CBI
THE VOICE OF BUSINESS

Doing things by halves?

Alternatives to UK EU membership

Lessons from Switzerland and Norway

Britain's Global Role

Introduction

Any objective assessment of the UK's membership of the European Union requires consideration of potential alternative relationships. Options include relationships based on those Norway and Switzerland have with the EU – neither are members but they both enjoy varying degrees of access to the single market. CBI analysis, drawing on interviews with a wide range of Norwegian and Swiss stakeholders, clearly shows that such forms of associate membership are not easy options that simply allow a country to gain the advantages of membership while removing the disadvantages. Rather these models offer different combinations of costs and benefits. The CBI rejects the premise that these models would be better options for the UK.

The debate about the UK's relationship with the European Union (EU) has dramatically risen up the political agenda following the prime minister's speech in January which set out that a future Conservative government would ask the British people if they wished to remain in the EU on the basis of a renegotiated relationship.

An important element of this discussion has been consideration of alternative options for Britain were it to leave the EU. The UK will always need a relationship with the EU. Whether it is a member or not, a substantial part of our imports and exports go, and will continue to go, to our closest neighbouring market. But the question remains which legal and political framework for UK-EU relations can best support the UK's global trading role.

Proposed options have ranged from a continued close relationship with the EU but without formal membership, such as through remaining members of the single market or customs union, to a completely detached model based on a possible free trade agreement with the EU or even based on just UK membership of the World Trade Organisation.

Analysing all alternative options for Britain and how they would impact on the UK's ability to play our global role forms an important part of the CBI's headline project this year, *Creating a global role for Britain in a new Europe*. This document highlights our research and conclusions on two 'half-way house' models, which some advocates of withdrawal from the EU believe the UK could emulate as they provide greater access to EU markets than a simple free trade agreement. Both are closely integrated with the EU, but have chosen different routes to political, economic and legal integration:

- ★ The Norwegian solution – where Norway is part of the EU's single market without being a member of the EU through the European Economic Area (EEA) Agreement
- ★ The Swiss option – where Switzerland has negotiated some access to EU markets through a free trade agreement and more than 120 bilateral agreements with the EU.

The analysis draws on a review of the literature as well as interviews with a wide range of Norwegian and Swiss businesses, business federations, senior politicians, diplomats and other stakeholders during visits to Norway and Brussels.

The conclusion from our analysis of the 'half-way house' options is clear: some form of associate membership for the UK is not an easy option that combines the benefits of membership but removes the disadvantages. It is clear that neither the Norwegians nor Swiss have developed an associate membership that is satisfactory to both Brussels and the country in question.

The CBI rejects the notion that these models would be better for the UK, arguing that British businesses don't want to find themselves at the margins of the world's largest trading bloc operating under market rules over which they have no influence.

Leaving the EU and opting for the Norway model of membership of the EEA would not solve any of the challenges of the UK's current relationship with the EU. It would mean that businesses would still have to follow EU rules, while at the same time it would remove the UK's ability to protect our national interests by relinquishing our seat at the table in Brussels.

Neither is the Swiss model an attractive option, as in practice it would potentially mean a long period of uncertainty during negotiations over market access, with no guarantee of the UK getting what it wants, before ultimately becoming a standards taker with limited influence.

This brief provides some background information on the two 'models' of relationship with the EU, including their historical development, key characteristics, economic and business benefits and challenges, as well as lessons learnt for the UK.

The UK, Norway and Switzerland: some key facts

The UK is a large country with a more complex economy than Norway and Switzerland and significant clout in the EU decision-making process

GDP in 2012 (% of EU27)

Population in 2012 (% of EU27)

Norway and Switzerland are heavily dependent on EU trade, which partly explains their preparedness to accept rules and standards over which they have limited influence.

Trade with EU – exports & imports (% of GDP 2002-12)

The UK, Norway and Switzerland: some key facts

	UK	Norway	Switzerland
GDP (€bn) 2012	1901	389	492
Population (m) 2012	63.0	5.0	8.0
GDP per capita 2012 (current international dollar based on PPP)*	36,941	55,009	45,417
% growth pa, 2002-12			
Real GDP Growth	1.4	1.6	1.9
% of GDP 2002-12			
Private consumption	64.3	42	58.6
Government consumption	21.8	20.8	11.3
Gross investment	16.2	23.1	21.2
Exports	29	42.6	49.3
Imports	31.2	28.4	40.4
Memo: trade	60.2	71	89.7
Current account	-2.1	14.2	10.9
Trade stats 2002-12			
Goods exports as % of total exports**	69.9	78.2	71.8
Services exports as % of total exports**	30.1	21.8	28.2
Trade with EU as % of total**	52.2	73.5	64.5
Goods trade with EU as % of total**	54.3	75.2	65.3
Services trade with EU as % of total**	45.4	67.2	61.8†

