popular consultation would be organized if a certain number of citizens, let's say 5 million, asked for it.⁶ It would be applicable solely to Community legislation already adopted by the Council and the European Parliament. If 50% of the voters turned down a new law it would not enter into force.

One objection is that it is possible to organize a referendum in Switzerland as it is a small country but that this is not practical in bigger entities. Some maintain that the size of the EU would prevent it from organizing a real debate amongst all citizens. Moreover, organizing large segments of the population to vote frequently would pose seemingly

⁶ We could also envisage, like Astrid Epiney, that a legislative referendum would only be organized upon the request of a certain number of parliamentarians or states. Yet we fear this might create a situation of continuous blackmail within the Council and the European Parliament (Epiney 1997).

insoluble problems. Without denying the validity of these objections as the problem of size is a real one, it seems to us, nevertheless, that this should not be seen as an insurmountable obstacle to direct democracy. Italy has more than 60 million inhabitants and this system works there. Furthermore, the development of inter-European public transport and new electronic media has given a new fillip to communications. Additionally, generalizing postal voting and introducing e-voting could remedy, in part, the difficulties engendered by the large number of voters (financial savings through reducing paper costs and limiting staff size at polling stations, greater participation in elections) (Trechsel & Mendez 2004).

Advantages and Shortcomings of Constitutional Referendums and Popular Initiatives

The idea of developing direct democracy at EU level is not a new one. It has been promoted by a number of activists and academics. They, however, propose solutions involving constitutional referendums and popular initiatives, whereas we favour an optional legislative referendum.

Supporters of the popular initiative are purists who wish to set up a true European *demos*.⁷ They are often also federalists who wish to eliminate the unique nature of the Unidentified Political Object (to coin a phrase) that the EU represents. They also sometimes claim to be followers of Jürgen Habermas (Habermas 1971) and of his concept of 'constitutional patriotism', in which he advocated referendums on constitutional issues alone.⁸

Even if we understand the arguments put forward by supporters of the popular initiative and their reticence regarding legislative referendums, we nonetheless maintain that the advantages of the latter are self-evident and overwhelmingly convincing. To begin with, the legislative referendum's main advantage is that it respects the *sui generis* nature of the EU's institutional architecture. Contrary to the constitutional initiative, the legislative referendum does not artificially create a European *demos* (Weiler 1999). This *demos* does not exist and it is anti-democratic to wish it to be imposed by stealth.

The unfinished (from a purely federalist viewpoint) nature of the European construction should also be respected. The Council's importance in decision-making is an undeniable fact. Although this is not the case in archetypical federal states like the United States and Switzerland

⁷ This is particularly the case in The Initiative & Referendum Institute Europe <http://www.iri-europe.org/>.

⁸ See Jean-Marc Ferry's French-speaking world in *La question de l'État Européen*.

it should be factored in. Lastly, we believe it is crucial to fully include the European Parliament in the decision-making process. Representative democracy is a pre-requisite for European legislation to be designed by competent and well-informed elected representatives.

The argument that voters should only be consulted on fundamental issues at constitutional level is not satisfactory either. Were this the case, overly abstract questions would be raised by jurists and constitutionalists, addressed to people who, on the contrary, prefer to explore concrete economic, environmental, societal and social matters.

Furthermore, a negative vote on a constitutional matter would generate a series of crises, paralysis and possibly a debate characterized by more heat than light, whereas a negative vote on legislation adopted by the Council and the Parliament would merely elicit token grumbling.

In this manner, by introducing a legislative referendum the European *demos* would be taken into account and we would move along the path towards a more democratic public sphere, one which included its citizens in the decision-making process. By dint of debate on concrete topics, citizens will find it natural to place political confrontation at a European level.

The European public sphere will not result from abstract discussion on the finality of European integration, on its constitution and its institutions. It will result from an on-going debate on questions of general interest. Regardless of the importance and the level of the subject under discussion, regardless of the rationality of the debates and the occasionally disconcerting results of "popular wisdom", at the end of the day, it is the deliberation in and of itself (Neyer 2006) that creates a feeling of belonging.

Federalism

Federalism is one of the generally cited obstacles on the path to accession. Unfortunately, this term conveys a number of very different concepts, to such an extent that, as a general rule, discussion about "federalism" is often confusing and often segues into people talking at cross-purposes.

For example, on the one hand, the pro-sovereignty right opposes accession to the European Union on the pretext that it jeopardizes Swiss federalism. On the other hand, the pro-accession forces, like the New Swiss European Movement, defend the banner of a federalist ideal.

So how is it that two camps, situated at opposing poles of the debate, can base their stances on the same concept of 'federalism', yet arrive at radically opposed political conclusions?

This confusion stems from two different problems: firstly, the ambiguity of the word "federalism" and secondly, Swiss ethnocentrism. Once we have clarified these two concepts we can examine the more pragmatic question of the effects of accession on Swiss cantons.

In the event of accession to the EU, it would not be necessary to modify fundamentally the federal structure of Switzerland. Member states maintain full autonomy in organizing their state system and EU membership would have fewer consequences on the powers of the cantons than on those of the Swiss Confederation.

