

Michał TOMCZYK

Lucerne

Perspectives of the Swiss policy towards the European Union

Abstract: Relations between Switzerland and the European Union might be perceived as interesting, and at the same time an unprecedented example of the new, flexible integration. Despite more than a decade of fruitful cooperation, many of its aspects remains controversial. The problem of autonomous adaptation, lack of ability to influence decision-making processes within the Community, the opening of the labor market for new EU member states or other institutional aspects of the implementation of the agreements. These are just a part of the problems, which could be mentioned here. So the basic question remains – what will happen next? Has this an unprecedented example of a new form of integration reached its limits? What could be the prospects for the future cooperation? This article attempts to find answers to these questions. Several scenarios are taking under consideration, based on an analysis of current conditions and experiences, as well as on evaluation of the current political strategy of the government. That is: continuation of the bilateral relations, the accession to the European Union or the conclusion of a framework or association agreement. Those scenarios are being analysed in order to find the most probably solution for the future relations between European Union and Switzerland.

Key words: European Integration, European Union, Swiss policy, bilateral agreements

Introduction

Switzerland is involved in the process of European integration in various dimensions, starting from the 1960s. It was a founding member of the European Free Trade Association (EFTA), and in 1972, it signed the first agreement on free trade with the EEC. From that point until the early nineties, we could observe a certain stagnation in relations with the Community, which was primarily dictated by political and economic factors, such as the satisfactory level of economic relations and Switzerland's neutrality, which constitutes an obvious barrier to further integration. It should be added that the fairly conservative attitude of most Swiss, who value independence and even a kind of isolationism of their own country is also a barrier.

The situation changed dramatically after the collapse of the bipolar system and the related need to adapt to ongoing changes in international politics. The government in Bern was forced to review its current political strategy as it was unsuitable for the new geopolitical order, ongoing European integration and the emergence of different sources of risks to the safety of Switzerland. The first, albeit unsuccessful, step in the establishment of a new dimension of policy was the attempt at including Switzerland in the European Economic Area. The negative outcome of the referendum, despite promising evidence in the form of the preceding, successful, votes on the International Monetary

Fund and the World Bank, foiled the ambitious plans of the government. The Swiss government had to quickly revise its own strategy, which resulted in the launch of bilateral cooperation. This choice proved to be most appropriate. Public support for such forms of cooperation grew, and in the late nineties the first set of agreements was signed, the so called *Bilaterale I*. They covered seven thematic areas of an economic nature, including the most controversial one, on the free movement of persons. The positive effects of the first contracts encouraged the Swiss government to continue the path. Already in 2004, another package of agreements – *Bilaterale II* was signed. They regulate cooperation in the areas of, among others, harmonization of law, the struggle against tax evasion, fiscal policy and participation in international research projects.

Scenarios for the future

After nearly a decade of policy towards the European Union, a general consensus about the correctness of the chosen path, based on bilateral agreements, does not encourage change but rather a cementing of relationships for as long as possible into the future. Public opinion is overwhelmingly in favor of government policy and sees no need for deeper integration. Also, the political elites and opinion leaders consider bilateralism the best option. In their opinion, any radical change, in the short term, simply would not make sense. It should be noted, however, that some aspects of this cooperation are causing a lot of controversy, especially in relation to the asymmetry in relations between the EU and Switzerland. Policy towards the European Union is therefore pragmatic and only to a minor extent dictated by ideological considerations such as the desire for integration or creation of a common Europe. If the strategy guarantees economic growth, and at the same time does not impose a number of commitments that are difficult to accept, it is regarded as appropriate.

In an interview with „*Neue Zürcher Zeitung*” in January 2008, Micheline Calmy-Rey, Minister of Foreign Affairs, expressed the desire to expand existing cooperation into further contentious areas. It turns out, however, that the continuation of this path might not be so simple. There are, in fact, more and more problems, confusion and mutual grievances. Several questions can be mentioned here, such as the specificity of the Swiss political system, institutional reform in the European Union, or the economic crises. Both parties want to cooperate, but on their own terms. The general approach seems to be more and more demanding, and not as enthusiastic and optimistic as in the early 1990s. Both parties are trying to conduct discussions on the establishment of new regulatory bodies, whose task would be to improve cooperation, but also to ensure greater respect for the sovereignty of Switzerland. It is equally important to create a more transparent system of mixed committee work and a better coordination of activities. It is postulated here to create an additional body at ministerial level.