	UK	Norway	Switzerland
% of GDP 2002-12			
Agriculture, forestry, fishing	0.7	1.4	1.0
Manufacturing	11.4	8.6	19.5
Mining, oil & gas, energy & utilities	5.1	27.5	2.5
Construction	7.1	5.3	5.6
Wholesale & retail	19.4	14.8	19.2
Information & communication services	6.0	3.8	4.3
Financial & insurance services	8.4	4.0	12.2
Professional services	19.7	13.6	9.1
Other services (incl. government & cultural)	22.3	20.9	26.7
Unemployment rate (%) 2002-12	6.3	3.5	3.2
Gross government debt (% of GDP) 2011	85.3	28.7	40

Souce: Haver Analytics (EUDATA & G10 database)
**Source: IMF (World Economic Outlook April 2013)*
*** Source: OECD (ITCS & MSIT databases*

† Data for Swiss services trade by destination is available. These estimates assume the share of exports and imports to/from the EU is the same as for goods.

The European Free Trade Association (EFTA)

Norway and Switzerland are both part of EFTA, which negotiates trade deals on behalf of its members

A common feature of the relationship Norway and Switzerland have with the EU is that neither are members of the EU's common trade policy. Instead, they have chosen to remain members of the European Free Trade Association (EFTA), which the UK left in favour of EU membership in 1973.

EFTA is an intergovernmental organisation set up for the promotion of free trade and economic integration to the benefit of its four member states – currently comprising Iceland, Liechtenstein, Norway and Switzerland.[1] Relations with the EU have been at the core of EFTA's activities, and an important basis for all EFTA countries' relationship with the EU are the free trade agreements (FTAs) concluded between the EFTA countries and the EC in 1972-73. These FTAs remain a base for all further agreements between each EFTA country and the EU.

Since the beginning of the 1990s, EFTA has actively pursued trade relations with third countries in and beyond Europe:

- It has concluded negotiations on behalf of its member state on 24 FTAs covering 33 countries, securing economic operators preferential access to markets of around 440 million consumers outside the European Union
- Today approximately 80% of EFTA's total merchandise trade is covered by preferential trade arrangements.[2]

EFTA has a few key characteristics

- The EFTA secretariat maintains the management of the EFTA Convention (intra-EFTA trade) and the EFTA free trade agreements (third country relations). Although Switzerland is not a member of the EEA, EFTA also manages the EEA Agreement (EFTA-EU relations).
- All EFTA states are free to sign bilateral agreements with other countries separately from EFTA. The general pattern is that countries have preferred to negotiate as part of EFTA, but Switzerland has signed FTAs with Japan while China has signed FTAs with Switzerland and Iceland.
- All EFTA agreements are bilateral – they are negotiated by the EFTA secretariat but in the end signed separately between the EFTA member states, sometimes with certain differences between the agreements.
- EFTA's trade agreements are similar to that of the EU, which reflects a previous EFTA policy of 'following the EU – one step behind'. After 1998, however, EFTA began a more independent free trade strategy and has since concluded FTAs with Canada and Singapore ten years ahead of the EU and with South Korea five years before the EU. Our research and interviews indicate that the quality of EFTA's trade agreements varies compared to that of the EU. Sometimes EFTA is able to get an agreement as good as or better than the EU because of the particularities of their economies, while at other times – especially when they follow EU negotiations – EFTA's agreements are often weaker.

The pattern seems to reflect the characteristics of the countries within EFTA. Sometimes they get better deals because their economies are not seen as a threat to the third country's industry, but at other times EFTA has less to offer than the EU, particularly when it comes to market size – an important factor for many developing economies.

If the UK joined EFTA...

- It would have to apply to become a member of the association, an application likely to be met with positive reactions from the EFTA member states in general, although they are likely to see their internal power balance altered and may have certain reservations.
- Becoming a member of EFTA would also mean budgetary contributions to the funding of the secretariat, which in 2013 had a budget of approximately £15m.
- Having joined EFTA, the UK would have to negotiate its own bilateral agreements mirroring the EFTA states' agreements. Given the differences between the small and fairly specialised EFTA states and the UK – a much more complex and diverse economy – each negotiation is likely to take around 3-5 years, depending on the depth of the agreement.

The Norway model: ‘outside yet inside’ through the EEA Agreement

History

The Norwegian government wanted to join the EU, but after two negative public referenda it signed the European Economic Area (EEA) Agreement