"Federalism" Is an Ambiguous Term

The ambiguity of even the term "federalism" itself is a universal problem. It is not specifically Swiss. It is impossible to come up with one single coherent theory of federalism because the term is too conceptually elastic. The term "federal" is difficult to define. It is a polysemous concept; depending on the context it may take on different meanings, at times even contradictory ones.

Three trends can be identified: centralism, de-centralism and equilibrium. Under centralism, Europe would become too federal if more state powers were to be transferred to Brussels. That is why UK Prime Minister John Major sought the deletion of the word federalism from the Maastricht Treaty; he feared centralization of the EU.

According to the second interpretation, Europe would become more federal if its system of governance drew closer to that of Switzerland or Germany. In such a case, the European Commission would be granted powers that were relatively similar to those of the Swiss Federal Council. The Council of Ministers would correspond to the German *Bundesrat*. Lastly, the European Parliament would obtain the powers and responsibilities of a lower chamber (*Conseil national, Bundestag*).

According to the third trend, Europe would become more federal if true equilibrium were struck between "the centre", the member states and the regions. This is the position that has been officially defended by the European Commission. This type of federalism seeks to reconcile the interests of several different states, peoples, nations, and communities, on a European level, so they could live together yet separately, at one and the same time. Federalism should be understood as a difficult compromise struck between, on the one hand, pressure for unity, where the different entities are subjected to homogenizing pressure from the "centre" and on the other, the respective sovereignty of the different states, peoples, nations and communities.

An Ethnocentric Vision

The confusion surrounding the notion of "federalism" also arises from a certain Swiss ethnocentrism. This means that there is a tendency to apprehend the reality of the European Union through the distorting prism of the Swiss experience.

In other words, the European Union is an "unidentified political object" which is not comparable to a federal state even though it may share some of its traits. As a result, by trying too hard to seek comparisons with the Swiss model we end up, at times, misconstruing the facts.

In this regard, to claim that Switzerland is less centralized than the EU (Steinberg 1996),⁹ is to go badly astray. In fact, Switzerland is far more centralized. First of all, although it has retained the name of "Swiss Confederation", it has not functioned as a true Confederation since 1874. This obviously creates confusion. In fact, federal laws are adopted without the cantonal governments being able to vote on them. However, in the EU, the Council of Ministers of the different member states constitutes the main legislative body.

Swiss laws are directly applicable in the cantons without any need for change whereas in the EU, directives may require an amendment. Bern has direct sources of revenue in the form of customs duties, VAT and direct federal income taxes. Brussels, on the other hand, can only rely on the revenue allocated to it by the member states, which, furthermore, have the right of veto for any increase in the overall total.

Switzerland has one foreign policy, one defence policy and one immigration policy. Its policies for transport and energy are coordinated broadly on the federal level. The same holds true for domestic policy and justice. These are but a few examples of the greater centralization of Switzerland compared to the EU.

The misconception may come from the fact that Switzerland, on the other hand, is much less centralized than EU member states like France or the Netherlands. Swiss cantons enjoy great autonomy regarding direct taxation, the police, public works, economic policy, social policy, health, education and culture. It is clear that such examples of autonomy would be unimaginable in France.

⁹ "The European Union cannot survive in its present dirigiste, centralized form (...) The European Union will be forced by its own inner logic to become more 'Swiss', more federal (...)". Steinberg 1996, p. xiii.

The Federalist Approach: Contributions and Limitations

The Swiss exception poses a conceptual problem to the federalist theory of European integration (Schwok 2005, p. 22). Generally speaking, this concept postulates that a federalist rationale should take hold in Europe because it is the best option. It should prevail because any other form of governance would be less rational and less favourable to peace (Sidjanski 2000).

Nation states constitute anachronistic forms of governance and as European international organisations are ineffective, we must now forge new paths. This is why, in reference to the federalist approach, a kind of "invisible hand" is logically leading us to an increasingly federal type of European integration.

More specifically, the federalist approach aims at a constitutional structure for the European Union that is rather close to that of the United States, Germany and Switzerland.

Switzerland is often presented as a model since it is founded on a federal structure that works well. When compared with the rest of the world it stands out as a role model for the equilibrium it has achieved among the different entities of which it is constituted. Nevertheless, it persists in its refusal to accede to the European Union. The federalist country *par excellence* continues to be unmoved by the federalist virtues of the European construction. This is enough to seriously frustrate many an expert.

Consequences of Accession for Cantons

In fact, when mention is made of the obstacle of "federalism" in discussion on Swiss accession to the EU, what comes to mind are the problems this would pose for the cantons.

Switzerland is, we should recall, composed of 26 cantons and half cantons. The cantons of Appenzell Inner Rhodes, Appenzell Outer Rhodes, Basel-Country, Basel-City, Nidwald and Obwald are called half cantons as they only have one representative in the Council of States and only half a vote in determining the majority of the cantons during federal elections. That is the only difference with the other cantons. The population in the cantons varies from 15,300 to 1,284,000 inhabitants (2006).