We can therefore create several scenarios for the further development of Swiss policy towards the EU. Based on an analysis of current conditions and experiences, as well as on an evaluation of the current political strategy of the government, we can identify three possible options: continuation of bilateral relations, accession to the European Union, or the conclusion of a framework or association agreement. Least likely is the suspension of

cooperation and a return to isolationism, or inclusion in the European Economic Area, but without joining the EU.¹

Continuation of bilateral relations

As mentioned before, the Swiss government is conducting talks with the EU in new areas. In September 2010, the Federal Council adopted a new report on European policy which considers bilateralism as the optimal instrument to protect the interests of Switzerland (*Bericht des Bundesrates über die Evaluation...*). The government also recognizes that bilateral cooperation is now much more difficult. Negotiations do not aim, however, to conclude a package of *Bilaterale III* (although there are also followers of such a solution). Both parties believe that this form of negotiation significantly prolongs the process and makes it more difficult to reach a compromise.

In November 2008, negotiations were started in the fields of agriculture, food and health. Their goal is to open the market for the entire agri-food chain, as well as to strengthen cooperation in the field of food safety and food products. Negotiations on this matter are probably among the most difficult, mainly due to the nature of the agricultural sector in Switzerland. Opening the market for agri-food products from the EU, usually much cheaper, could have a significant adverse impact on the condition of Swiss producers. The liberalization of the agricultural market is also a consequence of the provisions of the Doha Round in the World Trade Organization. The Government also considers this agreement as part of reforms implemented consistently in this sector. In order to reduce the negative effects of market opening, a special working group was set up, designed to determine the instruments that would strengthen the competitiveness of Swiss products on foreign markets (*Freihandel mit der EU im Agrar- und Lebensmittelbereich...*). There are plans to create a system of support for local producers, which will enable the development of the sector, making it more efficient and building a strong position against foreign competition. The results of this group were presented in July 2009.

The Swiss government also aims to regulate the cooperation in the field of health care, which currently operates in a very limited way. First of all, the national authorities have to cooperate with the European Centre for Disease Prevention and Control (ECDC), headquartered in Stockholm. Switzerland also intends to take part in a Community action program for the protection of health, which so far covers the period 2008–2013, but is likely to be extended for a further period. Its aim is to support preventative medicine (Decision No 1350/2007/EC of the European Parliament...).

Since November 2007, both parties have also held negotiations on the energy sector (*Verhandlungen Schweiz-EU im Strombereich...*). The EU came forward with a proposal of agreement. Its main objective is to secure the supply of electricity through the creation of a single European market.² This shall be possible due to the harmonization of safety

¹ For more see: *Verhandlungen über Landwirtschaft, Lebensmittelsicherheit, Produktsicherheit und öffentliche Gesundheit*, Integrationsbüro EDA/EVD, Oktober 2009.

² The creation of a single energy market will help to avoid the so-called blackouts (power outages) caused by power failure or network congestion.

standards and the elimination of barriers to cross-border trade. One element of this process is the separation of production from distribution services, which, in accordance with new EU regulations, will not be able to be provided by a single company. This will create an independent regulatory body to replace its counterparts at national levels. The main aim is to establish free energy trade between the European Union and Switzerland. The agreement also regulates the issue of the green energy market. Switzerland already earns about one billion francs annually on trade in this sector (mainly from trade with Italy and France) (*Strom*, 2010, p. 3). Agreement with the EU will facilitate access to EU markets and further strengthen the position of Switzerland in the future.

As a complement to cooperation in the energy sector, there is also an agreement on emissions trading. The domestic market is still small, which significantly increases the cost of certificates and thus hampers the implementation of emission commitments. Access to the EU market opens up new prospects for Swiss companies.

In September 2010, negotiations were launched on the participation of Switzerland in the construction of the Galileo satellite navigation system.³ The government's objective is to ensure the participation of Switzerland in the construction of the system on an equal basis, i.e. the right of co-decision and free access to know-how. The Galileo system can provide an excellent basis for the development of the Swiss aviation industry and the service sector.⁴

Two other areas are so far the subject of preliminary discussions. The first one concerns cooperation in the within the European Defence Agency. Its activities include the promotion of research and development and the promotion of international armaments cooperation in Europe. The agency aims to harmonize the rules and regulations concerning the manufacture and sale of arms and military equipment.