- When the Treaty of Rome established the European Economic Community (EEC) in 1957, Norway joined Britain in establishing EFTA (European Free Trade Association). In the years that followed, EFTA sought to stay closely linked to the EEC’s internal market, and several EFTA members chose to leave in favour of the EEC.
- Norway was also eager to join the EEC and has three times applied for membership. In a referendum in 1972, the Norwegian public said ‘no’, keeping Norway in EFTA as Britain entered the EEC in 1973.
- When the EEC broadened its membership and deepened the integration, it became increasingly difficult for EFTA to retain its access, despite the FTAs signed in 1972/3.[3]
- In 1984, the EEC and EFTA launched the so-called ‘Luxembourg process’ aimed at deepening and broadening the 1973 agreements to also include services and non-tariff barriers. The launch of the plans for a Single European Market in 1985 added urgency to this process. In the late ’80s, EFTA therefore began negotiating a model for closer integration which culminated in the EEA Agreement.
- As negotiations proceeded, the EEA was increasingly regarded as a stepping-stone towards full EC accession, and between 1989 and 1992, five of the six EFTA states applied for full membership, although not all were successful. Norway remained in EFTA and signed the EEA agreement in 1992, together with Iceland and Lichtenstein, with a view to joining the European Community (EC – as the EEC had now become) at the same time as Sweden, Austria and Finland.
- The Norwegian negotiations to join the EC began in spring 1993 and were finalised at the start of 1994. But Norwegian public opinion was particularly sceptical about the regional and agricultural policies of the EC. Later that year the Norwegian public rejected EU membership for the second time in a referendum.

Key characteristics

Norway is closely integrated with the EU through the EEA Agreement and has also signed further agreements with the union – such as Schengen

- The EEA Agreement brings together all the 27 EU member states and the three EEA member states – Iceland, Norway and Lichtenstein – integrating the 30 countries into a common economic area. It aims to allow for economic integration with the EU without becoming a member.[4]
- The Agreement provides the EEA countries such as Norway access to the single market through the inclusion in national law of EU legislation covering goods, services and capital, as well as the free movement of people. In practice the EEA agreement gives equal rights and obligations within the internal market for citizens and economic operators in the EEA, which means rules cannot favour operators in an EU member state.
- The implementation of rules is dynamic, with new EU rules automatically being integrated into an increasingly larger annex to the EEA Agreement.[5]
- Today the agreement covers most areas of the economy – including energy, financial services, state aid, competition rules, public procurement, transport, telecoms, company law, professional qualifications, free movement of labour and capital, and health & safety.
- The agreement also covers cooperation in other areas such as research and development, education, social policy, the environment, consumer protection, tourism and culture, collectively known as ‘flanking and horizontal’ policies.
- Several areas are not covered by the agreement, which means that countries like Norway are not involved in:[6]
  - Trade negotiations, as they are not part of the Common Trade Policy
  - The EU Customs Union
  - The EU’s agricultural and fisheries policy (although the Agreement contains provisions on various aspects of trade in agricultural and fish products)
  - The EU’s Common Foreign and Security Policy (although Norway chooses to take part in some of it)
  - Justice and home affairs (even though the EFTA countries are part of the Schengen area)
  - Monetary Union (EMU)
  - Development aid

- Norway has integrated with the EU beyond the EEA Agreement and signed 74 agreements in total with the EU, including the Schengen area agreement abolishing internal border controls.
- EEA members pay contributions to the EU through the EEA, and Norway pays additional 'Norway grants'. In total, Norway will pay €1.8bn in the period 2009-2014, a yearly contribution of €350m. In addition it pays directly for participation in EU programmes, and EEA/EFTA contributions to EU programmes in 2013 is estimated to be €284m, of which Norway pays around 95% – pushing the Norwegian bill to €600m.[7] This makes Norway about the tenth highest contributor to the EU despite not being a member, with Norway's per capita contributions of €100 being well over half the UK's equivalent of €180.

Governance of the Norwegian model

- All decisions by the EEA EFTA states are taken by consensus before laws are implemented, meaning that any country can hold up policy development.
- Members cannot accept direct decisions by European Commission or European Court of Justice, but are instead governed by separate EEA-institutions which mirror the EU's institutions, such as the EFTA Court and the European Surveillance Authority, which monitors the implementation and enforcement of the agreement. Any complex trade agreement needs institutions to police it.
- EEA countries have a right of reservation, which means they can choose to reject a particular piece of EU legislation (Article 102 in the EEA treaty), even if it is relevant and falls within their membership agreement, referred to as the 'reservation right'. The consequence of exercising this right is that the EU can choose to suspend any associated rights of the EEA EFTA states to linked benefits, such as market access. When using the reservation right the EFTA states are obliged to enter into negotiation to find a suitable solution for all parties, including investigating all other possibilities, for the agreement to be satisfactory. The investigation will last for no longer than six months after the reservation right has been used.
- EEA countries have no formal say in the EU's decision making process. But the EEA Agreement contains provisions for input from the EEA EFTA side at various stages before new legislation is adopted. For instance they have observer status in most Commission committees and expert groups in the policy-shaping phase.

Benefits of the Norwegian model

For Norway and Norwegian businesses the EEA Agreement has given access to the single market while retaining flexibility to pursue their own agenda on fisheries, agriculture and trade.