The cantons are sovereign under their respective constitutions. The distribution of powers between the Confederation and the cantons is enshrined in the Federal Constitution, which defines the limits of their sovereignty. Certain powers are explicitly attributed to the cantons or to

the Confederation. Whatever is not explicitly delegated to the Confederation falls under the competence of the cantons.

Each canton has its own constitution, its own parliament and its own government. It levies taxes and adopts laws for all areas that do not fall under the jurisdiction of the Confederation. Thus, a certain number of matters are managed at a cantonal level: *inter alia*, education (with the exception of federal universities), hospital management (except communal and private hospitals), road construction and maintenance (except motorways and national roads) and the police (as opposed to the army which is a federal matter), other social contributions or income tax inspection.

The strong cantonal system is often perceived to be a hindrance to European integration. Switzerland is split up into 26 governments and 26 parliaments, all eager to preserve their prerogatives and loath to relinquish any of them to Bern or to Brussels. This has led to a strong tendency to parcel out and distribute political power. The central government, even more so than the European Union, is often perceived to be bureaucratic and distant.

The member states of the EU, however, have kept their autonomy regarding their internal organisation. The fact that they are members of the EU does not mean that all member states are organised in the same way. Federal or decentralised states, like Germany, Austria, the United Kingdom and Spain are able to be members of the EU. Belgium has even become a less centralised state than Switzerland. In fact, in many areas, the different regions have a right of veto in relation to decisions adopted on a federal level.

Within the EU, it is the federal states themselves which are responsible for defining how the interests of sub-state bodies are to be defended. That is why if Switzerland were to join the EU it would have to decide itself what measures would have to be taken to protect the interests of the cantons in the various EU bodies. The examples of Germany, Austria, and Belgium show that participation of the cantons in Federal Council decisions would have to be strengthened during its negotiations with EU institutions.

When Switzerland's position is hammered out before and during negotiations with the EU, procedures would have to be adopted to ensure that cantonal participation is commensurate with the cantons' powers within the Swiss federal state.

EU membership would affect, with varying degrees of overlap, the following areas of cantonal jurisdiction (although this list is not exhaustive): education and culture, public health and infrastructure,

administration of justice, asylum, police and justice cooperation, professional degrees, public procurement and town-planning law.

According to an experts' report commissioned by the Conference of Cantonal Governments, EU membership would allow the cantons greater participation than the current Bilateral Agreements (Conference of the Cantons, 2006).

Under the bilateral approach, negotiations are consistently limited to specific sectors. This leads to legal uncertainty and may engender difficulties when there is overlap with Community *acquis*. This fuzzy area may cause Community law to be extended to domains that are not included in the agreements.

On the other hand, accession offers the advantage of allowing direct participation prior to and during the EU's own legislative process, even if it also reinforces automatic inclusion of Community law.

Switzerland would especially benefit from full-fledged participation in the drafting stages of European legal instruments, within the framework of democratic procedures which, whatever their shortcomings, exist at the EU level.

Accession would be more advantageous than the bilateral option in the following areas: home security, migration, health, professional training and research.

Economic Obstacles

The last major hurdle to accession is an economic one. Once again, in order to assess whether this represents a real problem, we should differentiate between people's perceptions, and the rhetoric coming from employers' associations. The fact is that both are negative. Furthermore, it is clear that the budgetary cost for accession is much higher than that for the current bilateral path.

Yet on the other hand, mention should be made of the more positive analyses made by certain economists. At this point there is no proof that accession would, in general, have negative effects on the Swiss economy. Nor can we assert, however, that it would be beneficial.¹⁰ What is certain is that it would entail major internal adjustments.

¹⁰ The last comprehensive economic studies were published in 1999: Straubhaar Th., *Integration und Arbeitsmarkt - Auswirkungen einer Annäherung der Schweiz an die Europäische Union*, Hamburg: Universität der Bundeswehr; Bärlocher J., Schips B., Stalder P., *Makroökonomische Auswirkungen eines EU-Beitrittes der Schweiz*, Zurich: KOF/ETH; Vaterlaus S. et Himmel M., Koellreuter C., Simmons-Sürer B., *Alternative EU-Integrationszenarien der Schweiz*, Basel: BAK Konjunkturforschung; Müller T. et Grether J.-M., *Effets à long terme d'une*

People's Perceptions

In all public opinion polls economic issues are seen to constitute an obstacle to accession. More precisely, most Swiss people believe they are the most affluent people in Europe and fear a erosion of their relative economic advantage. It is, above all, the underprivileged members of the population who fear the 'race to the bottom' that, in their view, EU accession would bring about.

Yet, in actual fact, the EEA rejection coincided with a long period of economic stagnation. According to a study conducted in the 1990s under the auspices of *Avenir suisse*, a think-tank with ties to employers' groups, the average growth rate of the Swiss gross domestic product (GDP) at the time was 1-2% below that of other European countries (Wagschal *et al.* 2003).