The second area is related to the Regulation of the European Parliament and European Council, concerning the safe use of chemicals. The regulation aims to facilitate trade and to ensure the safety of transport and storage. New EU rules make it difficult, as they are not compatible with the existing regulations in Switzerland.

The main problem in bilateral cooperation is, however, fiscal policy and the harmonization of the market. Reaching a compromise in these two areas is extremely difficult. In the case of liberalization of services, Switzerland is of the opinion that only certain sectors should be covered by the agreement. The Swiss government believes that the abolition of all restrictions could adversely affect the labor market. The European Commission insists, however, on not limiting the scope of the agreement, because it treats it as part of the EU single market strategy, which involves both the free movement of capital, goods and services and people. The discrepancies were too large, so the negotiations were suspended. Both parties have promised to return to the subject in the near future.

A similar impasse can be observed in a dispute concerning the fiscal policy of individual cantons. Working meetings, periodically organized between representatives of both parties have not yet brought any particular results, but have mainly involved presenting

³ Galileo is the answer to the American GPS system, but unlike the latter, control of the European system will be performed by civilian authorities, not the military.

⁴ See more *Satellitenavigation (Galileo und EGNOS)*, Integrationsbüro EDA/EVD, September 2010.

positions and exchange of views (*Dialog Steuerkontroverse...*). The dispute is focused around different interpretations of the Free Trade Agreement of 1972.

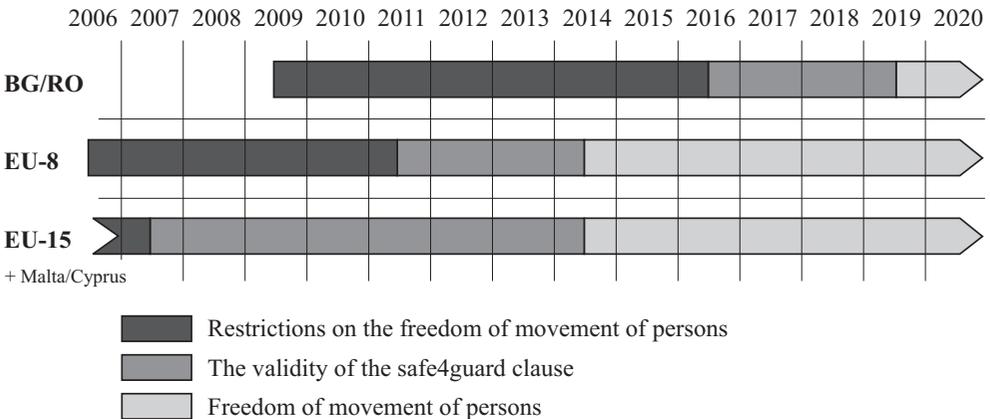
It should be noted that the issue of fiscal autonomy of cantons also has, besides the economic aspects, political significance. The allegations made by the European Commission are, in fact, contrary to the elementary principles of the Swiss political system, in which the individual components of the federation have considerable autonomy, including over fiscal policy.⁵ It is difficult for federal authorities to influence the behavior of the cantons in these areas which are still in their exclusive competence. Especially as this initiative would not have been the result of internal discussion or a part of wider reforms of fiscal policy in Switzerland, but a postulate inspired by other EU countries.

Recent government announcements reinforce the belief that a compromise will be difficult to achieve. On June 15, 2012, the Federal Council adopted rules that will be the basis for further negotiations with the EU's institutional areas:⁶

- consistent interpretation of the legal provisions in the agreements;
- adoption of the law must be dynamic, but not automatic. It must take into account the Swiss constitution, including the need to conduct a referendum;
- Switzerland should be guaranteed the right of co-decision (so called *Mitsprache-rechts* – decision shaping) in the establishment of a new law in the areas of bilateral agreements;
- Switzerland should be entitled to establish an independent body that will oversee the implementation of bilateral agreements;

Table 1

Freedom of movement of persons according to bilateral agreement between EU and Switzerland



Source: Integrationsbüro EDA/EVD.