- Norway is closely connected to the EU through the EEA agreement. The agreement makes Norway a full member of the EU's single market on the same level as any other member state, which means Norwegian companies in theory can operate within the EU the same way British businesses can.
- A comprehensive analysis and report of Norway's 20 years in the European Economic Area – *Outside and inside* – found that access to the single market has benefitted the Norwegian economy and businesses. More than two thirds of Norwegian exports and imports go to the EU. Most Norwegian investments abroad are in the EU. EU-owned businesses account for 24% of the country's GDP and employ close to 20% of the workforce.
- Being outside the EU and its trade policy leaves Norway with a degree of flexibility to conclude trade deals with third countries bilaterally and through EFTA. It is currently negotiating a comprehensive economic partnership agreement with Indonesia through EFTA, and was close to achieving a bilateral free trade agreement with China until politics got in the way following the award of the Nobel peace prize to the EU.
- Norway is also not part of the Common Agricultural and Fisheries Policy, which gives Norway the opportunity to protect its primary industries in agriculture[8] and fisheries policy[9] by adjusting policies to meet national priorities on fish stock preservation and regional policy.
- At a business breakfast at the Confederation of Norwegian Enterprise (NHO) in Oslo the CBI met several Norwegian companies who confirmed that Norwegian businesses are dependent on having full market access to the EU.

> ***'The EEA Agreement has been a lifeline for Norwegian businesses. Any relationship with the EU that is less integrated than the EEA would be a disaster.'***
>
> **Knut Baumann**
> Federation of Norwegian Industries

Challenges

Practical barriers and realities reduce the economic benefit of market access

- Although the EEA agreement has secured market access and provided flexibility in certain economic areas, the CBI research visit also highlighted several economic challenges of being the outsider.

- Norway has equal access through the single market, but since it is not part of the customs union, Norwegian exporters and foreign companies exporting to Norway have to go through customs procedures such as import/export declarations, including rules of origin for all goods exports, and payments of VAT. A report published this year by the Swedish Chamber of Commerce on trade between Norway and its closest neighbour Sweden concluded that businesses see trading between the two countries as cumbersome despite the perception that it should be simple within the EEA.

- Moreover, although a member of the single market in theory, the lack of knowledge about the EEA across the EU means that trade barriers exist in practice. For instance, at a CBI roundtable event in Oslo, Norwegian businesses shared experiences of getting into difficulties with custom officials at border crossings across Europe causing severe delays and lost profits.

- Businesses brought up challenges posed by the legislative backlog – rules are implemented later in Norway than in the EU because the rules have to be agreed within the EEA structures after they have been approved at EU level. The EEA is supposed to implement rules 'simultaneously' with the EU (within a period of six months), but this is rarely the case – for example, EU rules on energy efficiency in buildings took nearly a decade to implement in Norway.

This creates a competitive disadvantage for Norwegian firms because they operate in a more uncertain regulatory framework than their European competitors. It can also harm inward investment in some circumstances – for instance, where long-term targets or rules on subsidies and state aid are set much earlier in the EU. Some Norwegian businesses that the CBI spoke to, pointed out that this happened with the implementation of the Renewable Energy Directive, where Norwegian delay led investors to invest elsewhere – often in the UK.

- It also became evident in CBI meetings with Norwegian stakeholders that most negotiations concluded by EFTA follow in the EU's footsteps and that major countries have been unwilling to negotiate with EFTA before they get an agreement with the EU, reducing the real benefit of Norway's trade flexibility.

- Similarly, although the primary industries in agriculture and fisheries policy have benefitted from the exemptions in the EEA Agreement, it has stunted growth in related industries. For instance, most of Norway's fish processing industry has relocated within the EU, often to Scotland.

And the democratic deficit means Norway has no formal channels to influence EU legislation

- The main challenge of the Norway model is the lack of any formal sway over decisions made in Brussels. Norway has no Commissioner, no members in the European Parliament, no votes in the council and has no vote in most expert groups and agencies widely used to prepare European legislation.

- Because the Norwegian government is not formally represented at EU level, it is often left out of the information loop, and therefore risks missing out on early stage discussions while EU member states are consulted by the Commission. While Norway might be involved by the Commission in discussions on sectors it considered of crucial national significance, it was more often excluded.

- A study prepared as part of Norway's recent review of the EEA found that a majority of actors involved in EU-lobbying believed that Norway's limited relationship with the EU limits their ability to influence at EU level. Businesses see the Norwegian delegation to the EU in Brussels of minor importance in their work on EU issues in terms of getting intelligence and support. Being outside the EU with no formal channels for influence is particularly harmful to SMEs who unlike the larger companies cannot afford to lobby and are therefore left unrepresented.

- The businesses the CBI spoke to felt that the lack of formal involvement led to an absence of knowledge and prioritisation of EU issues among Norwegian politicians and civil servants in Norway. They argued the absence of a need to prepare for regular meetings in Brussels meant Norwegian politicians did not focus on EU issues. Similarly, because the civil service is not required to brief ministers leading up to EU interactions, working on EU issues is not considered a useful career route, leading to lack of competence on the EU among civil servants.

- Norway has recently tried to challenge the automatic adoption of EU rules by using its right to reservation for the first time over the EU postal directive. It is still uncertain what the consequences of this reservation will be as the EU is yet to take formal action, but it is expected that there will be a suspension of linked benefits, such as access to the single market in that area. But as this is the first time Norway has tested this legal right, there is no precedent for how the European Commission will react.