International Monetary Fund (IMF) statistics reflect the effect on income per inhabitant. In 2008, the Swiss GDP *per capita* purchasing power parity (PPP)¹¹ was only slightly higher than that of Belgium and Finland.¹² It is lower than that of Switzerland's neighbours in some German Länder, such as Bavaria or Baden-Wurtemberg.

The Most Anti-EU-membership Employers' Associations in Europe

One of the peculiarities of the Swiss case can be observed in the attitude of its employers' groups. Since the 1950s, these groups have argued that Switzerland has more to lose than to gain by joining the EU. It would, therefore, be wiser to stay out. So argues the employers' group, which is the most hostile to accession. Whereas in other countries the financial sector is usually part of the pro-Europe *avant-garde*, in Switzerland they always spearhead resistance to EU membership.

It is true that they have played an invaluable role in averting Switzerland's economic and political marginalisation in Europe. Swiss employers have supported other forms of integration into the EU system, like the 1973 Free Trade Agreement and the Bilateral Agreements and

intégration de la Suisse à l'Europe, Genève: Laboratoire d'économie appliquée, Université de Genève; Müller A. et Renger Van Nieukoop H., *EU-Integration der Schweiz: Wirtschaftliche Auswirkungen*, Berne: ECOPLAN Wirtschafts- und Umweltstudien.

¹¹ It should be recalled that purchasing power parity (PPP) is a method which enables us to calculate how many goods and services can be purchased with one currency in comparison to another. This helps us determine price differences for goods across countries. It is generally calculated in American dollars.

¹² <http://imf.org/external/pubs/ft/weo/2008/01/data/>.

have been favourable overall, as we have seen, to the European Economic Area.

It is also true, however, that the dogged opposition by employers' associations, even by those that are extremely pro-free trade, has been a force to be reckoned with. It is not only the most protectionist sectors which oppose accession. In this case, it boils down to a kind of resistance that can be seen elsewhere as well. Yet we see even the most ardent advocates from the economic sector balk at the idea of accession to the EU.

Classically, opposition to accession first develops in Swiss protectionist *milieux* that fear their privileges will be jeopardized. This is the case for certain over-protected, cartel-prone, subsidised sectors such as agriculture, where farmers benefit from the most generous support in the whole of Europe. They bridle at accession to the Common Agricultural Policy (CAP), adoption of Community competition law, and the removal of non-tariff barriers.

But the truly original aspect of the Swiss case, in relation to countries such as Luxembourg or Ireland, is that opposition also comes from the most globalised sectors. This undeniable distinctive feature is due to the fact that a broad swathe of the international sector profits from the differences in Swiss legislation from that of the EU. Generally speaking, multinationals, banks and insurance companies have turned Switzerland into a haven for "special" laws and fear a spiral of interventionist Community regulations that could jeopardize them.

Bankers are convinced that banking confidentiality would be endangered in the event of accession. These same bankers have managed to maintain it and legalise it in the past: we have seen how it was legitimized by the Bilateral Agreements II. They know that countries such as Austria, Belgium and Luxembourg are equally striving to maintain banking secrecy. Yet they worry that once they start negotiations for membership they will have to make concessions on this point. This is far from being a foregone conclusion since they might enjoy the support of those EU countries that share their concerns.

How are we to explain the attitude maintained by employers? If we confine ourselves to picking over the arguments that economic groups themselves put forward, we may well find them rational and fundamentally sincere: increases in VAT, adoption of the euro, higher customs duties, etc.

Nevertheless, upon careful scrutiny, certain flaws in the argument can be seen. For example, increasing VAT does, indeed, pose a number of problems but these involve adaptation requirements. If indirect taxes go up, it would be possible to reduce direct taxes. The transaction could

then lead to a zero-sum situation: we will return to this later. Furthermore, this is the very taxation philosophy Swiss employers' associations have advocated for years.

From that point on, the hypothesis of a political science-based explanation, referring to the notion of "power", comes to the fore. Swiss management is against membership because it would lose some of its political clout. In Switzerland, it enjoys a unique position and wields much more influence than in other countries. This is due to the weakness of the state counterbalancing power: Switzerland is run by a *militia system* of parliament, controlled in the main by deputies with close ties to the financial sector. *Militia system* means that Switzerland has developed a mechanism under which citizens take on public office which they perform alongside their normal jobs. As a result, members of the federal parliament do not give up their former jobs when they take their seats.

Another source of management power stems from direct democracy where results greatly depend on the amounts invested in referendum campaigns. Yet another comes from the weakness of the central state in relation to the cantons. All these characteristics of the Swiss political system may well wither away with accession.

The Center-right Is Less in Favour of Accession than the Centre-left

Another feature of the Swiss system is that centre-right parties are less pro-accession than those of the centre-left. This is quite rare in Europe. The Christian Democratic Party and the Free Democratic Party are no longer favourable to membership. They have been, at different moments in time and do not rule out accession entirely. Yet, essentially, they do not believe the time is ripe to go in this direction.