⁵ For more see: *Warum die materielle Steuerharmonisierung kein Rezept für die Schweiz ist*, Referat Bundesrat Hans-Rudolf Merz an der Bundessteuerkonferenz, Bern, 11.05.2006.

⁶ *Bundesrat verabschiedet zuhanden der EU Grundsätze für institutionelle Lösungen*, Medienmitteilung EDA/EVD, 15.06.2012.

— in case of violations of the agreement it is necessary to establish institutionalized dialogue between the highest courts of Switzerland and the EU in order to ensure uniformity of jurisprudence.

It is also worth mentioning that in the case of further enlargement of the EU, the Swiss will probably again have to make a decision on opening their labor market for the new members of the EU in a referendum. Public opinion is not so enthusiastic in that matter, especially in view of the deepening of the European crisis. Economic migration to Switzerland in April 2012 reached a level justifying the re-introduction by the government of quota restrictions to new EU member states (in accordance with the provisions of the bilateral agreements from 1999). Since May 2012, the government has reduced the number of work permits issued (for more than one year) in Switzerland. This decision triggered a wave of criticism from EU member states.

Joining the European Union

Government official announcements regarding European policies and the statements by the foreign ministers of Switzerland suggest that accession to the European Union is definitely the less likely option than the continuation of cooperation at the bilateral level. Perhaps the pressure of the Community will be so large that membership will be inevitable for Switzerland in the long term.

Political dimension

Considering the political aspects, we can talk about the positive implications for Switzerland, in the form of the even stronger impact on the decision-making process within the Community. The size of Switzerland does not guarantee a significant position among the other members of the community. Especially in the context of the new method of voting in the EU Council adopted by the Treaty of Lisbon, which is not conducive to small states.⁷ However, with appropriate and beneficial alliances, interaction could be significant. Switzerland will be able to appoint a representative in the European Commission (admittedly on a rotary basis) and in the General Secretariat of the Council. In addition, membership provides the opportunity to occupy positions in the EU diplomatic service. It is also worth mentioning that, since accession to the EU, one of the judges of the European Court of Justice could be Swiss.

On the other hand, we are dealing with a huge problem of a legislative nature, regarding the necessity for the adoption of the *acquis*. Of course, Swiss legislation is, in the vast majority, compliant with European law. This does not change the fact that, by the applicable decision-making process and the division of responsibilities in the Swiss federation, the issue of implementing a dynamically developing EU law results in a lot of complica-

⁷ Switzerland will have 10 votes in the Council. The European Parliament will have a maximum of 20 members from Switzerland.

tions. Certain acts, such as the regulations, are directly applicable, which eliminates the influence of the citizens on creating laws. This is similar in the case of basic civil rights, such as a referendum or initiative. There is no doubt that the proposals in the referendum will be able to relate, if at all, only to national implementation of rules. In case of failure to implement EU directives on time, Switzerland will answer before the European Court of Justice.

In those circumstances, it is particularly important to carry out the demands of deep institutional reforms, addressing the division of competences between the government and the cantons, as well as the functioning of direct democracy.

Adoption of EU policy will entail the necessity to transfer powers to a transnational authority. Thus, the sovereignty of the state will be reduced in some areas. This applies in particular to monetary policy and monetary union, unless of course Switzerland agreed to replace the Swiss franc with the euro.

Currently, the problem of permanent neutrality, which makes it impossible to join the transnational organization of a political nature, like the European Union, is raised more rarely. A report of 1993 changed the meaning of neutrality in Switzerland's foreign policy, but it is currently difficult to determine precisely whether it is a barrier to full integration or not.

Economic dimension

Taking into account the current level of integration and the areas that are already, or in the near future will be regulated by bilateral agreements, it appears that economic arguments will be against accession to the EU. What is more, membership of the EU will not be a guarantee of Switzerland's economic development.

According to a study conducted by UBS in 2000, during the first three years after accession to the EU, a mild economic slowdown is expected (*Alleingang – Bilaterale Verträge...*, p. 8). However, in the long term, the economy is foreseen to grow much faster than at the bilateral level, mainly due to the deregulation of markets.