Conclusion: the Norwegian model would not work for the UK

- ★ The EEA Agreement has worked for Norway by providing a stable framework for Norwegian businesses through access to the single market and giving the Norwegian government the flexibility it wants to protect certain industries from EU regulations.
- ★ However, the model has many economic flaws that hamper growth and competitiveness of the Norwegian economy and the democratic deficit means that Norway is a passive 'standards-taker' – accepting all rules from Brussels without any formal say in the process.
- ★ The model would not be suitable for the far more complex British economy. Nor does it in any way accommodate those who want to see a reduction in Brussels' influence on the UK and our regulatory development.
- ★ If anything the position would be worsened. Norway makes a significant financial contribution in return for market access but accepts rules it has virtually no influence over.

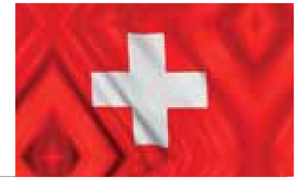
'We try to influence, but we do not have a seat at the table when decisions are being made. That is the price.'

Jeanette Iren Moen
secretary of state
Ministry for Trade and Industry

'If you want to run the EU, stay in the EU. If you want to be run by the EU, feel free to join us in the EEA'

Nikolai Astrup MP
EU spokesman for the Conservative party
and vice-chair, the European Movement

Switzerland and bilateral agreements: a complex and unsustainable strategy



History

Switzerland said no to the EU and the EEA and pursued a myriad of bilateral agreements with the EU

- Switzerland, a member of EFTA, was a signatory party to the EFTA-EU Free Trade Agreement in 1972. It was also part of the negotiations in the late ’80s and early ’90s between EFTA and the EU on the EEA Agreement creating closer integration between the EFTA states and the European single market.
- Switzerland was positive towards further integration and therefore signed the EEA Agreement in 1992 and subsequently applied for EU membership as the government believed this was the right option for the country. But on 6 December 1992, the people rejected the EEA Agreement in a narrow referendum result where 51.3% voted against membership of the EEA.
- To ensure access to the single market, Switzerland decided to negotiate bilateral trade agreements with the EU building on the 1972 Free Trade Agreement. After six years of negotiation Switzerland was able to conclude a package of seven bilateral agreements in 1999, usually referred to as ‘Bilaterals I’, which are mainly liberalisation and market opening agreements and covered free movement of people, technical trade barriers, public procurement, agriculture and air and land transport.
- This was complemented with the nine agreements in ‘Bilaterals II’ in 2004, which strengthen cooperation in the economic sphere and extend cooperation, including Schengen, taxation of savings, environment, pensions and fight against fraud.
- In total there are now over 120 agreements in force between Switzerland and the EU.

Key characteristics

Through more than 120 agreements Switzerland has access to parts of the single market but an agreement is yet to be reached on services

- The agreements grant Swiss companies’ tariff and duty free access to the EU’s single market in the areas covered.
- The agreements relating to the internal market cover free trade and free movement of people, the latter accompanied by flanking measures in Switzerland which protect against wage and social dumping.[11]
- In addition Switzerland is also intertwined in other areas...[12]
  - Internal security with agreements on Schengen and EU rules on asylum seekers (Dublin II)
  - An agreement ensures Switzerland’s participation in the European Environment Agency (EEA)
  - The Insurance Agreement grants reciprocal freedom of establishment to insurance companies (excluding pensions and life insurance as well as cross-border offering of insurance to Europe for instance via the internet)
  - Public procurement, extending the area of application of the current WTO regulation to cover procurement by regions and municipalities: by public and private companies in the sectors of rail transport, gas, and heating supply – as well as procurement by private companies which, on the basis of special or exclusive rights transferred to them by a public authority, are active in the sectors of drinking water, electricity supply, urban transport, airports, as well as river and sea transport.
  - Transport, through agreements on overland transport and civil aviation
  - Tax matters, through agreements on taxation on savings and fight against fraud
  - Research, allowing for Swiss participation in research co-operation within the European Union, in particular the framework programmes. Negotiations are necessary for each framework programme mainly determining Swiss contributions.
  - Education, ensuring Switzerland’s full and direct participation in the EU’s education, vocational training and youth programmes, ‘Lifelong Learning’ and ‘Youth in Action’.
- **The guillotine clause**: All agreements have to be adopted, enter into force and eventually expire simultaneously. This means that when concluding a number of agreements, Switzerland could not pick and choose its approach, but had to take the package as a whole.
- **The safeguard clause:** Under free movement of people, a politically difficult area of integration for Switzerland, they have negotiated an exemption – the ‘safeguard clause’ – which gives the country the right to cap immigration over a limited period of time if, in a given year, the number of EU arrivals exceeds the average for the three preceding years by at least 10%. This has rarely been used but in 2012 the Swiss government introduced quotas on five year residence permits (B permits) for the EU-8 nationals – including Poland, the Czech Republic, Slovakia, Hungary, and the Baltic Republics. This was recently extended for another 12 months and will limit immigration to about 2,180 entrants until May 2014.[13] In May 2013, the government decided to also limit the number of permits issued to people from the EU-17 nations, including Germany, France, Italy, Spain and Britain, which will be capped at 53,700 over the next 12 months.