The pro-membership advocates are found in the centre-left, in the Social Democratic Party, the Greens and trade unions. However, although their arguments are no doubt rational and sincere, they are not the full story when it comes to explaining their readiness to join the European Union.

For example, the Social Democratic Party affirms that Switzerland will become more socially-oriented with membership (PS 2006). Thus, certain EU regulations against the dismissal of workers, limits to working hours and employee contributions go beyond current Swiss labour law (Rennwald 2005). But these are relatively marginal points. In and of themselves, these demands, although clearly legitimate, do not justify accession.

Once again, through a political science-based approach, the question should be raised as to whether the issue of EU membership is not, in part, being exploited by the centre-left for reasons of internal politics. The Social Democratic Party, the Greens, and the trade unions are trying to compensate for their weakness in Switzerland by using the prospect of membership to shake up defenders of the *status quo*.

What Would Switzerland's EU Budget Contribution Amount to?

In any discussion about economic matters the question inevitably arises about what Switzerland's contribution to the EU budget would be. Opponents to membership are always keen to emphasise this point. Switzerland's annual EU membership cost would come to CHF 3.4 billion (€ 2.25 billion) (Federal Council 2006, p. 119).

Projected membership costs thus reveal how much more advantageous the bilateral path appears in comparison, costed at CHF 472 million francs (€ 313 million) per year.

Obviously, the financial consequences of Swiss accession to the EU can only be calculated on the basis of certain hypotheses. They will depend on the number of EU member states at the time of accession, estimates of their GDP and that of Switzerland, the value of the euro in relation to the Swiss franc and on Swiss customs revenues at accession.

Yet, as a member state of the EU, Switzerland would definitely have to contribute to the Community budget, as well as certain extra-budgetary programmes. In exchange, it would receive subsidies tied to implementation of EU programmes in a variety of areas, such as agriculture or professional training.

The European Union finances its expenditures through its own resources. These are fiscal revenues allocated on a permanent basis, to which the EU remains entitled independently of any subsequent decision by national authorities.

The Communities own resources include agricultural duties, customs duties on industrial products, part of the VAT and a "fourth resource", also known as a "complementary resource", calculated on the basis of the total GNP of all the member states.

VAT

Value Added Tax is one of the prominent reasons put forward for Switzerland not joining the EU. Switzerland would have to adopt the EU minimum rate in order to avoid triggering competition distortions.

Thus, the standard Swiss rate of 7.6% might almost double, rising to 15% and the reduced rate of 2.4% would rise to 5%.

This prospect is viewed with a jaundiced eye by Swiss management. They argue that a 1% increase could bring a 0.6% price inflation. Thus, a 7.4% increase in VAT would bring about a price rise of 4.4%.

Another issue is that the federal budget would have an extra CHF 18 billion coming in from additional tax revenues, raising the issue of how these new resources would be used.

The simplest solution would be to reduce direct federal taxes proportionately. That was what Swiss management had maintained for many years, hoping in this way to reduce corporate and income taxes. However, employers changed their viewpoints as they feared that the drop in direct taxes would not match the amount of the hike in indirect taxes.

The Social Democratic Party rejected the idea of lowering direct federal taxes, deeming it to be an inappropriate compensatory measure, as poorer households would be the most hard-hit by a VAT hike. They would not benefit from the drop or elimination in direct federal taxes, given that they pay either little or no income tax at present.

The Social Democratic Party would prefer to use part of this windfall to support social institutions. They would like the budget surplus to be channelled back to the people as a lump sum paid out to individuals. Support would mainly go to cover compulsory health insurance premiums.

Let's take a quick look at the figures. If CHF 11.4 billion in net additional revenue remained available for reimbursement, the VAT increase could be compensated for to the tune of CHF 1,600 francs per person, which comes to CHF 6,400 francs for a family composed of four people.

This reasoning, however, is contested by those who fear the negative effects of introducing free basic health insurance. Their concern is that health costs, rising at the rate of 5-6% *per annum*, will skyrocket. They expect the VAT to rise regularly. They are worried that the insured will not have any incentives to behave responsibly if they no longer have to chip in financially and if the state covers all health costs.

Unfortunately, when discussing VAT, one tends to lose sight of the final objective, which is to harmonise Swiss VAT with that of the EU. Let's remember that the goal is to eliminate onerous administrative procedures, do away with Swiss protectionism and stimulate trade, and that calculations have shown that this boost would bring about 0.85% growth in GNP (Minsch & Moser 2006).

Agricultural Policy: the Federal Council's U-turn

For almost 50 years all the political and economic *milieux* in Switzerland stated that membership was out of the question because it would put an end to Swiss agriculture. No-one dared contradict this prediction.

For quite a while, the aim of preserving a minimal level of agricultural self-sufficiency was linked to national defence and to the myth of the *Wahlen Plan* during the Second World War.¹³ Agriculture became a sort of sacred cow in its own right.

In the spring of 2006, however, a 180-degree about-turn took place. The Federal Council launched the idea of an agricultural free-trade area with the EU. This implied dropping any type of agricultural protectionism *vis-à-vis* European countries.