By far the biggest loser will be the agri-food industry, which will most painfully feel the abolition of export subsidies and import tariffs. The group that would benefit from the changes includes the machinery and automotive industry, textile manufacturers and watchmakers (*Alleingang – Bilaterale Verträge...*, p. 17). The banking sector will benefit from integration of markets, although the issue of banking secrecy may cause many problems.⁸ Integration would not be relevant for businesses that have been present for a long time in foreign markets and cope well with existing barriers.

It is worth mentioning the direct implications for the state budget. After accession to the EU, Switzerland will become a net contributor. Each year, it will be forced to pay into the EU budget about 3.5 billion francs. The total cost of membership, taking into account expenses related to the implementation of EU legislation, the abolition of customs duties,

⁸ The UBS report's authors suggest that a similar system of banking secrecy operates in Austria and Luxembourg. It is therefore suggested that the current pressure on Switzerland by the European Commission is a kind of demagoguery.

the implementation of programs and policies, and other administrative expenses, may come to slightly over 5 billion francs. Part of this amount will be compensated in the form of additional government revenues, due to a higher VAT rate. It will be increased from the current rate of 7.5% to 15%. At present, it is difficult to predict the final balance of gains and losses related to changes in tax rates.

Alternative forms of integration

In the discussions on the future development of relations with the EU proposals for a framework or association agreement sometimes occur (*Europabericht 2006 vom 28. Juni 2006...*). Many times this has been subject of debate during sessions in the Swiss parliament (*Bericht der APK des Ständerates vom 18. März 2002...*, p. 6326). Members of different parties reported interpellations concerning the desirability and feasibility of a framework agreement with the EU (*Interpellation Polla Barbara vom 21. Juni 2002...*; *Postulat Stähelin Philipp, Rahmenvertrag zwischen...*; *Interpellation Fehr Hans-Jürg. Wie weiter mit der EU?...*; *Interpellation Riklin Kathy. Rahmenabkommen...*). They have not, however, met with a concrete response from the government, but confirmed the need for a separate report on this matter. Micheline Calmy-Rey, the head of Swiss diplomacy, among others, was enthusiastic about the signing of such an agreement. According to her, this document would give bilateral cooperation a concrete regulatory framework. The general idea is to create a horizontal agreement, to facilitate the efficient management of existing treaties.

A framework agreement generally relates to the proposal to establish a central coordinating body to organize and harmonize the work of the various joint committees. Such a committee should be composed of senior representatives of government (ministers and European Commissioners), supported by experts and representatives of non-governmental organizations (trade unions, chambers of commerce and industry). The proposal of signing a framework agreement was also assessed by the Conference of Cantonal Governments (CCG). According to the cantons, the primary purpose of such a document should be clear regulation of the transposition of EU law and the institutionalization of political dialogue. CCG even believe that negotiations on a framework agreement should take precedence in relation to new bilateral agreements, provided, however, internal reforms are carried out first, such as the consolidation of the federal organization of the state (*Bericht des Bundesrates über die Evaluation ...*, p. 70). Currently, the concept of a framework agreement can be considered rather unrealistic. It is true that the European Union has repeatedly expressed interest in signing such a document, but has not taken a concrete decision (*European Parliament resolution of 7 September 2010...*). The European Commission has also sent clear signals that there is no space to create another precedent for Switzerland. Pre-existing relationships are a special case in the Union's relations with third countries. The authorities in Brussels are worried that this may cause a revisionist attitude among the current members of the Community and the countries that aspire to joining it. In addition, the conclusion of a framework agreement will *de facto* imply the inclusion of Switzerland in the EEA, meaning the adoption of almost all *acquis* (except for the service sector) with partial membership in a supranational organization.

Such an option would be possible only if the lack of consensus with the EU was painful for the Swiss economy, but for now this is not likely.

Finally, there is also the idea of customs union. However, it seems that neither side is interested in such a solution,⁹ especially as the European Union has already had a negative experience with attempts to introduce customs union with Turkey (Vahl, Grolimund, 2007, p. 127).

Conclusions

There is no doubt that bilateralism, which was initially treated as a period of transition towards full integration, has become the basis for the relationship. Both sides probably did not foresee such a scenario. When, in the early 1990s, it was decided to conclude a number of economic agreements, nobody expected that over the next ten years the relationship between Switzerland and the European Union will take an unprecedented dimension. If no significant changes occur in European moods, a model of cooperation will continue. The problem for the Brussels may be the situation in which the example of Switzerland would become a model for other present and potential members of the Union. Bilateralism in relations with Switzerland could evoke revisionist concepts within Community and threaten its unity. On the other hand, the case of Switzerland, if it is found to be effective for both parties, could be successfully applied also to third countries, such as Russia, Turkey and Israel. According to some opinions, bilateralism in relations with Switzerland is only the result of its unique location in the heart of Europe (Cottier, Liechti, 2006, p. 31). This form of cooperation will not be applied to other partners.