Areas not covered by the agreement

- Switzerland is not part of the EU's Common Agricultural Policy, but the EU is by far the most important supplier of food products to Switzerland. An agreement from 2004 on processed agricultural products reduced duties on trade in products such as chocolate, coffee, beverages, biscuits and pasta. It enforced free trade for sugar and for products that do not contain any agriculturally relevant products other than sugar, but the EU can restate duties in connection with the development of raw materials' prices.
- The two parties have not been able to get an agreement on services, despite evidence of a positive impact both for Switzerland and the EU.[14] Moreover, Switzerland has not pressed for an agreement on financial services, arguably because of its fear of unwelcome regulation for its banks.

Governance

- The Swiss model is governed by agreements based on a classic form of cooperation between governments – ie the conclusion of the agreements by the state actors did not involve the transfer of any legal or decision making authority to a supranational body, as with the Norway model.
- The bilateral agreements are based either on the equivalence of legislation (as in the case of technical barriers to trade) or on the literal adoption (as in the case of Schengen) of EU legislation – the Acquis Communautaire – while 'cooperation agreements' regulate cooperation and participation in various programmes and agencies.
- The agreements and their further development are administered by joint committees, in which the EU and Switzerland exchange information, give advice and mutually consult on key issues.
- Both parties can turn to these committees when there are differences of opinion. But there is no real dispute settlement mechanism which in some cases leads the parties to 'agree to disagree' which can impact on Swiss market access. The recent quotas on immigration is a useful example, where the EU argues that Switzerland is breaking the rules on free movement of people as they discriminate between groups of countries within the EU, while Switzerland argues that it is in their right to do so. The Swiss business lobby, Economiesuisse, urged the Swiss government to prevent the quotas doing further damage to Switzerland's difficult relations with the EU and warned that this could hurt the country's businesses as many employers have a shortage of skilled employees and will now face hiring problems.
- The Swiss option is a fairly static one in that there is no in-built mechanism to take into account a continuously changing EU rulebook (except for the joint committee for Schengen/Dublin Association Agreement), and bilateral agreements can therefore quickly be out of date. But in practice, Switzerland attempts to follow the development of EU regulations and adopt these to maintain equal competitive conditions.
- Switzerland has no formal say in the development of new EU rules and unlike the EEA states the agreements do not provide for informal structured involvement. However, Swiss experts do sometimes participate in expert meetings where there is a mutual interest for them to be involved and procedures for information exchange and consultation have been set up for cases where the EU plans to change certain legal requirements in the area of application of the agreements.

Benefits

The Swiss solution has provided benefits through 'access with flexibility' for the Swiss economy and businesses

- Economically Switzerland is closely integrated with the EU, with the EU being Switzerland's number one trading partner. Goods worth more than one billion Swiss francs cross the border between Switzerland and the EU every day.[15] Swiss merchandise exports to the EU are concentrated on a few sectors – particularly chemicals and medicinal products, machinery, instruments and watches – while the EU consumes many service imports from Switzerland, in particular commercial services.
- Swiss companies have equal access in areas covered by the agreements opening up business opportunities in markets that were formerly closed to them.
- The Swiss government argues that Switzerland has achieved greater productivity as foreign suppliers gain free access to the Swiss market, which should result in greater competition in the sectors concerned, providing incentives for increased productivity.[16]
- Direct savings have been made through reduction in trade barriers, but more importantly through simplification of rules on testing and admission of products for the entire European market which is carried out by a single certification body.
- According to the Swiss integration office, the biggest economic impact is that resulting from liberalisation of the movement of people, which makes it easier to transfer Swiss staff to positions in the EU states, and also to recruit workers for the Swiss labour market. High-skilled workers are especially attracted to work in Switzerland, and some estimates argue that more than a third of the teaching staff at Swiss universities are EU citizens.

- A model based on bilateral agreements give a certain degree of flexibility in terms of choosing to include or exclude certain areas – for example the Swiss wish to exclude the area of financial services.
- Switzerland has some autonomous control over its borders and immigration through the Safeguards Clause.
- By signing agreements that cannot be amended substantially without renegotiation, Switzerland has retained formal control over which EU rules will be incorporated into Swiss law.