According to initial estimates, a free-trade area would allow the Swiss GDP to rise by 0.5%, thus swelling state coffers by more than CHF 2 billion (€ 1.32 billion) per year.

Overall, the vast majority of economic associations, the food industry, retailers and consumers are favourable to this prospect and even the largest associations of farm producers do not reject the idea. On the other hand, the SPP and CINS are against it.

This turnaround is due to four factors.

Firstly, Swiss agriculture finds itself at an impasse being, along with Norway, as we have already seen, the most highly subsidised in the world without being the most productive.¹⁴ Price support to farmers in terms of percentage of gross agricultural revenue amounts to approximately 70% in Switzerland as compared to 35% within the EU.

Secondly, a great deal of lobbying is taking place at the World Trade Organisation (WTO) to liberalize agricultural markets and end subsidies.

Thirdly, the success of the Bilateral Agreements on the liberalisation of certain agricultural products and processed agricultural products has cleared the way for more relaxed discussion.

Fourthly, Austria's impressive example of raising cheese exports shows that the future will depend on finding niches on the European market.

¹³ In 1939 the Swiss civil servant Friedrich Traugott Wahlen planned the increase of agricultural production: every green area that seemed to be usable was cultivated according to the "Wahlen Plan" with potatoes, vegetables and bread grain. The cultivated area almost tripled up to the end of Second World War.

¹⁴ <http://www.oecd.org/switzerland>.

We would like to underscore the fact that EU membership would go further than simply creating an agricultural free-trade area. It would not only lead to the free movement of farm products but along with it, the adoption of Community customs legislation and the entire, the Common Agricultural Policy (CAP).

In other terms, the group of member states as a whole would determine the amounts of agricultural aid and the type of production to be imposed on Swiss farmers, and the European Commission would oversee Switzerland's implementation of Community agricultural laws. Would this kind of free-trade area make Switzerland's accession to the EU easier to achieve or less so?

On the one hand, it would break the protectionist taboo as it would allow all agricultural products to be imported into Switzerland free of control. This would remove a major hurdle along the path to membership.

Yet, on the other hand, this free-trade area could entitle the Confederation (subject to negotiations) to grant even higher subsidies to farmers than those applicable under EU membership. Under these conditions farmers would not wish to support accession for, in comparative terms, they would be losing out.

Consequently, participation in an agricultural free-trade area does not necessarily constitute a step towards membership. Everything will depend on other constraints that might be placed on Swiss farmers.

The Euro Instead of the Swiss Franc

Unless Switzerland were to obtain a derogation during accession negotiations, the Swiss franc would disappear and be replaced by the euro.

There would be a number of consequences if the euro were adopted. First of all, Swiss monetary policy would be set by the European Central Bank (ECB). Short-term interest rates would be the same as in the rest of the euro zone. The Swiss National Bank would as a result lose its ability to react to financial turbulence affecting Switzerland.

Furthermore, concerning long-term assets, the gap between nominal interest rates would become much narrower, or even disappear. The loss of the "bonus" linked to interest rates could bring about negative repercussions on investment.

For example, house builders would have to borrow capital at higher rates than is now the case, and this could dissuade them from building or prompt them to raise sale or rental prices. This is why EU opponents claim that membership would force rental prices up.

We should note, however, that mortgage rates in Luxembourg, a country in the euro zone, in 2008 were globally equivalent to those on offer in Switzerland, that is, about 3.25% for adjustable rate mortgages.¹⁵

The loss of interest rate advantages and the end of the Swiss franc (one of the five most important currencies in the world) would also have negative repercussions on the appeal of Swiss financial centres.

Nevertheless, by adopting the euro, currency fluctuations and problems linked to excessive volatility against the euro would completely disappear.

Another advantage is that consumers would benefit from economies of scale and from the elimination of exchange rate fees.

The end of monetary autonomy would also be partially compensated for by the possibility of participating in decisions on monetary policy in the Eurozone.

Theoretical Economic Approaches: Contributions and Limitations

The case of Switzerland is a challenge for certain economic and politico-economic theories. These theories postulate that there is an almost inevitable logic behind joining the EU. As a consequence, a state like Switzerland, whose characteristics so closely dovetail with those of a "normal" European country, are at the source of a sort of enigma.

The main economic theories on integration have identified three leading reasons supporting EU membership as beneficial to Switzerland. These are that membership would stimulate greater competition, facilitate economies of scale and provide opportunities to specialise in domains where the state enjoys comparative advantages.

Certain economic theories offer additional reasons explaining why *small* European states would be well advised to join the EU. They are more dependent than large countries on international markets. They are thus more prone to benefit from the boons that free trade offer within the context of European integration (Krugman 1988).

Richard Baldwin had predicted a "domino effect" whereby any enlargement of the EU would naturally set off other enlargements from neighbouring states (Baldwin 1993). His model states that EU enlargement harms non-member exporters, goading them to lobby for their home country's accession. He shows that this is all the more so for

¹⁵ See for instance: Fortis bank, www.fortisbanque.lu.

countries whose exporters can only rely on a small domestic market (Baldwin 1993). This clearly holds true for Switzerland.