From the Swiss point of view the greatest obstacle to continuing the bilateral relations are institutional problems. In the report presented on December 20, 2012, the government called for a new regulatory framework for current and future agreements. It should ensure the proper implementation of dynamically changing EU laws, dispute resolution and control the uniformity of the internal market. Switzerland's proposal to establish an independent national supervisory authority is, however, not acceptable to the EU.

If the two parties fail to reach agreement in the near future, the European Union may propose the solution adopted in the case of the air traffic treaty from 1999. Switzerland here adopted all EU legislation under the control of the European Commission and accepted the judgments of the European Court of Justice in this regard. It should be remembered that this is not a precedent, because Switzerland has accepted the judgments of international institutions in the case of the WTO and the International Criminal Court.

In conclusion, we can point out four main reasons why major changes should not be expected in the near future. All of them are associated with public votes that have a direct or indirect impact on relations with the Community.

⁹ That proposal was rejected, *inter alia*, by CCG, see: *Europapolitische Standortbestimmung der Kantonsregierungen vom 25. Juni 2010*, p. 1, <http://www.kdk.ch/int/kdk/de/mm.ParagraphContainer-List.ParagraphContainer0.ParagraphList.0026.File.pdf/20100625.pdf>, 4.11.2010.

- Extension of the principle of free movement of persons in Croatia. The SVP has already announced that they will insist on a referendum, which might be expected no sooner than mid-2014.
- Ecopop initiative – referendum on reducing immigration, possible no sooner than in 2015.
- Co-financing of the EU Cohesion Fund. The referendum, preceded by what will certainly be a very severe debate, can be expected in 2014. A particularly pro-active approach should be expected from the SVP.
- Parliamentary elections in 2015. The SVP again will want to gain in the polls on a wave of criticism of the EU. The election campaign may begin in autumn 2014.

This is why the Swiss government is unlikely to opt for a spectacular change in bilateral relations with the EU before 2016.

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Warum die materielle Steuerharmonisierung kein Rezept für die Schweiz ist, Referat Bundesrat Hans-Rudolf Merz an der Bundessteuerkonferenz, Bern, 11.05.2006.

Streszczenie

Perspektywy szwajcarskiej polityki wobec Unii Europejskiej

Stosunki między Szwajcarią a Unią Europejską mogą być postrzegane jako interesujące, a jednocześnie jako bezprecedensowy przykład nowej, elastycznej integracji. Mimo ponad dekady owocnej współpracy, wiele jej aspektów pozostaje kontrowersyjnymi. Problem autonomicznej adaptacji, braku możliwości wpływania na procesy decyzyjne na terytorium Wspólnot, otwarcia rynku pracy dla obywateli nowych państw członkowskich UE lub inne problemy związane z instytucjonalnym wymiarem realizacji umów. To tylko część problemów, które mogą być wymienione w tym kontekście. Można więc postawić zasadnicze pytanie: co będzie dalej? Czy ten bezprecedensowy przykład nowej formy integracji osiągnął już swoje granice? Jakie mogą być perspektywy przyszłej współpracy? Celem niniejszego artykułu jest próba znalezienia odpowiedzi na powyższe pytania. W rozważaniach uwzględniono kilka scenariuszy, będących wynikiem analizy aktualnych warunków i doświadczeń, jak również na oceny bieżącej strategii politycznej szwajcarskiego rządu. Mowa o: kontynuacji stosunków dwustronnych, przystąpieniu do Unii Europejskiej lub zawarciu umowy ramowej czy też stowarzyszenia. Scenariusze te są analizowane w celu znalezienia odpowiedzi na pytanie o najbardziej prawdopodobny przebieg przyszłych stosunków między Unią Europejską a Szwajcarią.

Słowa kluczowe: integracja europejska, Unia Europejska, polityka szwajcarska, umowy bilateralne