Challenges

The Swiss option has major weaknesses and is under pressure for reform

- Although having a relationship based on bilateral agreements means Switzerland doesn't have a seat at the EU table, in theory it gives the opportunity for Switzerland to safeguard national interest by not adopting EU legislation. But this does not seem to happen in practice as most of the time Switzerland opts to 'autonomously introduce' similar measures to make sure its industry doesn't have obstacles in accessing the EU market.[17] For Swiss businesses to be allowed to continue to export, they need to follow the rules of the EU. Swiss access to the single market on that area is only guaranteed as long as the EU rules remain the same as when the agreement was made. If the EU's laws have changed, Swiss businesses lose the access unless Switzerland adjusts their rules accordingly.
- Although a bilateral model gives certain flexibility in terms of areas included, this is not always a reality in practice. Switzerland has given substantial concessions in order to get market access.
    - An example can be taken from the negotiation of 'Bilaterals I' where Switzerland proposed a list of 15 areas to be covered, while the EU only wanted four areas – road transport, research, market access for agricultural products and the free movement of people, agreements on technical barriers to trade and public procurement – only the first two of which were on the Swiss list. Negotiations ended up covering seven areas, short of Swiss ambitions for access, and based mainly on the six areas suggested as a compromise by the EU Council in November 1993.
    - Another example is on free movement of people, an important reason for the Swiss rejection of the EEA Agreement. Switzerland still had to accept this when it negotiated the first package of bilateral agreements as the EU sees this as essential for the operation of a single market. Moreover, the Safeguards Clause is limited in its application, as it is only triggered in certain particular circumstances and is strictly time-limited.
- Negotiating trade agreements has been a complex and time consuming process, meaning costs to businesses due to uncertainty. Bilateral I took more than six years to negotiate, from proposing negotiations in 1993 to concluding in 1999, and didn't enter into force until June 2002, meaning that Swiss businesses were practically without access for nearly a decade.
- The lack of any dispute resolution mechanism makes it difficult for businesses to get clarification in case of disagreement.
- The process and administrative system surrounding the management of the agreements is viewed as burdensome. The sheer number of joint committees (27 in total) means managing the agreements leads to difficulties, in particular concerning the communication between them. In some cases it has proven to be a challenge to determine under which committee a certain sectoral agreement falls causing delays that could be costly for businesses, such as the case of mutual recognition of drivers licenses, or customs formalities in relation to provision of services, or standards for wooden containers.[18]
- The agreements reflect EU laws as they were originally adopted, but have no built-in mechanisms to address future changes, which can be challenging for businesses needing a medium to long-term planning horizon. In areas where updates occur, delays can occur as most joint committees meet only once or twice a year. Each committee tends to have limited oversight of what is discussed in the other committees, which can lead to a lack of coverage of certain issues or to duplication of work, leading to further bureaucratic costs.
- There is no official institution to interpret the sectoral bilateral agreements in a universal manner. This creates legal uncertainty and poses a potential barrier to trade.
- The EU and Switzerland has not been able to get an agreement on services although they have planned for negotiations. The free movement of services is covered by the bilateral law only very selectively and under different instruments, despite the potential benefits for both sides. Financial services are wholly outside the agreements, and thus its sector is treated under third country rules.

- The sustainability of the Swiss option has been questioned, as it is not a favoured model by the European Commission or by EU member states. The pressure for change from the Commission focuses on getting a better overall framework for the large number of agreements. Switzerland and the EU are currently discussing changing the relationship by adopting a more comprehensive and coordinated approach encompassing all current bilateral issues between Switzerland and the EU. This could include moving away from the principle of equivalence to adopting the Acquis, adopting the principle of homogeneity for Swiss interpretation of the law vis-à-vis the European Court of Justice (ECJ), and introducing a type of surveillance mechanism and a dispute settlement – similar to the EEA institutions that govern the Norwegian EU relationship.

And Switzerland has no formal channels to set the agenda and influence EU legislation

- Although some of our interviews have indicated that the Swiss are efficient lobbyists in Brussels, the political influence of Switzerland is even less than that of Norway. This means that they have to follow all the rules on the areas covered by the bilateral agreements without being able to set the agenda and influence the development of those rules.
- As a general rule Swiss experts are not allowed to sit on EU expert groups. Moreover, lack of information on and notification of new EU legislative proposals that involves even the fields covered in the bilateral agreements limit the possibilities of the Swiss in participating in the decision shaping process.
- As with Norway, the result of the fact that the Swiss are not involved in the practical aspects of EU decision making is that certain developments go unseen by the national administration.

Conclusion: the Swiss model would not work for the UK

- The Swiss model seems at first an attractive way to sign agreements on areas of national interest while exempting areas where it is important to keep control at national level. But research and interviews clearly indicate that this is not how the model works in practice.
- Firstly, the time it would take for the UK to renegotiate an agreement similar to the Swiss would mean a significant period of dislocation as negotiation takes place. The Swiss experience of a whole decade of uncertainty would not be conducive to growth and investments in the UK.
- Moreover, looking at Switzerland there is no guarantee that the UK would achieve agreements on all its prioritised areas while keeping other challenging elements out, as there are two parties to the agreement. In the case of Switzerland, the EU has successfully used its negotiating power to ensure that bilaterals are signed in a way that does not undermine the internal market, with the inclusion of the free movement of people being a clear example. The same approach is likely to be taken if the UK were to negotiate free trade and bilateral agreements, meaning Britain would be likely to end up having to accept a balanced package of rules related to the single market in order to get market access.
- It is also an illusion that the Swiss option would enable the UK to freely choose when to update the agreement. Although bilateral agreements are static, and the UK would have the power to 'say no', it would be in the UK's national interest to continue updating UK rules reflecting changes in EU law in areas covered by the agreement to ensure that businesses retain access. This would then be done without the UK having a say in the policymaking process of these rules.
- Finally, Switzerland is coming under increasing pressure from the EU to reform the relationship. The model is not considered a viable option from the perspective of the Commission and the EU member states and it's highly unlikely that the Commission would countenance an extension of this approach to other countries.