In Walter Mattli's view, countries recording GDP growth below that of the EU seek to join it. This was so for EFTA countries in the early 1990s and that is why most wished to join the EU (Mattli 1999, p. 82, 89). Studies conducted on Austria, Sweden, and Finland arrived at the same conclusions. It is the weak performance of these states, in comparison to those of the EU, that prodded them into joining (Luif 1991; Koch 1994; Ingebritsen 1998). Once again, flying in the face of this orthodoxy, the Swiss case does not conform to this theory.

The Neofunctionalist Approach: Contributions and Limits

The Swiss case also flies in the face of neo-functional theory (Schwok 2005, p. 53). This approach is generally considered to be the theory of European integration *par excellence*. Formulated at the end of the 1950s, principally by Ernst Haas, this theory gives a preponderant role to new political, economic and social forces. This means multinational companies, trade unions and lobbies. These new forces are obliged to continuously demand more economic integration so as to maintain their edge. The related spill-over shows, in the line of development embraced by the European Union, effects that go beyond governments' initial expectations. For example, the European Coal and Steel Community (ECSC) was originally launched for geo-strategic reasons linked to the German question. Yet once the European "machine" was set in motion at the beginning of the 1950s, it "slipped the leash" of its creators. It is a partially internal rationale that keeps its momentum going.

Similarly, the effect of the ECSC was to rationalise the exploitation and trade of coal, thus stimulating competition with other sources of energy, and continuing the momentum of spill-over. That is how other forms of economic integration were also created.

According to the neo-functional approach, it is this process of spillover that led to the creation of the European Atomic Energy Community (EURATOM), more than any state motivations. Considering its geographic proximity, Switzerland should not have been able to withstand the momentum or the magnetic pull and "externalisation" of the EU (Laursen 1990; Laursen 1995).

According to the neo-functional approach, a state located in the centre of the continent should have been swept up by the process of European integration. There can be little dispute that there is a disproportionate number of multinationals in Switzerland and the Swiss Confederation is nothing if not open to the world. These enterprises,

according to the theory, should have spearheaded internal pressure to put Switzerland at the heart of the EU. Nonetheless, we have already seen that outward-looking multinationals and the economic sectors never did push for accession.

CHAPTER 10

Conclusions: Interesting Paradoxes

Our study has uncovered a certain number of interesting points and paradoxes that we shall underline in this concluding chapter.

Switzerland Is Sometimes More Integrated than Some EU Member States

1. Since 1988, Switzerland has not adopted any new federal (national) legislation without checking *a priori* what the relevant EU law is in the same area. Thus, Swiss parliamentarians are aware of what the EU does and have been advised to avoid creating disparities with EU legislation. They are, of course, free to do as they please but in general they endeavour not to stray too far from the EU fold. Moreover, in the perspective of joining the EEA, in the early 1980s, the Swiss Parliament accepted a legislative package which would approximate Swiss laws in many fields to those of the EU ("Eurolex"). These laws did not enter into force, as Switzerland did not, in the end, join the EEA, but many were nevertheless introduced, and are known as "Swisslex".

2. Switzerland has adopted EU policies rejected by some EU states. A good example is seen in its participation in the Schengen area. The Confederation has dismantled its physical borders whereas the United Kingdom and Ireland, two member states, have not adopted this important EU policy. Moreover, Switzerland is often quicker to apply Community legislation under the terms of the Bilateral Agreements I and II than many EU member states.

3. Switzerland may well deserve a prize for having organized the greatest number of popular elections on the European question. Since 1972, Swiss citizens have been called upon to express their views on European integration on no fewer than fourteen occasions. (See *Chronology of Events* where these votes are indicated in italics).

The Swiss, therefore, are among the most knowledgeable nations when it comes to EU policies. They have acquired a unique background on some issues. There is, in addition, a certain irony in the fact that Swiss citizens (thus, not citizens of an EU member state) were the only ones to be asked to express their opinions at the ballot box on the free

movement of Central and Eastern Europeans in Western Europe. No other Europeans were called on to accept the 2004 EU enlargement through a popular vote.

The Bilateral Agreements Are not Original from a Legal Point of View

From a legal point of view, the Bilateral Agreements (I & II) might have been expected to be more sophisticated than they are since they post-date the establishment of the European Economic Area. Yet they are short on legal innovations, following the conventional lines of a classic international agreement.

The EEA mechanism is much more interesting. In this mechanism there is an EFTA Court of Justice and an equivalent of the Commission for Norway, Iceland and Liechtenstein (EEA/EFTA States), the so-called EFTA Surveillance Authority. It is also clear that the EEA/EFTA states accept the jurisprudence of the EU Court of Justice. Finally, those non-EU European countries have committed to adopting subsequent modifications in Community *acquis* relevant to the EEA.

