Brexit
The Swiss Model

Switzerland is unique, in that it is the only EFTA state which is not also part of the European Economic Area (EEA). Its relationship with the EU is instead governed by a large number of bi-lateral agreements. In this article we explore whether the Swiss example might be used as a guiding model for the future UK/EU relationship.

Background

Established in 1960, as an intergovernmental organisation, originally the objectives of EFTA included the promotion of free trade and economic integration amongst its Member States, and further economic integration between itself and the 'Western European States', which formed the European Economic Community (EEC), as the EU was then known.

Originally membership comprised seven founding countries (including the UK) and at its peak had a membership of ten states. All but four of these have now departed to join the EU, and of the EFTA states remaining, all but Switzerland are members of the EEA.

In June 2002, the Vaduz Convention came into force, superseding the original EFTA Convention, bringing about several key changes in the relationship between the EU and Switzerland. These were designed to shape Switzerland's relationship with the EU with more of the principles and rules which feature in the EEA agreement.

Switzerland does not have any general right of access to the EU single market, and as an alternative, it has negotiated numerous individual agreements, covering various elements of market access, with the EU. These bi-lateral agreements took many years of negotiation to complete and are currently managed through a structure of more than 15 joint committees. Additionally, Switzerland benefits from EFTA's 29 free trade agreements (covering 41 countries).

Working with the EU: Scope of Switzerland's Arrangements

Through the 120 or so bilateral agreements covering a variety of market sectors and removing or reducing practical barriers to cross-border trade, Switzerland has achieved broad access to the EU's single market and is able to trade in most goods.

A notable exception to this however is in respect to some service industries. And while the bilateral agreements provide partial coverage in areas such as insurance and public procurement, no such free trade agreement has been reached in other key areas such as professional services (including accounting and legal services), in that sector limited market access mean professionals practising in Switzerland are prevented from providing services in EU member states for more than 90 days each year.

Furthermore, there are curbs to the provision of financial services and banking. Switzerland is neither a member of the EU financial passport system (which reduces considerably the regulatory barriers to providing financial services across the EU), nor is there a bilateral agreement in place covering banking. Swiss banks are therefore obliged to open subsidiaries in an EU/EEA state in order to benefit from free market access and avoid the plethora of red tape that would otherwise be involved in its cross border transactions. In a number of cases they have chosen a UK base for such a subsidiary.

Only partial agreements have been reached on agricultural products and because of this, products considered as 'raw' agricultural goods remain subject to certain restrictions and tariffs.

Application of EU laws and regulations

To gain market access some key EU principles and rules have had to be accepted by Switzerland as the price of gaining market access. And although not an absolute requirement, Switzerland also adopts laws and regulations which generally align its legal framework to that of the EU, especially in areas such as competition, the environment and state aid.

Switzerland's forced acceptance of the EU's free movement of persons, and membership of the passport-free Schengen Zone has undoubtedly been hard to swallow, with the issue leading to a referendum in 2014 which resulted in a majority voting to impose a quota on inward migration, including immigration from the EU. With that result binding on the Swiss Government, it remains to be seen how it can be squared with the EU's position on free movement.

In the meantime, the EU has suspended negotiations over deeper access to the EU market, but for now there is no direct impact on the ability of Swiss and EU / EEA citizens to move and work between the states. The deadline for resolving the quota issue is February 2017.

Meanwhile Switzerland has been obliged to extend the free movement deal to Croatia: earlier attempts to block this, along with the 2014 referendum result, led to the freezing of research grants for Swiss universities worth hundreds of millions of euros (in particular the Horizon 2020 grant), and suspension of the involvement of the Swiss in the Erasmus student exchange programme.

Other Arrangements with the EU

Despite being a non-member, as a condition of the bilateral agreements, Switzerland contributes to the EU budget. In return, it can apply for certain funding and it also receives EU funded grants.

As a member of Schengen, Switzerland has access to the Schengen databases to assist in the tracking of suspected international criminals and terrorists. It also engages with Europol where required, but does not take part in the European Arrest Warrant. As a neutral state, Switzerland does not involve itself in any EU military missions.

Does the Swiss experience provide signposting for the UK?

In the event of the UK leaving the EU, and re-joining EFTA, some of the goals sought by Brexit campaigners could be achieved: the UK would still have partial access to some elements of the single market, yet have the freedom to independently realign its own free trade policy to focus on non-EU countries, such as China, India and America.

However, commentators and government bodies have pointed to the significant drawbacks and difficulties of the EFTA option:

1. Arrangements between Switzerland and the EU exclude certain service sectors, eg. financial services and banking. With the UK economy dominated by these sectors, the inability to access the free market could be damaging. Although the UK would be in a position to negotiate its own deals with the EU, there is no evidence that the EU would grant access. For example, despite numerous requests, Switzerland has still not been granted access to the EU's financial passporting service, instead being forced to open EU- based subsidiaries.
2. In order to sign up to bilateral treaties with the EU, Switzerland has made key concessions in implementing EU rules and regulations. It is likely that the UK would remain obliged to adhere to EU laws, rules and regulations, but with no influence on how these are designed and on whether or not they are suitable for the UK economy. This would, as with a number of the other potential models, undermine the argument that a vote for Brexit was a vote for legislative sovereignty.
3. This is of particular importance in respect to immigration – a key point of contention in the Brexit referendum campaign. The EU's attitude to Switzerland has shown that it is unwilling to make any concessions on this requirement: if a state wants any form of access to the free market, it must accept this fundamental principle. Although the UK could attempt to insert immigration limits into the terms of any bilateral arrangement, the Swiss example is a warning of a limited chance of success.

Additionally, although the UK would be free to negotiate its own free trade deals, the Swiss experience has shown that, without the weight of the full single market, the terms concluded might not always be as advantageous as they would be if they had been agreed with the EU block. For example, the recent free trade deal agreed with China has improved Swiss access to the Chinese market, but the deal represents a greater win for China in that the Swiss had to agree to an immediate reduction on tariffs on almost all Chinese imports, whereas China will allow 84% of Swiss exports to China to become exempt from tariffs over a period of 15 years.

So although membership of EFTA would give the UK more flexibility over its external trade arrangements, there are some limitations to this model. These drawbacks have also been recognised by the UK Government in its paper on the *Alternatives to membership: possible models for the UK outside the EU.*

The path to Brexit remains under negotiation and it is possible that a compromise on the terms of EFTA style bilateral agreements could be reached. However, given the lack of enthusiasm shown by Brussels for such compromise, this does seem unlikely, in particular given the Swiss model has proven to be, in certain respects, a complex headache for EU and Swiss lawmakers alike.