Interviews conducted

The CBI visited Norway between 23 and 25 April 2013, and interviewed European and Swiss stakeholders in Brussels on 13 and 14 May 2013.

- NHO (The Confederation of Norwegian Enterprise (NHO), Tore Myhre, director, Internationalisation and European policy, and Petter Haas Brubakk, executive director for economic and industrial policy
- Ministry for Foreign Affairs, Kathrine Raadim, political adviser to the foreign minister Espen Barth Eide
- Ministry for Trade and Industry, Jeanette Iren Moen, state secretary to minister Trond Giske
- Nicolai Astrup MP, vice chair of the European movement and EU spokesperson for the Conservative Party (Høyre)
- Svein Roald Hansen MP, Labour party (Arbeiderpartiet)
- Erna Solberg MP, leader of the Conservative party (Høyre)
- Hans Frode Asmyhr MP, FRP, Progressive party (FRP)
- Professor Kjell A Eliassen, author of external study linked to the EEA review on Norwegian interest representation, Norwegian Business School (BI)
- No to EU Movement, Heming Olaussen, leader and Eli Blakstad, deputy leader and state secretary for the minister for local government and development Liv Signe Navarsete, Centre party (Senterpartiet)
- Nordea, Steinar Juel, chief economist, economic research, Norway
- UK embassy to Norway, ambassador Jane Owen
- Ambassador János Herman, European Commission's delegation to Norway
- François Baur, permanent delegate, Economiesuisse
- Swiss mission to the EU, minister Daniel Klingele (second deputy head) and Jean-Marc van Dril (first secretary, trade and economic affairs, EFTA, enterprise and industry)
- Catherine Day, secretary-general of the European Commission
- Marc Vanheukelen, fead of cabinet to commissioner for trade Karel de Gucht
- Jonathan Faull, director general, internal market and services
- Sir Jon Cunliffe, UK permanent representative to the EU

References

1 A short introduction to 50 years of EFTA, EFTA (2010)

2 Free trade agreements, EFTA webpage (link)

3 NOU 2012: 2 Utenfor og innenfor. Norges avtaler med EU. Utredning fra utvalg oppnevnt av Utenriksdepartementet 7. januar 2010 (Europautredwwwwningen)

4 EFTA webpage, 'EEA Agreement' (link)

5 NOU 2012: 2 Utenfor og innenfor. Norges avtaler med EU. Utredning fra utvalg oppnevnt av Utenriksdepartementet 7. januar 2010 (Europautredningen) (link)

6 EFTA webpage, 'EEA Agreement' (link)

7 NOU 2012: 2 Utenfor og innenfor. Norges avtaler med EU. Utredning fra utvalg oppnevnt av Utenriksdepartementet 7. januar 2010 (Europautredningen) (link)

8 Norges forhold til EU på mat- og landbruksfeltet, Frode Veggeland (2012)

9 Analyse av Norges avtaler og samarbeid med EU på fiskeriområdet', Torben Foss (2012)

10 Norwegian non-governmental cctors in Brussels 1980-2010, interest representation and lobbying, Kjell A. Eliassen og Pavlina Peneva (2012)

11 Marius Vahl and Nina Grolimund (2006), Integration without membership. Switzerland's bilateral agreements with the European Union

12 Swiss directorate for European Affairs DEA, Webpage 'Bilateral agreements Switzerland-EU' (link)

13 Financial Times (link) and Reuters (link)

14 Henk Kox and Arjan Lejour (2005) Liberalisation of the European services market and its impact on Switzerland. Assessing the potential impacts of following the EU's 2004 Services Directive. Report to Swiss State Secretariat for Economic Affairs (SECO), Economic Policy Directorate, Division Growth and Competition Policy.

15 Economisuisse (2004) 40th Anniversary of the free trade agreement between Switzerland and the EU.

16 Swiss Directorate for European Affairs (DEA), Federal Department of Foreign Affairs (FDFA), 'Economic importance' (link)

17 Marius Vahl and Nina Grolimund (2006), Integration without membership. Switzerland's bilateral agreements with the European Union

18 Christa Tobler, Jeroen Hardenbol and Balázs Mellár (2010) Internal Market beyond the EU: EEA and Switzerland, European Parliament Briefing Paper

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June 2013

Product code: 10099