If the relevant Community *acquis* is changed it is not at all clear what Switzerland will be called upon to do (except in the air transport agreement and Schengen/Dublin). It is generally assumed that Switzerland will adapt its legislation autonomously on minor issues. If there is, however, a major change in EU legislation, it is expected that another treaty will be concluded. Nothing, however, has been codified in this regard.

In the bilateral agreements between Switzerland and the EU there is no specific Court of Justice or any kind of Tribunal of Arbitration. In the event of litigation, no legally binding mechanism has been established. There are only political mixed committees staffed by diplomats rather than lawyers (Kaddous 2006, p. 214).¹

A recent example illustrates this point well. In 2007, the EU began strong attacks against tax privileges granted by some Swiss cantons to foreign companies, claiming that they ran contrary to the 1972 Free Trade Agreement. This is not at all the view of the Federal Council. Yet in the absence of an independent jurisdictional mechanism to resolve such divergences of opinion, there will be negotiations and a compromise based on a showdown.

¹ There is not even a mixed committee in the agreement on the taxation of savings.

The Swiss Case Defies a Number of Principles

The case of Switzerland is not only interesting for the Swiss. It is also interesting for European integration experts. Switzerland is a state that has obtained privileged treatment that most community leaders and jurists had considered unachievable.

How many times have we heard that "tailor-made treatment" was to be excluded in any dealings with the European Union? That Switzerland could not "have its cake and eat it"? That Swiss self-centeredness could not go on? That there would be a price to pay if we wanted to take advantage of others without assuming a minimal amount of solidarity?

Nonetheless, it is undeniable that, with just a few exceptions, the Confederation has been able to find customized solutions. The bilateral path has proved to be feasible. It is true that, to a certain extent, this approach is at the mercy of a negative referendum. Switzerland runs the risk of having the Bilateral Agreements called into question.

Despite these undeniable difficulties, the fact remains that the EU is well on its way down the bilateral path with Switzerland and its governing authorities have given us no reason to believe that there is any wish to challenge the status quo.

From the same perspective, some twenty dossiers could be negotiated over the next few years. It is perfectly realistic to expect that a framework agreement could be drafted to consolidate this approach.

Mutatis mutandis, we are getting reports of statements by Community leaders and experts who learnedly assert that differentiated accession (which we have called "pick 'n' choose") is not feasible.

The facts are more nuanced, in the first instance because the European Union has already granted permanent derogations and secondly, because the Swiss case specifically shows that Community dogma may be more elastic than generally thought.

The Swiss Case Defies a Number of Theories

The Swiss exception also challenges certain theories on European integration (Schimmelfennig 2000, p. 19). These general views have one element in common: they seek to explain why European states agree to accession.

The solidity of these theories is shaken and their pertinence challenged by the Swiss case. It also leads us to distrust overly structuralist reasoning which seeks to explain the success of the European construction.

The Swiss exception presents the interesting paradox, underscoring the fact that the EU was not at all formed in a "natural" way, or "as dictated by history". On more than one occasion, European leaders could have chosen other policies. They might also have taken the inward-looking road, as Switzerland has done. They would have had no difficulty in merely defending their national interests and, by so doing, spared themselves the bother of finding effective solutions to the problems of Europe and of her citizens.

Switzerland's record reminds those favouring structuralist approaches that European integration is less the result of deeply-rooted forces than the clear-sightedness of certain European leaders.

Switzerland and the EU, the Ever-fleeing Horizon

Bilateral Agreements I and II also lead to the paradoxical observation that the closer Switzerland gets to the EU, the more distant the prospects of joining the EU seem to become.² The *EUization* (Europeanization) brought about by the proliferation of bilateral agreements and the autonomous adoption of much EU legislation will not necessarily prompt Switzerland to join the EU.

Indeed, most Swiss do not believe that this satellisation negates their independence. They are not disillusioned by a situation which gives the appearance of sovereignty but which, in fact, has already lost its substance. This reality does not encourage them to choose the option of accession.

On the contrary, the principal lesson retained by a majority of Swiss citizens is that the country can continue to "get by" for a long time yet. Most people hold that it is not worth joining the EU if one can have most of the EU advantages without its disadvantages.

The Bilateral Agreements II reinforce this analysis. Indeed, they grant Switzerland certain special conditions, which, in theory, would disappear in the event of accession. These concern, for example, banking secrecy in the agreement on the taxation of savings.

On the one hand, it brings Switzerland closer to the European Union on a particularly significant point. It forces the Confederation to copy European legislation and to tax the savings incomes of EU residents who have deposited their money in Switzerland.

Yet, on the other hand, it constitutes an additional obstacle on the path to accession. Bankers fear that by joining the EU, this very

² Most authors in a book edited by Clive Church in 2006 do not share my analysis. Most claim that the bilateral way is not sustainable and that Switzerland will naturally be forced to join the EU. See Clive Church (2006).

favourable treatment will be called into question. They are concerned that the Confederation will be forced to adopt automatic exchange of information, implying the lifting of banking secrecy. Thus, the closer Switzerland gets to the EU through bilateral agreements, the more distant the prospects of joining the EU seem to become.